

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 421 OF 2022

Mr. Dinesh Kisan Wanjale]
Age – 20 years, Occupation – Labour]
residing at Behind Marathi School,]
Taluka – Haveli, District Pune] ...Petitioner

Vs.

1. The State of Maharashtra]
(Through the Secretary of Home Department]
(Preventive Detention) (Special)]
Mantralaya, Mumbai – 400 032.]

2. The Commissioner of Police,]
R/at- 2 Sadhu Wasvani Road,]
Camp, Pune City,]
District - Pune]

3. The Superintendent of Yerwada]
Central Jail, Yerwada, at Pune]

4. The Police Inspector,]
Through Uttam Nagar Police Station]
Tal. - Haveli, District – Pune] ...Respondents

Mr. R. M. Haridas a/w Mr. Sachin M. Bhavar - Advocate for the Petitioner
Mrs. S. D. Shinde - APP for the Respondent-State

CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.

RESERVED ON : 31st MARCH, 2022
PRONOUNCED ON: 22nd APRIL 2022

JUDGMENT (PER S. M. MODAK) :-

. The only issue involved in this Writ Petition is whether there was a sufficient material available before Detaining authority i.e. Commissioner of Police Pune City while detaining the Petitioner. As per the Order dated 20th July 2021, for the period of two years the Petitioner is detained in Yerwada Central Prison.

2. We have heard Mr. R. M. Haridas, the learned counsel for the Petitioner and Mrs. S. D. Shinde, learned APP for the Respondent-State.

3. The materials which were considered by the Detaining authority consist of two offences registered at the Uttam Nagar Police Station on 23rd January, 2021 and 5th March 2021. Apart from that, there were statements of two witnesses recorded on 26th March 2021 and 2nd April 2021. Earlier to these offences, there was an offence registered with the same Police Station on 5th April 2019. Thereafter, action was initiated against the Petitioner under Section 107 of Code of Criminal Procedure. The Detaining Authorities contend that this preventing action has not deterred the Petitioner from committing further offences and he did committed two offences in the year 2021.

4. The proposal for initiating action under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers 3 [Drug-offenders, Dangerous persons and video pirates] Act, 1981 was initiated by

Sponsoring authority i.e. Senior Inspector of Police, Uttam Nagar Police Station and after the proposal was routed through various authorities, it reached the Detaining authority, and accordingly the Order came to be passed. The learned advocate for the Petitioner challenged the action of preventing detention on the following grounds :

- (a) On the basis of two offences, the Petitioner cannot be said to be a dangerous person.
- (b) Without admitting the commission of offences, it cannot be said that by the commission of those offences, there was disturbance of Public orders.
- (c) The second offence was registered on 5th March 2021 and the statements were recorded on 26th March 2021 and 2nd April 2021, and as such, there is a delay in between the second offence and recording of statement.
- (d) There was delay in finalizing the proposal. The Detaining authority received the proposal on 1st July 2021. Whereas the impugned order was passed on 20th July 2021.

5. In order to buttress his submission the learned counsel for the Petitioner relied upon a judgment given by Division Bench of this court in case of *Anil Tukaram Mohite Vs. Commissioner of Police and Ors.*¹ and second in case of *Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and Ors.*² and third in case of *Salman Vs. State of Maharashtra*³.

1 2021 SCC Online Bom 2969

2 1993 Supp (2) Supreme Court Cases 61

3 2020 SCC Online Bom 858 (2020) 3 AIR Bom R (Cri) 91

6. As against this, the learned APP submitted that two offences has certainly affected the Public Order, if the Sections applied in those offences and the *modus operandi* for commission of these offences is considered, it certainly affects the Public disorder. According to her, there is no delay in Scrutinizing the proposal. According to her, due to the extraordinary Covid situation, certain time was taken in forwarding the proposal. That is to say after verifying the two statements by Assistant Commissioner of Police, certain time was exhausted in submitting the proposal. According to her, even there is no delay in finalizing the proposal at various levels and after passing the order. Accordingly, she prayed for dismissal of this Petition.

Dangerous Person

7. In Order to ascertain whether the Petitioner can be considered as dangerous person, we have perused the record made available in respect of two offences registered in the year 2021, (i) Dated 23/01/2021 under Section 307 and other Sections of the IPC, (ii) Dated 05/03/2021 under Section 4 read with 25 of the Arms Act and other Sections.

8. The first is registered at Khadakwasala Police Station whereas second is at Uttam Nagar Police Station. The first informant in first offence is one Akshay Bhausaheb Chavan, who is injured in that incident whereas in the second incident the first informant is one Maya Ganesh

Pawar. The injured Akshay Bhausahab Chavan is son-in-law of Maya Ganesh Pawar. In the first incident, the Petitioner came in front of the house of the first informant at 9 p.m. on 22/01/2021 and assaulted him with the help of sickle. The Petitioner was accompanied by his Mother Radha, one Gaurav Shelke, Ganesh Waghmare. After releasing on bail as per Order dated 17/02/2021 by Additional Sessions Judge, Pune (page 114), the Petitioner again went in front of the house of first informant Maya Ganesh Pawar and threatened her with dire consequence with help of the sickle. There was prohibitory order in force issued by the Commissioner of Police and second offence under Section 506(2) of the IPC and under Section 4 read with 35 of the Arms Act and Section 37 read with 135 of the Maharashtra Police Act and Section 7 of Criminal Law amended Act was registered.

9. Charge-sheet is filed in both these offences. When we have considered the background in which other two offences have taken place, we may find that there is dispute in between Maya Ganesh Pawar her Son-in-law Akshay Chavan on one hand and the Petitioner and his relatives on the other hand.

10. It is true that the offence of 2019 was registered with Uttam Nagar Police on 05/04/2019 on the complaint of Smt. Sangita Krishna Mankar. It was under Section 326 read with 34 of the IPC. Shubham son of first

informant was assaulted. The said Shubham is friend of Akshay Chavan. There is reason to believe that all these incidents have taken place due to dispute between the Chavan and Mankar families on one hand and family of Wanjale of which the Petitioner is a member.

11. It is not in dispute that the Petitioner has taken law into in his own hands and committed different offence at different time at different places with different person. Always there is motive for commission of offence. It may be previous rivalry, property dispute, anger, lust etc.. It may also happen that a particular person may commit offence for earning his livelihood mean to say that committing offence is his lifestyle.

12. Dangerous person is a person whose presence in the society is dangerous to the persons from the vicinity or the locality. There is risk to the life and property of persons due to presence of such person. Even if criminal action is initiated against him for the offence committed by him, law does not deter him from taking a law again into his own hands.

13. Such is an alarming situation which warrants invocation of law as to preventive detention. So that there will be control over his future activities. If we applied these tests, we do not find that the two recent activities are sufficient enough to treat the Petitioner as a dangerous person. We feel that the Detaining Authority has not appreciated materials we disagree with him.

14. The record show that two statements Witness No. A and Witness No. B were recorded on 26/03/2021 and on 02/04/2021 by Senior Police Inspector, Uttam Nagar Police Station that is Sponsoring Authority whereas Assistant commissioner of Police has verified those statements on 18/06/2021. These witnesses have stated about the incident dated 15/03/2021 and on 26/03/2021. On those dates the Petitioner went to the shops of respective witnesses and demanded extortion of Rs. 2,000/-. Both these witnesses were threatened by showing the weapons of Sura. Both were threatened by dire consequences if Police complaint is filed. Accordingly, they have not filed Police complaint.

15. It is true that there is difference in between the phrase “Law and Order” and “Public Order”. In legal parlance both these phrases are having different meaning. According to the Petitioner, alleged acts may violate the ordinary laws but they are not sufficient so as to disturb the Public Order. The Division Bench of this Court in case of *Anil Mohite Vs. Commissioner of Police* referred above has dealt with these issues elaborately. Earlier judgment were also referred.

16. It will be material to reproduce the observations in para no. 22.

“9..... It, therefore, becomes necessary to determine whether besides the person being a “dangerous person” his alleged activities fall within the ambit of the expression “public order”. A distinction has to be drawn between law and order and

maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. 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."

17. So what is important is not the quality of the act but its a degree of potentiality and extent of its reach upon the society. If we apply those tests to the case before us, we may find that the Petitioner has quarreled with some of the members of the society whose names are referred in the

earlier part of the Order. Even statements of the witness A and witness B suggest that the Petitioner has threatened them and tried to extort them. If we consider these factors it is difficult to believe that the presence of the Petitioner in the society is so dangerous that it may create a Public Order problem. The acts involved in both these offence and referred by the witness A and witness B, we may find that the incident pertains to month of March 2021. We feel that ordinary criminal law is sufficient to deal with the behaviour of the Petitioner. They are not of such kind so as to create Public Order issue as observed in the above referred judgment. On this ground also the detaining authority has exceeded his jurisdiction and labels the act of the Petitioner as falling within the disturbance of the Public order.

Stages

18. Both the sides have apprised us about the various steps right from signing the proposal by the sponsoring authority and then reaching to the office of Commissioner of Police through the various channels. The exercise can be divided into following steps:

- 1) Signing the proposal by Sponsoring authority.
- 2) Routing the proposal through Assistant Commissioner of Police, Deputy Commissioner of Police, Additional Commissioner of Police and reaching to Commissioner of Police.
- 3) Again enquiry into the proposal by PCB branch and

verifying the statements of the witnesses by PCB.

19. The proposal by Senior Inspector of Police was submitted on 18/06/2021 whereas it reached the office of Commissioner of Police through proper channel on 01/07/2021. Second time the proposal reached the office of Commissioner of Police on 16/07/2021 and the final order was passed on 20/07/2021. The learned APP tried to explain the two dates of receiving the proposal by the office of the Commissioner of Police. When first time it was received on 01/07/2021, it was sent back for verification and again it was received on 16/07/2021.

20. The learned counsel for the Petitioner emphasized on delay in sending the proposal by the sponsoring authority himself. According to him, verification of the statement of the witness B was done on 18/06/2021 and proposal was sent on 18/06/2021. The learned APP during the oral arguments tried to give the explanation that due to Covid, this delay has occurred. However he admits that this explanation does not find place in the affidavit filed by the detaining authority.

21. The Petitioner relied upon the following judgment on the point of the delay:-

- (a) Anil Tukaram Mohite Vs. Commissioner of Police and Ors. - 2021 SCC Online Bom 2969
- (b) Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and Ors. - 1993 Supp (2) Supreme Court Cases 61

(c) Salman Vs. State of Maharashtra through its Secretary,
Home Department and Ors.

22. It is true that whether there is delay in complying the formalities or not depends upon the facts of that case. As said above, the two offences were registered on 23/01/2021 and on 05/03/2021. Whereas verification of statement of witness B was recorded on 18/06/2021. So there is clear cut time gap of more than two months upto 18/06/2021. There was no other incident happened wherein the Petitioner has taken law in his own hands. If the sponsoring authority claims that the Petitioner is so dangerous person, then he must not have remained idle from 05/04/2021 upto 18/06/2021. The law laid down in above judgment is important. If there is delay, it severes link in between the activities of dangerous person and the proposed action initiated. So we are not inclined to accept the explanation given of Covid. If that link is missing, the ingredient is lacking and as such the detaining Order cannot be sustained in the eyes of law.

23. For these reasons, we are not going into aspect of delay alleged to have occurred in other stages. For the above reasons, we are inclined to allow the Petition. Hence the following Order:

ORDER

- (i) The Writ Petition No. 421 of 2022 is allowed.
- (ii) The Order dated 20/07/2021 bearing No. PCB/DET/1634/2021 issued by the Commissioner of Police, Pune City, Pune under Section 3(2) thereby detaining the

Petitioner under the provisions of M.P.D.A Act is quashed and set aside.

(iii) The Superintendent of Jail Yerwada Central Prison is directed to release the Petitioner forthwith, if not required in any other case.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)