

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1816 OF 2021

Shital alias Nitin Bhimrao Kharat (detenu) Petitioner

Versus

The District Magistrate, Satara
and others

.... Respondents

....

Ms. Jayshree Tripathi, Advocate a/w. U.N. Tripathi, Shrikant Panhale
i/b. Shailesh Chavan, for the Petitioner.

Mr. J.P. Yagnik, APP for the Respondents-State.

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**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : 16 NOVEMBER 2021

JUDGMENT: (Per Sarang V. Kotwal, J.)

In this Petition the Petitioner has challenged the detention order bearing No.DC/MAG/4/KAVI-1954/2020 dated 2nd December 2020 issued by the District Magistrate, Satara under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-Marketing of Essential Commodities Act, 1981 (for short, "MPDA Act"). Since the Petitioner was detained pursuant to that order he has also prayed for his release from detention. The District Magistrate, Satara was delegated the powers under Section 3(1) of the MPDA Act vide order dated 8th July

2020 issued by the Government of Maharashtra, Home Department (Special) Order No.MPDA-0620/CR-76/SPA-3B.

2. Along with the order of detention, the Petitioner was served with the grounds of detention dated 2nd December 2020 along with the documents.

3. According to the Petitioner, he has made a representation to the State Government for revocation of the order of the detention. However, his representation was rejected.

4. Heard Ms. Jayshree Tripathi, the learned counsel for the Petitioner and Shri J.P. Yagnik, the learned APP for the State.

5. The Detaining Authority has filed an affidavit-in-reply opposing this petition. The Deputy Secretary, Government of Maharashtra, Home Department (Special) has also filed his affidavit explaining various stages regarding approval order, reference to Advisory Board, receipt of its opinion and confirmation of the detention order.

6. Though in the Petition various grounds were raised, Ms.Tripathi, the learned counsel appearing for the Petitioner has restricted her arguments only to the following grounds:

- (i) Ms. Tripathi submitted that the in-camera statements, on which the Detaining Authority has placed reliance for the purpose of arrival at his subjective satisfaction, are vague.

They do not give sufficient details. The incidents mentioned in those in-camera statements are individualistic in nature and do not affect even tempo of life of the society. Those incidents, even as per the narrations in those statements, do not affect the public order and, therefore, they could not form basis of issuance of the detention order.

- (ii) According to Ms. Tripathi those two witnesses “A” and “B” were chance witnesses and their narrations do not appear to be genuine. Ms. Tripathi further submitted that once those two in-camera statements are left out of consideration then the only material relied on by the Detaining Authority remains the C.R. No.158/2020 registered at Pusegaon police station, Taluka-Khatav, District-Satara. That FIR, by itself, will not make the Petitioner as a person who has “habitually” committed the offences mentioned under the MPDA Act. She, therefore, submitted that the material relied on by the Detaining Authority was not sufficient for passing the detention order.
- (iii) Ms. Tripathi further submitted that in the grounds of detention, the Detaining Authority has specifically referred to paragraphs No.4, 4(B)(i) and 4(B)(ii). These paragraphs specifically refer to C.R. No.158/2020 registered at Pusegaon police station and two in-camera statements of witnesses “A” & “B”. Ms. Tripathi submitted that the

reference to eight registered offences pending in different police stations, as mentioned in paragraph No.5 of the grounds of detention, was an extraneous and irrelevant consideration. The reference to this material shows that the Detaining Authority was influenced by this material and, therefore, the detention order is vitiated for non-application of mind and for consideration of irrelevant material. The very fact that the detenu was served with the material concerning these offences show that it was taken into consideration for arriving at subjective satisfaction by the Detaining Authority. She submitted that the opening paragraph of the grounds of detention specifically makes a reference to paragraphs No.4, 4B(i) and 4(B)(ii) only, on which the detention order was passed by the Detaining Authority. The other material therefore was extraneous.

7. In support of her contentions, Ms. Tripathi referred to various judgments, which shall be discussed in the following paragraphs.

8. Shri J.P. Yagnik, the learned APP opposed this petition. He submitted that except for ground (b) in the memo of the petition, the Petitioner has not taken any specific ground with reference to the arguments advanced before the Court. He submitted that in this situation there was no occasion for the Respondents to give specific reply to the submissions made before this Court. He submitted that

the in-camera statements of the witnesses “A” and “B” are genuine statements which is apparent from the fact that wherever they did not remember the particulars, they have candidly stated so. It was very easy for those witnesses to have given fictitious dates if the incidents were not true. Shri Yagnik submitted that those in-camera statements and truthfulness of the incidents mentioned in those statements were verified by the competent officer. He submitted that giving more details than necessary would have exposed the witnesses to the Petitioner. This would have defeated the very purpose of recording their statements “in-camera”. He submitted that long list of offences registered against the Petitioner shows live link between his past activities till the last registered offence and also demonstrates the necessity for issuing detention order.

9. We have considered these submissions. Though Shri Yagnik is right in submitting that specific grounds, which are advanced by way of arguments in respect of the in-camera statements, are not taken in the petition, we are still considering the submissions made on behalf of the Petitioner because this is a petition challenging detention of the Petitioner affecting his liberty, and they are taken in the written submissions circulated in advance with the leave of the Court.

10. The witness “A” has given a statement on 21st October 2020. In his statement, he has stated that one month prior to that, at about 4:15 p.m., he was travelling on his motor-cycle, he was followed by the Petitioner and his three associates in their Scorpio car. The Petitioner

was driving the car. The Petitioner accosted him, showed him a pistol kept near his waist and threatened to shoot him. The Petitioner asked this witness to run away. Even then the Petitioner kept following him and threatening him. It is specifically mentioned that the owner of the nearby hotel closed his hotel. All the people from the lane closed their doors and the people in the locality ran away due to fear. This statement was verified by the Sub-Divisional Police Officer, Patan, District-Satara on 4th November 2020. He has recorded that on his verification, he found that the incident was true.

11. The witness "B" has given his statement on 23rd October 2020. He has stated about the incident which had taken place in the last week of September between 12:00 p.m. to 12:30 p.m.. He was also returning home on his motor-cycle. At that time, the Petitioner and his four to five associates were standing near a petrol pump. They stopped this witness. The Petitioner manhandled, abused and threatened him. People on the road started running due to fear. This witness was threatened. The Petitioner showed him a knife kept near his waist. This witness was told that the Petitioner would stab him. The people in nearby workshop, grocery shop and garage got scared and ran away. The shop-keepers closed their shops. This witness somehow rescued himself and went away. This statement was verified by the same Police Officer on 4th November 2020 and has recorded that on his verification and enquiry he found that the incident was true.

12. Ms. Tripathi submitted that the incidents narrated by these two witnesses “A” and “B” do not affect the public order. She relied on certain judgments in support of her contention. The first judgment referred to by Ms. Tripathi was in the case of *Arun Ghosh Vs. State of West Bengal*¹. The Hon’ble Supreme Court has held in that case as follows:

“..... Disturbance of public order is to be distinguished, from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. There is no formula by which one case can be distinguished from another.”

In the case before the Hon’ble Supreme Court, all the acts were directed against a particular family and were not directed against the women in general from the locality. However, in the present case before us, the statements of the witnesses “A” and “B” show that the people in the locality had got scared. Shops were closed and the people ran away. This has affected even tempo of the society and was prejudicial to public order. These witnesses have also stated that the

1 1970(1) Supreme Court Cases 98

Petitioner had created a reign of terror in the locality. Their claim is verified by the competent police officer. Therefore, this observation of the Hon'ble Supreme Court does not support the contention of Ms. Tripathi.

13. Ms. Tripathi further relied on the judgment of a Division Bench of this Court passed in the case of *Nilesh Bansilal Gaywal @ Ghaywal Vs. The State of Maharashtra and others*². In this case also a distinction was made between 'public order' and 'law and order'. A reference was made to the case of *Arun Ghosh* (supra). However, in that case the Division Bench had observed that the place of occurrence depicted by both the witnesses in that case seemed to be rather secluded. These facts are quite distinct and distinguishable in the case before us. Therefore, even this judgment does not help the Petitioner in his contention.

14. Ms. Tripathi relied on the decision of a Division Bench of this Court in the case of *Jay @ Nunya Rajesh Bhosale Vs. The Commissioner of Police, Pune and others*³. In that case, the detention order was set aside because it was based only on a solitary incident which would not constitute a habit. In the present case, Ms. Tripathi sought to urge that if these two in-camera statements are left out of consideration then only the registered offence i.e. C.R. No.158/2020 registered with Pusegaon police station remained for consideration and

2 Decided on 2nd September 2021 in Writ Petition No.1768/2021.

3 2015 ALL MR (Cri) 4437

that would not show that the Petitioner was covered within the meaning of “dangerous person” under the MPDA Act. In this context, since we hold that the in-camera statements cannot be left out of consideration, this argument does not survive. Because besides the two in-camera statements, the aforementioned registered offence will definitely show that the Petitioner is covered under the definition of “dangerous person” under the MPDA Act.

15. Ms. Tripathi thereafter submitted that a reference to the entire list of past registered offences which were eight in number including C.R. No.158/2020 of Pusegaon police station; was wholly irrelevant. It is an extraneous consideration which had clouded the Detaining Authority’s mind while he arrived at his subjective satisfaction. In that context, Ms. Tripathi relied on the judgment of a Division Bench of this Court in the case of *Ganesh alias Gajaraj Sainath Patil Vs. The State of Maharashtra*⁴. In that case it was observed that though there was a reference to earlier criminal proceedings against that detenu between the year 2018 and 2020, it was specifically stated in paragraph No.1 of the detention order that the order was passed only on the ground which referred to one registered C.R. and two in-camera statements. The learned APP in that case had also submitted that the subjective satisfaction was not based on the criminal antecedents and it was only referred to as a past history. In the facts of that case, the Division Bench was not satisfied that the detenu in that case was a dangerous person and, therefore, the

4 Decided on 29th June 2021 in Criminal Writ Petition No.846/2021

detention order was set aside. However, in the present case, we do not find any infirmity in the reliance placed on two in-camera statements and one registered offence which is referred to in paragraph No.4 of the grounds of detention.

16. Ms. Tripathi further relied on the judgment of the Hon'ble Supreme Court in the case of *Khaja Bilal Ahmed Vs. State of Telangana and others*⁵. She relied on paragraph No.23 of that judgment. The discussion in that paragraph was with reference to antecedents of the detenu in that case. The detention order had referred to criminal cases instituted between 2007 and 2016. The order of detention stated that fourteen cases against the detenu were referred to demonstrate the antecedent criminal history and his conduct. In the counter affidavit, the Detaining Authority had recorded that those cases were referred by way to show his criminal background, but, were not relied upon. The Hon'ble Supreme Court had observed that the said averment was contradictory to the order of detention. If the pending cases were not considered for passing the order of detention, it defied logic as to why they were referred to in the first place in the order of detention. It was further observed that the satisfaction to be arrived at by the Detaining Authority must not be on irrelevant or invalid grounds.

. Ms. Tripathi relied on these observations. However, the Hon'ble Supreme Court in the same paragraph has further discussed that the order of detention may refer to the previous criminal

5 (2020) 13 SCC 632

antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities could indicate the detenu's tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the Detaining Authority. However, in the absence of a clear indication of a casual connection, a mere reference to the pending criminal cases cannot account for the necessary requirements. It was not open to the Detaining Authority to simply refer to stale incidents and hold them a basis of order of detention.

. We do not find that this judgment in the case of *Khaja Bilal Ahmed* (supra) relied upon by Ms.Tripathi in any manner helps her contentions. The offences referred to in paragraph No.5 of the grounds of detention in the present case before us does show the live link with detenu's past activities.

17. Considering the above discussion, we do not find any infirmity in the detention order and subjective satisfaction of the detaining authority based on the grounds of detention formulated by the Detaining Authority. With the result, the petition is dismissed and the rule is discharged.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)