

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR**

CRIMINAL WRIT PETITION NO.457 OF 2021

Shri Yash s/o Anil Tekam,
Aged 20 years,
Occupation-Labour,
R/o. Plot No.15-A, Dobi Nagar,
Near Tamilnadu Transport, Waddhamna,
Police Station, Wadi, Tah. and District-
Wadi.

.. Petitioner

.. Versus ..

- 1] State of Maharashtra, through its
Secretary, Department of Home,
Mantralaya, Mumbai-32.
- 2] State of Maharashtra, through
Police Commissioner, Nagpur City,
District-Nagpur.
- 3] State of Maharashtra, through
Police Station Officer, Wadi Police Station,
Wadi.

.. Respondents

.....
Mr. A.B. Moon, Advocate for the petitioner,
Mr. S.S. Doifode, APP for the respondents.
.....

**Coram: M.S. Sonak and
Pushpa V. Ganediwala, JJ.**

**Reserved on : 15.11.2021.
Pronounced on : 17.11.2021.**

JUDGMENT (PER: M. S. SONAK, J.)

Heard the learned counsel for the parties.

2. Rule was issued in this petition on 2.7.2021. The pleadings are complete and therefore, at the request of the learned counsel for the parties, the matter was taken up for final disposal.

3. The challenge in this petition is to the order dated 17.4.2021 issued by the Commissioner of Police, Nagpur City, Nagpur preventively detaining the petitioner under the provisions 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 (the said Act).

4. Mr. Moon, the learned counsel for the petitioner raised several grounds in support of his petition. He submitted that the subjective satisfaction for exercising for such drastic step was not correctly reached. He submitted that the two instances referred to in the impugned detention order relate to simple law and order issues and not to public order issues. He submitted that the instances were stale and the proximity test was not fulfilled. He submitted that the 'in camera' statements relied upon by the detaining authority are blissfully vague and not of any credence. He submitted that in both the instances

the petitioner was enlarged on bail and the detaining authority failed to take into consideration the bail orders and the conditions subject to which the petitioner was enlarged on bail. He submitted that there was no proper communication of the grounds since the translations furnished to the petitioner were patently defective. He submitted that the impugned detention order violates the constitutional mandate of Article 22 and therefore deserves to be set aside. Mr. Moon, the learned counsel for the petitioner, relied on 2021 ALL MR (Cri) 2585 (Ganesh @ Gajaraj Sainath Patil .vs. The State of Maharashtra and others, 2021 ALL MR (Cri) 1028 (Rakesh Mohan Gadekar .vs. State of Maharashtra and another) and 2021 ALL MR (Cri) 1394 (Elizabeth Ranibhai Prabhudas Gaikwad .vs. The State of Maharashtra and another).

5. Mr. Doifode, the learned APP, defended the impugned order, based on the grounds referred to in the impugned order itself as well as the reasoning disclosed in the affidavit filed to oppose the grounds of reliefs in this petition. He submitted that the two instances when read with the 'in camera' statements afforded sufficient cause for issuing the impugned detention order. He submitted that the adequacy of material cannot be looked into in such matters. He submitted that the detaining authority was aware of the petitioner's release on bail, but given the in-camera statements, the detaining authority has correctly recorded the satisfaction that the preventive detention was

necessary despite the bail order. He submits that there was no defect in the translations and in any case such trivial defects cannot vitiate the impugned detention order. He submits that the petitioner was alleged to have hurt the residents in open or public places and therefore, the issue of public order was indeed involved in the matter. Mr. Doifode, the learned APP, distinguished the decision relied upon by Mr. Moon, the learned counsel for the petitioner, and submitted that this petition deserves dismissal.

6. The rival contentions fall for our consideration.

7. In this case, the detaining authority has relied upon the following two instances for passing of the detaining order :

Sr. No.	Police Station Cr. No.	Under Section	Date of Offence/FIR	C.C. No. & Date	Remarks
1	Wadi 433/2020	324, 506, 34, IPC	29/10/2020	216/2020, 28/12/2020 C.C. No.218/2020 08/01/2020	Court Pending
2	Wadi 28/2021	143, 147, 149, 294, 324, 504, 506 IPC	24/01/2021	19/2021 17/02/2021 C.C. No.944/2021 02/03/2021	Court Pending

8. In addition to the aforesaid instances, the detaining authority has also relied upon two in-camera statements recorded sometime by the end of February-2021.

9. There is and there can be no dispute about the proposition that order of preventive detention under the said Act can be made *inter alia* on the ground that the proposed detainee is a threat to 'public order' as opposed to 'law and order'.

10. The first instance on which the impugned detention order is based is Crime No.433/2020 registered on 29.10.2020 i.e. almost six months before the issuance of the impugned detention order dated 17.4.2021. This instance can hardly offer any live nexus for arriving at subjective satisfaction that the petitioner needed to be preventively detained under the provisions of the said Act. Besides, the said instance alleges the commission of offenses under Sections 324, 506, 34 of the Indian Penal Code. A perusal of the record concerning this instance makes it clear that the same has no nexus with the issue of public order but at the highest relates to the issue of law and order. This is a case where the petitioner alleged to have hurt an individual and further hurled abuses at him. Such an instance even if coupled with the other instance i.e. Crime No.28/2021 cannot be regarded as some instance having proximity or live nexus with the issues of public order. Based upon such an instance, therefore, the impugned detention order could not have been issued.

11. The second instance is Crime No.28/2021 registered

on 24.1.2021. This instance alleges the commission of offenses under Sections 143, 147, 149, 294, 324, 504, 506 of the Indian Penal Code. Again, from the perusal of the documents in support of this instance, it is difficult to hold that this instance has nexus with the issues of public order as opposed to law and order. However, Mr. Doifode, the learned APP, pointed out that there is a reference to Sections 143, 147, 149 of IPC in addition to Sections 294, 324, 504, 506 of the Indian Penal Code and therefore this instance relates to threat to public order. Even if we proceed on such a basis, the question is whether such solitary instance could form the basis for the issuance of the impugned detention order.

12. Incidentally in the case of Ganesh Patil (supra), the detention order was passed on a single criminal proceeding alleging that the detainee was involved in the commission of offenses under Sections 307, 341, 323, 504, 506, 143, 147, 148, 149 of the Indian Penal Code along with two in-camera statements. The Division Bench of this Court, after examining several precedents, concluded that based upon such an instance, no order of preventive order could have been made under the provisions of the said Act. The Division Bench relied upon the decision of the Hon'ble Apex Court in the case of Arun Ghosh .vs. State of West Bengal, 1970 (1) SCC 98 in which the distinction between disturbance of public order and simple acts of law and order came to be explained. Hon'ble Apex Court held

that these are matters of degree and the detaining authority has to apply its mind to the same.

13. Mr. Doifode, the learned APP, however, submitted that the two instances cannot be read in isolation but have to be considered along with the two 'in camera' statements. The 'in camera' statements, unfortunately, provide no significant details and to a great extent are quite vague. The 'in camera' statements came to be recorded a month after the petitioner was released on bail in Crime No.28/2021.

14. The 'in-camera statements' speak about some instances in the third week of February 2021. Again, from the perusal of the transcript, it does appear that the allegations are not quite specific and consequently verifiable. In Rakesh Gadekar (supra), the Division Bench of this Court did not approve reliance on similar generalized and unverifiable statements to sustain the order of detention.

15. The order granting bail had imposed several stringent conditions. If the impugned detention order or rather the grounds in support of the impugned detention order are perused, it is apparent that the detaining authority had not applied its mind to such stringent conditions imposed upon the petitioner in the order dated 25.1.2021, by which the petitioner was enlarged on bail. The bail order dated 25.1.2021 had

directed the petitioner to remain in his residential house during the lockdown period. The order had also directed the petitioner to attend the Police Station as and when called by the Investigating Officer in writing and to co-operate with the investigating agency. The order was made on 25.1.2021 and the impugned detention order has been made on 17.4.2021. There is no allegation that the petitioner had breached the conditions on which he was enlarged on bail.

16. In the peculiar facts of the present case as well, the reasoning in Elizabeth Gaikwad (*supra*) can be said to be attracted. This is because the detaining authority, in the present case, does not seem to have applied its mind to the stringent conditions imposed upon the petitioner for his enlargement on bail. This was a relevant circumstance and consequently constituted relevant material. Hence, the impugned detention order, which ignores such relevant material stands vitiated.

17. For the aforesaid reasons, we are satisfied that the impugned detention order warrants interference. The impugned detention order is therefore quashed and set aside. The petitioner is directed to be released forthwith, unless his detention is required in any other matter.

18. Rule is made absolute. There shall be no order as to costs.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)

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