

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 559 OF 2021

Mr.Shubham Rajendra Hingade
Age - 28 years, Occupation-Social Service,
R/at : Flat No. 803, Vaidya Bunglow,
Naman Society, Gnyaneshwar Paduka Chowk,
Pune 411 005.Petitioner

Versus

1. State of Maharashtra
through Secretary, Home Ministry
(Summons to be served upon
Office of Government Pleader,
High Court, Mumbai)
2. Commissioner of Police, Pune City
Having address at :
Police Commissioner office,
Sadhu Waswani Chowk, Pune ... Respondents

Mr.Kapil Rathor for petitioner.
Mr.J.P. Yagnik, APP for respondents.

**CORAM : S.S. SHINDE &
N.J. JAMADAR, JJ.**
Reserved for Judgment on : 10th June 2021.
Judgment Pronounced on : 22nd June 2021.

JUDGMENT : (PER N.J. JAMADAR, J.)

1. Rule. Rule made returnable forthwith and with the consent of the learned counsels for the parties, the petition is heard finally.
2. The challenge in this petition is to an order of detention,

dated 20th November 2020, passed against the petitioner by the Commissioner of Police, Pune City, under section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (hereinafter referred to as "MPDA Act, 1981").

3. The petition arises in the backdrop of the following facts :

(i) The petitioner claims to be a Social Worker.

Certain crimes have been registered against the petitioner out of political rivalry.

(ii) Two of the offences, which have been taken into account by the Detaining Authority, are registered with Chaturshringi Police Station, Pune City. In C.R.No. 931 of 2021, registered for the offences punishable under sections 326, 323, 504, 506 read with 34 of the Indian Penal Code, 1860 ('The Penal Code'), section 4(25) of Arms Act, 1959, and section 37(1) read with 135 of Maharashtra Police Act, 1951, the petitioner, in furtherance of his common intention with the co-

accused, allegedly caused grievous hurt to Yogesh Naik by means of a deadly weapon on 9th June 2020. The petitioner was arrested in the said crime on 10th June 2020 and was released on bail on the very same day. In crime No.1076 of 2020, registered for the offences punishable under sections 324, 504, 506 and 427 read with 34 of the Penal Code, section 4(25) of Arms Act, 1959, and section 37(1) read with 135 of Maharashtra Police Act, 1951, the petitioner, in furtherance of his common intention with the co-accused, allegedly assaulted Mr.Akash Suresh Pawar by means of dangerous weapon. The petitioner was arrested on 12th July 2020 and released on bail on the very same day.

(iii) In the backdrop of the violent and dangerous acts and conduct on the part of the petitioner, over a period of time, an enquiry was conducted. It transpired that the petitioner along with his associates has been committing offences under Chapter XVI and XVII of the Penal Code,

armed with deadly weapons. The petitioner has thus become a perpetual danger to the lives and properties of the people residing within the local limits of Chaturshringi Police Station, Pune City. The inquiry revealed that nobody was coming forward to lodge complaint and depose against the petitioner due to fear of retaliation. During the course of enquiry, in-camera statements of two witnesses were recorded.

(iv) The Detaining Authority, after considering the aforesaid material, was of the view that it was necessary to detain the petitioner by invoking the provisions contained in section 3 of the MPDA Act, 1981 in order to prevent him from acting in any manner prejudicial to the maintenance of public order. Thus, the impugned detention order was passed on 20th November 2020.

(v) The State Government approved the order of detention on 24th November 2020. The Advisory Board opined that there was sufficient

cause for the continued detention of the detenu. Thereupon, by order dated 10th December 2020, the State Government confirmed the detention order issued by the Commissioner of Police, Pune and further directed the detention of the petitioner to be continued for one year from the date of detention. Hence, this petition.

4. The petitioner has taken exception to the impugned order of detention on the following principal, amongst the other, grounds :-

“.....

(iv) Petitioner submits that, the three F.I.Rs cited in the record and proceedings of the detention order, ex facie does not satisfy the essential ingredients of MPDA Act to implicate present Petitioner.

(v) That, Petitioner's detention is caused with ulterior motive and malafide intentions due to local political rivalry and political pressure on Respondent No.2.

(vi) Petitioner states that, since the day of detention no opportunity for challenging the unlawful detention is being given to Petitioner, Respondent No.1 intentionally delaying the hearing and thereby curtailed the personal liberty of the Petitioner.

.....

(viii) Thus, Respondent Nos.1 and 2 hand in hands violating the fundamental rights and liberty of the Petitioner, by intentionally delaying the proceedings.”

5. An affidavit in reply is filed by respondent No.2-the Detaining Authority. The respondent No.2 has endeavoured to justify the impugned order on the count that the subjective satisfaction arrived at by the respondent No.2 to pass the order of detention under section 3(2) of the MPDA Act, 1981 was based on cogent and relevant material. The challenge to the impugned order, therefore, was stated to be unsustainable. An affidavit in reply is also filed on behalf of the State Government-Respondent No.1 to demonstrate the scrupulous compliance of statutory requirements.

6. We have heard Mr. Kapil Rathor, the learned counsel for the petitioner and Mr.J.P. Yagnik, the learned APP for the respondents. With the assistance of the learned counsels, we have also perused the material on record.

7. Mr. Rathor, the learned counsel for the petitioner submitted that the material which has been relied upon by the Detaining Authority, as is evident from the grounds of detention furnished to the petitioner, does not justify the impugned order of detention. Taking the Court through the grounds of detention, especially in the context of Crime Nos.931 of 2020 and 1076 of 2020 registered against the petitioner at Chaturshringi Police Station and comparing the same with the copies of the first information reports

in those crimes, Mr. Rathor made an earnest endeavour to draw home the point that the first information reports nowhere disclose that the petitioner had allegedly used the weapons which would warrant application of the provisions contained in section 326 of the Penal Code and the Arms Act, 1959. Mr. Rathor would further urge that the allegations against the petitioner, even if taken at par, would reveal that the offences were not serious and, in any event, the incidents arose out of personal animosity. The acts and conduct attributed to the petitioner, according to Mr. Rathor, by no stretch of imagination, can be said to be prejudicial to the maintenance of public order. The impugned order thus suffers from the vice of non-application of mind. The personal liberty of the petitioner has been trampled upon on the basis of unsustainable grounds, urged Mr. Rathor.

8. As against this, Mr. Yagnik, learned APP, stoutly supported the impugned order. First and foremost, it was urged that the grounds on which the impugned order is challenged (extracted above), are vague and general. The petitioner has neither made out a case of non-compliance of the statutory requirements nor of non-application of mind. In the totality of the circumstances, according to Mr. Yagnik, in the light of the antecedents of the petitioner, as

reflected from the grounds of detention, the subjective satisfaction arrived at by respondent No.2 cannot be faulted at. A continual course of dangerous and violent acts by the petitioner had endangered the even tempo of lives of the persons residing within the limits of Chaturshringi Police Station and, therefore, the respondent No.2 was well within his rights in exercising the power to detain the petitioner under section 3(2) of the MPDA Act, 1981, urged Mr. Yagnik.

9. We have given our anxious consideration to the aforesaid submissions.

10. To begin with, there can be no duality of opinion that the personal liberty of an individual is the most precious and prized right guaranteed under the Constitution. Though the State is empowered to put restraint on personal liberty, under the laws of preventive detention, the exercise of power must be in conformity with the provisions of law with meticulous compliance of the procedural safeguards. The authority empowered to detain a person must record a subjective satisfaction, based on a proper appreciation of the material placed before it, that the acts and conduct attributed to the proposed detenu are prejudicial to the society and fall within the mischief of the provisions which

empower the detention. The provisions contained in the enactments which authorize preventive detention cannot be resorted to as an easy substitute to deal with an ordinary law and order problem.

11. Section 3 of MPDA Act, 1981 empowers the State Government and also empowered Officers to detain any person with a view of preventing him from acting in any manner prejudicial to the maintenance of public order. It is trite that, “public order” and “law and order” are different concepts and have distinct juridical connotations. Only those acts which are prejudicial to the maintenance of public order, furnish a legitimate basis for preventive detention.

12. At this juncture, it may be appropriate to note the relevant provisions contained in the MPDA, Act, 1981 under which the Detaining Authority passed the impugned order. The Act defines ‘dangerous person’ as under :-

“2.....

(b-1) "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959."

Under clause (a) of section 2, in the context of a dangerous person, “acting in any manner prejudicial to the maintenance of public order”, means-

“(iv) in the case of a dangerous person, when he is engaged, or is making preparation for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.”

The explanation appended to clause (a) of section 2 further clarifies the import of ‘public order’, for the purpose of the said clause, which reads as under :

“Explanation—For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia, if any of the activities of any of the persons referred to in this clause directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health; [or disturbs in public safety and tranquility or disturbs the day to day life of the community by black-marketing in the essential commodities which is resulting in the artificial scarcity in the supply of such commodities and rises in the prices of essential commodities which ultimately causes inflation][or disturbs the life of the community by producing and distributing pirated copies of music or film products, thereby resulting in a loss of confidence in administrations.].”

13. In the backdrop of the aforesaid provisions, it may be apposite to first consider the distinction between the concepts of

“public order” and “law and order”. Public order is something more than ordinary maintenance of law and order. A proper test to distinguish between “law and order” and “public order” is whether the complained acts led to disturbance of the ordinary tempo of life of the community so as to amount a disturbance of the public order or it merely affected an individual leaving the tranquility of society undisturbed. It is, therefore, said that the essential distinction between the concepts of “public order” and “law and order” is not in the nature or quality of the act but in the degree, potentiality and extent of its reach upon society. The given act by itself may not be determinant of its own gravity. It is the propensity and potentiality of the act of disturbing the even tempo of life of the community that renders it as prejudicial to the maintenance of public order.

14. The aforesaid distinction has been enunciated in a catena of decisions. In our view, it may be appropriate to make a useful reference to the judgment of the Supreme Court in the case of *Harpreet Kaur (Mrs.) Harvinder Singh Bedi v. State Of Maharashtra And Another*¹, wherein, in the context of the provisions of MPDA Act, 1981, the Supreme Court expounded the distinguishing features, in following words :

1 (1992) 2 SCC 177

“18. From the law laid by this Court, as noticed above, it follows that it is the degree and extent of the reach of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a breach of ‘law and order’ or has acted in a manner likely to cause disturbance to ‘public order’. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of ‘public order’. Whenever an order of detention is questioned, the courts apply these tests to find out whether the objectionable activities upon which the order of detention is grounded fall under the classification of being prejudicial to ‘public order’ or belong to the category of being prejudicial only to ‘law and order’. An order of detention under the Act would be valid if the activities of a detenu affect ‘public order’ but would not be so where the same affect only the maintenance of ‘law and order’. Facts of each case have, therefore, to be carefully scrutinised to test the validity of an order of detention.”

(emphasis supplied)

15. After adverting to the provisions contained in section 2(a) [as it stood then], the Supreme Court observed that the explanation to section 2(a) incorporates a legal fiction as to the adverse effect on ‘public order’. They read as under :-

“28. The explanation to Section 2(a) (supra) brings into effect a legal fiction as to the adverse effect on ‘public order’. It provides that if any of the activities of a person referred to in clauses (i)-(iii) of Section 2(a) directly or indirectly causes or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or a widespread danger to life or public health, then public order shall be deemed to have been adversely affected. Thus, it is the fall-out of the activity of the “bootlegger” which determines whether ‘public order’ has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing with detentions under the Act.”

16. In the backdrop of the aforesaid enunciation of the legal position, we re-advert to the consideration of the pivotal question as to whether the subjective satisfaction arrived at by the Detaining Authority, that the acts and conduct attributed to the petitioner warranted his detention by invoking the provisions contained in section 3(2) of the MPDA Act, 1981 on the premise that those acts were prejudicial to the maintenance of public order, is sustainable? For an answer, it is necessary to consider the material which weighed with the Detaining Authority. The relevant part of the grounds of detention, furnished to the petitioner, bears upon the controversy. It reads as under :

“4 Recently, your involvement is noticed in the following offences which are of serious nature and are suggestive of your violent tendencies and inclinations to perpetuate your criminal activities as a ‘Dangerous Person’. This criminal activities of yours are prejudicial to the maintenance of public order as defined in section 2(a)(iv) of the act and hence, I, being the Detaining Authority, have relied mainly upon the same while passing the order of detention. I have considered following two offences mentioned below at para No.5.1 and 5.2 and two in-camera statements mentioned in para no. 6.1 and 6.2 to issue this detention order. The relevant documents regarding the investigation of these offences are enclosed herewith in order to enable you to make an effective representation.

Offences Considerable for Passing Detention Order

Sr. No.	Police Station	C.R. No.	Sections of law	Date & time of registration	Date and time of arrest	Status
1.	Chaturshringi	931/2020	U/s 326, 323, 504, 506 of I.P.C. Arms	09/09/2020	10/06/2020 15.40	Court Pending

			Act-1959; Arms Act 4(25), 37(1)/135 of M.P Act	07.00 hrs.	hrs.	
2.	Chaturshringi	1076/2020	U/s. 324, 504, 506, 427, 34 of I.P.C. Arms Act-1959; 4(25), 37(1)(3)/135 of M.P Act.	12/07/2020 at 11.49 hrs.	28/07/2020 at 13.10 hrs.	Court Pending
3.	Chaturshringi	1089/2020	U/s. 326, 323, 34 of I.P.C. Arms Act-1959; 4(45), 37(1)(3)/135 of M.P Act.	14/07/2020 at 01.08 hrs.	26/07/2020 at 18.00 hrs.	

“5 Particulars of Offences Considered for Passing Detention Order as below :-

5.1 Chaturshringi Police Station, Pune C.R. No. 931/2020 U/s 326, 323, 504, 506 of IPC Arms Act-1959; Arms Act 4(25), 37(1)/135 of M.P Act.

Shri Yogesh Ramchandra Naik, age – 21 years, r/o Sr. No.211, beside Shankar temple, Khairewadi, Pune is the complainant of the said offence.

On 08/06/2020 at about 10.00 hrs. the complainant along with his friends Rahul Admane, Rohit Shandge, Aditya Kalapkar were walking from Khairewadi towards Esquire, Ganeshkhind road. The complainant and his friends came near Vijay Housing Society, three of his friends were walking in front and the complainant was walking behind them. Suddenly you along with your accomplices came on four two wheeler and stood in front of the complainant and assaulted him with the back side of koita and his shoulder, hand and his head. Your accomplices also holding Koita in their hand started assaulting the complainant, he started yelling for help to his friends. As soon as the friends of the complainant saw the incident, they started pelting stones towards you and your accomplices, you then fled from the spot along with your accomplices on two wheeler. Accordingly, on the complaint of the complainant, the offence was registered against you and your accomplices at Chaturshringi Police Station, Pune on 09/06/2020 at 07.00 hrs.....

5.2 Chaturshringi Police Station, Pune C.R. No.1076/2020 U/s 324, 323, 504, 506, 34 of I.P.C. Arms Act-1959; 4(25), 37(1)(3)/135 of M.P Act.

Akash Suresh Pawar, age - 25 years, r/o Wadarwadi, in front of block no. 51, behind Homibhabha Hospital, Pune is the complainant in the said offence.

On 11/07/2020, the complainant was talking with his friend Pravin Shalke in front of Bhaba Hospital, Wadarwadi, Pune,

person namely Jayesh Lokhande who had disputed with Pravin Shalke along with you and Nikhil Kusalkar, age 20 and Shubham Sarode, age 28 with a conspiracy came there on your motorcycle, complainant's friend Pravin Shalke ran away from the spot. Since you and your accomplices saw complainant talking to Pravin Shalke, you came near complainant and asked him "बोल ए गांडू, प्रविण्या का पळाला" as the complainant replied, "I don't know", you started slapping on his face and your accomplices using bad words got him down and started blowing fists and kicks. Your accomplices Jayesh Lokhande and Shubham Sarode removed a shart koita like weapon and were raising in the air. The complainant was begging to leave him. Your accomplice Shubham Sarode assaulted complainant's head with the back side of the koita like weapon and injured him. You with a stick hit the complainant on his legs and back, at that time your accomplices Nikhil Kusalkar age 20 started kicking him in his stomach. Jayesh Lokhande said if they again see complainant, Jayesh Lokhande came in front and raising the koita like weapon in air said "बोल कोणीही पुढे आला तर तुकडे करुन टाकीन, चला गुपचूप निघा आयद्याल्यो" and ran towards them to create terror, the people ran helter skelter to save their lives. Person namely Ajay Vitkar begged you to leave him, but you and your accomplices assaulted him with kicks and blows. Accordingly, on the complaint of the complainant, an offence was registered against you at Chaturshingi Police Station, Pune on 12/07/2020 at 11.49 hrs."

(emphasis supplied)

17. Evidently, the Detaining Authority has professedly taken into account the two offences registered against the petitioner, namely C.R. Nos. 931 of 2020 and 1076 of 2020 at Chaturshringi Police Station, Pune City and in-camera statements of two witnesses. The question which wrenches to the fore is whether the aforesaid material, especially the role attributed to the petitioner in the aforesaid offences, which allegedly affected public order, is borne out by the report under section 173 of the Code of Criminal Procedure, 1963 ('Cr.P.C.'), in the case of C.R. No. 931 of 2020, and

the F.I.R. in the case of, C.R. No.1076 of 2020, copies of which were also furnished to the detenu along with the grounds of detention.

18. From the perusal of the aforesaid narration in respect of C.R. No. 931 of 2020, the Detaining Authority has imputed the petitioner the role of having accosted the first informant therein, Mr. Yogesh Naik, and assaulted him with the blunt side of sickle (Koyta). We have perused the first information report lodged by Mr. Yogesh Naik on 9th June 2020. In the said report, the first informant Yogesh Naik alleged that he had known one Mahesh Hingade. On the day of occurrence, Mahesh Hingade had accosted him along with 4 to 5 unknown associates. Mahesh Hingade had assaulted him by means of the blunt side of the sickle on his shoulders and hands. The unknown associates of Mahesh Hingade also started assaulting him by means of sickle. Evidently, the petitioner was not named as the assailant initially. It transpired that the name of the petitioner as an associate of Mahesh Hingade was disclosed in the statements of the witnesses recorded on 13th June 2020. It is imperative to note that the witnesses have, however, refrained from attributing the role of assault to the petitioner. At best, the witnesses have stated that the associates of Mahesh Hingade were assaulting the first informant by fist and kick blows. The witnesses

have professed to inform that it was Mahesh Hingade, who had created terror in the locality.

19. If the report of the first informant Mr. Yogesh Naik is considered in conjunction with the statements of the eye witnesses, it becomes abundantly clear that the role of assault by means of sickle was attributed to Mr. Mahesh Hingade. Conversely, the petitioner herein was initially not named as an assailant. Nor is it a positive case that the petitioner had assaulted the first informant by means of sickle. On the contrary, the first informant reported that Mahesh Hingade had assaulted him as they were on inimical terms.

20. Likewise, from the narration qua C.R. No. 1076 of 2020, (extracted above), it becomes evident that the Detaining Authority again made an endeavour to attribute a major role to the petitioner. However, from the perusal of the first information report lodged by Mr. Akash Pawar, it becomes abundantly clear that the alleged incident occurred as the first informant was having a conversation with Mr. Pravin Shalke, who was inimically disposed towards Jayesh Lokhande. As the said Pravin Shalke allegedly ran away after noticing Jayesh Lokhande and his associates, the latter accosted the first informant and abused and assaulted him. Jayesh Lokhande and Shubham Sarode were allegedly armed with sickle

like sharp weapons. They assaulted him by means of the blunt side of the said weapons. The role attributed to the petitioner herein is of assaulting the first informant by means of stick on back and legs. Mr. Akash Pawar further reported that Jayesh Lokhande threatened the persons who came to his rescue. Mr. Jayesh Lokhande had created terror in the said locality.

21. The aforesaid analysis of the material pertaining to C.R. Nos. 931 of 2020 and 1076 of 2020 indicates; firstly, the genesis of those two offences is in the previous enmity between the first informant in C.R.No.931 of 2020 and Mr.Mahesh Hingade, the principal accused therein, and Mr. Jayesh Lokhande, the principal accused in C.R.No. 1076 of 2020 and Mr. Pravin Shalke, the friend of the first informant therein. Secondly, it is imperative to note that in neither of the offences, the role of having assaulted the respective first informant, by means of a deadly weapon, is attributed to the petitioner. Thirdly, the endeavour made by the Detaining Authority to paint the picture of the petitioner as the principal accused, nay the leader of the gang of assailants, is belied by the allegations in the first information reports and statements of witnesses.

22. The acts attributed to the petitioner in the aforesaid narration, in the grounds of detention, are, thus, simply not made

out by the underlying documents. The justification for the detention sought to be offered, in the grounds of detention, thus, suffers from a grave misconstruction of the record. In an effort to shore up grounds in support of detention order, the Detaining Authority has committed a patent error of levelling against the petitioner the imputations, which the documents do not bear out.

23. In any event, even if the material relied upon by the Detaining Authority is taken at par, the acts attributed to the petitioner would fall within the ambit of a case of breach of law and order. As indicated above, the role attributed to the petitioner is, at best, that of an accomplice of the principal offender. In the first case, no assault is attributed to the petitioner. In the second case, the petitioner allegedly assaulted the first informant by means of stick only. In both the cases, the previous enmity between the respective assailant and the victim, was alleged to be the genesis of the occurrence. Applying the tests, adverted to above, to the facts of the case, we find it rather difficult to persuade ourselves to hold that the acts committed by the petitioner were such that they disturbed the public tranquility by creating a terror and panic in the society or a considerable number of the people in the said locality.

24. The conspectus of the aforesaid consideration is that the

subjective satisfaction arrived at by the Detaining Authority suffers from misconstruction of material placed before it and, consequently, non-application of mind. The objectionable acts of the petitioner, even if taken at par, would fall within the dragnet of “law and order” and can be taken care of by ordinary laws. Thus, there was no justification for resorting to the provisions contained in section 3(2) of the MPDA Act, 1981 and, thereby impinge upon the cherished personal liberty of the petitioner.

25. For the foregoing reasons, we are persuaded to quash the impugned order and set the petitioner at liberty. Hence, the following order :

O R D E R

- (i) The petition stands allowed.
- (ii) The impugned order of detention dated 20th November 2020 stands quashed and set aside.
- (iii) The petitioner- Shubham Rajendra Hingade be set at liberty forthwith, if not required to be detained in any other case.

Rule made absolute in the aforesaid terms.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)