

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

Amk

WRIT PETITION NO. 1881 OF 2021

VISHAL
SUBHASH
PAREKAR

Rekha Shambhu Gawli	]	
Age-46 yrs, Occ.-Housewife,	]	
R/at : Pratikshanagar Slum,	]	
Panchshilnagar No.02,	]	
Room No.407, Sion, Koliwada,	]	
Mumbai-400022.	]	.. Petitioner

Digitally signed
by VISHAL
SUBHASH
PAREKAR

Date:
2021.09.03
11:08:50 +0530

Versus

- | | | | |
|----|----------------------------------|---|----------------|
| 1. | State of Maharashtra |] | |
| | (Through Commissioner of Police, |] | |
| | Railways, Mumba) |] | |
| 2. | Superintendent of Thane |] | |
| | District Jail. |] | .. Respondents |

Ms. Paavani Chadha for the Petitioner.

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

CORAM : S. S. SHINDE AND N. J. JAMADAR, JJ.

Judgment reserved on : 29.07.2021

Judgment pronounced on : 02.09.2021

JUDGMENT (Per N. J. Jamadar, J.)

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels, heard finally.

2. The petitioner, who is mother of Umesh Shanbhu Gawli, a detenue, has assailed the order of detention dated 07.04.2021 passed by Commissioner of Police, Railway, Mumbai under Section 3(2) 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 (MPDA Act).

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

(a) A proposal was initiated to detain the detainee as it transpired that number of offences were registered against the detainee. He was indulging in criminal activities with impunity in the area of Thane, Kalyan, Kurla and Dadar. The detainee roamed around with his associates armed with deadly weapons. Various grave offences like robbery, theft, causing hurt and extorting money were registered against the detainee. The activities of the detainee were causing harm and insecurity amongst the general public. In the past preventive action was taken against the detainee yet the detainee continued to pursue life of criminality, unabated and with impunity.

(b) The detaining authority considered two predicate offences, namely, C.R. No. A-915/2020 registered at Thane Railway Police Station on 07.12.2020 for the offence punishable under Section 392 of the Indian Penal Code, 1860 (the Penal Code) and C. R. No. A-922/ 2020 registered with Thane Railway Police Station on 22.12.2020 for the offences punishable under Sections 392, 201 and 75 of the Penal Code. As persons were not coming forward to lodge complaints against the dangerous criminal activities of the detainee due to fear of reprisal, the sponsoring authority recorded the statements of witnesses in camera.

(c) The detaining authority after considering the facts revealed in

the above numbered offences registered against the detainee and the confidential statements of the witnesses, arrived at a subjective satisfaction that the detainee was a dangerous person and indulged in activities which were prejudicial to maintenance of public order. Thus, in order to prevent the detainee from indulging in such activities, which were prejudicial to the maintenance of public order, in future, found it necessary to detain the detainee by invoking the provisions contained in Section 3 of the Act.

(d) The grounds of detention were served on the detainee. The State Government approved the order under sub-Section (3) of Section 3 of the MPDA Act.

4. The petitioner has invoked the writ jurisdiction of this Court assailing the legality and correctness of the impugned detention order by raising multi-fold grounds. On a careful consideration of the petition, we find that only ground (a) can, at best, be said to contain a challenge to the legality of the detention order. The petitioner asserts in ground (a) that the detention order is legally unsustainable as it does not spell out the period of detention. Rest of the grounds in the petition reflect the adverse social condition and poor financial position of the petitioner and detainee. In the passing, in ground (f), it is asserted that there is no threat to any person of the society from the detainee as he is an ordinary young citizen.

5. Affidavits-in-reply have been filed by the detaining authority as well as on

behalf of the State Government. The challenge to the detention order on the score of not specifying the period of detention is stated to be unworthy of countenance. There is no requirement in law that the detaining authority must specify the period of detention. Rest of the contentions in the petition, according to the respondents, properly construed, do not constitute grounds of challenge to the detention order.

6. In the wake of aforesaid facts and pleadings, we have heard Ms. Paavani Chadha, learned counsel for the petitioner and Mr. J. P. Yagnik, learned APP for the State at length. With the assistance of the learned counsel for the parties, we have also perused the material on record including the original record tendered for the perusal of the Court.

7. Ms. Chadha, learned counsel for the petitioner strenuously urged that the detention order cannot be sustained as the satisfaction arrived at by the detaining authority that the activities of the detainee were prejudicial to the maintenance of the public order is infirm. Amplifying the submission, Ms. Chadha would urge that the acts and conduct attributed to the detainee, even if taken at their face value, would, at best, justify an inference that those activities fall in the realm of law and order issue. No element of threat to public order by the alleged activities of detainee is made out, submitted Ms. Chadha.

8. As against this, Mr. Yagnik, learned APP took the Court through the grounds of detention and the material against the detainee borne out therefrom. It was

urged that in the facts of the case, where the detenue is shown to have relentlessly engaged in criminal activities and created a reign of terror, no other inference than that of the detenue being a dangerous person and having engaged in activities prejudicial to the maintenance of public order can be drawn. In the backdrop of material on record, according to Mr. Yagnik, the detaining authority was well within its rights in arriving at the subjective satisfaction that the detention of the detenue was necessary for preventing him from acting in a manner prejudicial to the maintenance of public order. And adequacy or sufficiency of the material to arrive at such subjective satisfaction cannot be delved into in exercise of extraordinary writ jurisdiction, submitted Mr. Yagnik.

9. As indicated above, the petitioner has not raised substantive grounds to assail the detention order, except the challenge on the count that the detention order is legally unsustainable for not specifying the period of detention. Even this ground does not advance the cause of detenue. The legal position is no longer *res integra*. A three Judge Bench of the Supreme Court in **T. Devaki Vs. Government of Tamil Nadu and Ors. (1990) 2 SCC 456** has set the controversy at rest. After advertent to the provisions of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Immoral Traffic Offenders and Slum Grabbers Act, 1982 which are *pari materia* with Section 3 of the MPDA Act, the Supreme Court ruled in clear and explicit terms that the order of detention is not rendered invalid or illegal in the absence of specification of period of detention in the detention order passed under Section 3(1) or (2). The

observations in paragraph 10 are material and hence extracted below:

“10.The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression “the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order” occurring in sub-section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The legislature has taken care to entrust the power of detention to the State Government; as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification.”

(emphasis supplied)

10. This takes us to the pivotal question, which the Court is invariably confronted with, while adjudging the legality and validity of a preventive detention order. Whether the resort to the exceptional power to preventively detain a person is justified on the touchstone of the activities of the detainee being prejudicial to the maintenance of public order?

11. Ms. Chadha made an earnest endeavour to draw home the point that the activities attributed to the detainee do not fall within the ambit of the expression, “prejudicial to the maintenance of public order”. An effort was made to

demonstrate that the activities which the detenue is alleged to have indulged in, constitute offences which can be very well dealt with under ordinary criminal laws and there was no justification for invoking the provisions which authorise preventive detention. Often the obfuscation as to whether the activities, in a given case, fall in the realm of law and order or within the ambit of public order, arises in not appreciating the real distinction between the concepts of 'breach of law and order' and 'threat to public order'. The Courts often come across the cases where two expressions are confused and detention orders are passed by authorities on the strength of the activities which may properly fall within the domain of law and order and do not bear upon the maintenance of public order.

12. In order to properly appreciate the import of the term, "public order", in the context of the challenge at hand, it would be imperative to note the relevant provisions of the MPDA Act, 1981. Clause (a) of Section 2 of the MPDA Act, 1981 provides that "acting in any manner prejudicial to the maintenance of public order", in the case of dangerous person, means, when he is engaged, or is making preparations 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. Clause (b-1) of Section 2 of the Act, defines the "dangerous person" to mean 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. It would be

contextually relevant to note that the explanation to Clause (a) explains as to when public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely.

13. A conjoint reading of the aforesaid provisions would indicate that to sustain the order of detention under the MPDA Act, the detaining authority must be satisfied that the proposed detainee is a, “dangerous person” within the meaning of Section 2(b-1) of the Act, who habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. The authority must be further satisfied that such dangerous person 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.

14. It is well recognized that the act by itself may not be determinative of its character so as to fall within the ambit of “law and order” or “public order”. In its quality the act may not differ, when it affects law and order or public order. What is of critical significance is the potentiality and propensity of the act to affect the even tempo of life of ordinary citizen. It is the degree of disturbance and its impact upon the even tempo of life of society or the people of locality which answers the question as to whether the disturbance caused by such activity amounts to only a mere “breach of law and order” or “prejudicial to maintenance of public order”.

15. The aforesaid legal position is well neigh settled. A useful reference in this context can be made to the Judgment of the Supreme Court in the case of **Mustakmiya Jabbarmiya Shaikh Vs. M. M. Mehta, Commissioner of Police & Ors. (1995) 3 SCC 237**, on which a strong reliance is placed by Ms. Chadha, albeit for a different purpose. In the said case, the distinction between law and order and public order was expounded in the following words:

“In this connection it may be stated that in order to bring the activities of a person within the expression of “acting in any manner prejudicial to the maintenance of public order”, the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of “law and order” or it amounts to “public order”. If the activity falls within the category of disturbance of “public order” then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality.”

16. In the said case, after adverting to the criminal activities of the detenue-petitioner therein, the Supreme Court expounded that casual and isolated incidents can hardly have any implications which may affect the even tempo of life or jeopardize the public order. Ms. Chadha laid special emphasis on the observations of the Supreme Court in paragraph 11 which read as under:

“11. This brings us to the criminal activities of the detenu-petitioner which are said to have taken place on 10-8-1994 at 4.00 p.m. and on 12-8-1994 at 7.00 p.m. In the incident dated 10-8-1994 the petitioner is alleged to have purchased goods worth Rs 500 from a businessman and

on the demand of the price of the goods, the petitioner is alleged to have dragged him out on the public road and not only gave a beating to him but also aimed his revolver towards the people gathered over there. Similarly it is alleged that on 12-8-1994 at about 7.00 p.m. the detenu-petitioner stopped the witness on the road near the eastern side of Sardar Garden and beat him as the petitioner doubted that he was informing the police about the anti-social activities of the petitioner and his associates. The petitioner is also alleged to have rushed towards the people gathered there with the revolver. Taking the aforesaid two incidents and the allegations on their face value as they are, it is difficult to comprehend that they were the incidents involving public order. They were incidents directed against single individuals having no adverse effects prejudicial to the maintenance of public order, disturbing the even tempo of life or the peace and tranquility of the locality. Such casual and isolated incidents can hardly have any implications which may affect the even tempo of life or jeopardize the public order and incite people to make further breaches of the law and order which may result in subversion of the public order. As said earlier the act by itself is not determinant of its own gravity but it is the potentiality of the act which matters.

(emphasis supplied)

17. Banking upon the aforesaid observations, it was urged by Ms. Chadha that in the instant case the acts attributed to the detenu are of much lesser gravity and, thus, the impugned order is wholly unsustainable.

18. In the backdrop of aforesaid submissions, we revert to the consideration of the material on record qua the detenu. The detaining authority has noted that in the past since 27.04.2017, as many 13 crimes were registered against the detenu. The detaining authority, however, based its order on the crimes registered at C.R. Nos. 915 of 2020 on 07.12.2020 and 922 of 2020 on 22.12.2020. In both these offences registered against the detenu, the allegations are that the detenu committed robbery in running trains. The moment the trains left the Thane station, after halt, the detenu allegedly

robbed unknown and unsuspecting passengers of their mobile phones. In addition, the detaining authority considered the confidential statements of two witnesses. The first incident deposed to by witness 'A' indicates that in the first week of December, 2020, the detainee, in the precincts of Thane Railway Station, attempted to extort money from the said witness for arranging a party. When the witness remonstrated, the detainee whipped out a knife and threatened the witness on the point of knife. Upon alarm being raised by the witness, people gathered. However, on account of terror created by the detainee and his associates, nobody came to his rescue. The detainee robbed him of a sum of Rs.600/- amidst threat to amputate his arms and legs if he reported the matter to police.

19. The narration of facts in the statement of witness 'B' proceeds on identical lines. The detainee allegedly demanded the said witness to collect Rs.500/- from each of the coolies working at Thane Railway Station. When the witness expressed his inability, the detainee slapped him and exhorted his associates to beat the said witness. When he raised alarm, people gathered thereat. The detainee took out a knife and threatened the persons to mind their businesses lest they would also face the same fate like the witness. The detainee extorted a sum of Rs.400/- from the witness amidst threat that if the matter was reported to the police, his life would not be spared.

20. We have perused original statements of the witnesses. There is a

proper verification of the truthfulness and correctness of the facts narrated therein. The competent authority, namely the Assistant Police Commissioner, Kalyan Railway Division, has himself verified the truthfulness from the witnesses in person and also visited places where the alleged incident had occurred and satisfied himself about the correctness thereof.

21. The situation which thus obtains is that the material on record indicates that the detainee had been habitually indulging in offences punishable under Chapter XVI and XVII of the Penal Code. As many as 15 offences were registered against the detainee in a span of about three years preceding the order of detention. In two of the cases, arising out of C. R. No. 1478/19 of Kurla Railway Station and C. R. No. 751/20 of Thane Railway Police Station, the detainee was convicted for the offence punishable under Section 392 of the Penal Code. In the totality of the circumstances, the satisfaction recorded by the detaining authority that the detainee was a dangerous person does not seem to be vitiated.

22. The submission of Ms. Chadha that the detainee has indulged in offences of theft and robbery only and, thus, the activities of the detainee could not have been termed to be prejudicial to the maintenance of public order, loses sight of the fact that the robbery armed with a dangerous weapon in a public transport has the propensity to cause a sense of insecurity in the ordinary commuters. Theft *per se* is essentially a law and order issue.

However, the robbery armed with deadly weapons at public places like railway station and in the running trains stands on a different footing on account of its reach and impact upon the general public. It has the potential to disturb the even tempo of life of ordinary citizens. To add to this, the activity of extortion, on the point of deadly weapons, attributed to the detenue, at the railway station, squarely fall within the mischief of an activity prejudicial to the maintenance of public order.

23. In the instant case, had those acts been isolated incidents, different considerations could have come into play. What, however, emerges from record, is a pursuit of criminality of a particular type associated with elements of system, continuity and repetition. This factor coupled with the potentiality of the activities brings them within the tentacles of “prejudicial to maintenance of public order”.

24. For the foregoing reasons, we are not persuaded to accede to the submission on behalf of the petitioner that the activities of the detenue, at best, represented a law and order problem and could have been dealt with under ordinary penal laws. We are of the view that the detaining authority was justified in invoking the provisions contained in Section 3 of the MPDA Act and the subjective satisfaction arrived at by the detaining authority is sustainable.

25. Hence, the petition deserves to be dismissed. Thus, the following order:

O R D E R

- (i) The petition stands dismissed.
- (ii) Rule discharged.

(N. J. Jamadar, J.)

(S. S. Shinde, J.)