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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
WRIT PETITION NO. 4728 OF 2021

Pravin @ Palya Arjun Uttekar

... Petitioner

V/s.

1. The Commissioner of Police,  
Brihanmumbai Mr. Hemant Nagrale
2. The State of Maharashtra
3. The Superintendent,  
Thane Central Prison, Thane
4. The Superintendent,  
Nashik Central Prison, Nashik

... Respondents

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Mr. Nitin Sejpal a/w. Ms Akshata Desai a/w. Ms. Sakshi Jha and  
Mr. Ravindra Kaware for the Petitioner.

Mrs. M.H. Mhatre, APP for the Respondent/ State.  
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CORAM : NITIN JAMDAR &  
N.R. BORKAR, JJ.

DATE : 14 JULY 2022.

**JUDGMENT (PER N. R. BORKAR, J.)**

. This petition takes an exception to the order of detention dated 4<sup>th</sup> October 2021 passed by the Respondent No.1- Commissioner of Police, Brihanmumbai in exercise of powers conferred by Section 3 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 'the Act'). By the order impugned, the Petitioner is directed to be detained in Thane Central Prison with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. We have heard Mr. Nitin Sejpal, the learned Counsel for the Petitioner and Mrs. M. H. Mhatre, the learned APP for the Respondent – State.

3. The learned Counsel for the Petitioner submits that the Respondent No.1 to reach to the decision that the Petitioner needs to be detained has relied upon the case registered against the Petitioner at Dahisar Police Station vide C.R. No.921 of 2021 dated 8 July 2021 for the offence punishable under Sections 341, 385, 504 and 506 of the Indian Penal Code (for short 'IPC') and Section 37 read with Section 135 of the the Maharashtra Police Act and two in-camera statements recorded on 19 July 2021 and 22 July 2022. It is submitted that the nature of crimes as alleged against the Petitioner can at the most said to be law and order problem and not the public order problem and thus the Respondent No.1 ought not to have resorted to the law of preventive detention. In support of his submissions, the learned Counsel for the Petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of *Shaikh Nazneen vs. The State of Telangana & ors.*<sup>1</sup>

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1 Criminal Appeal No. 908 of 2022 decided on June 22, 2022

4. On the other hand, the learned APP submits that the Petitioner and his associates are engaged in criminal activities like attempt to murder, extortion etc. It is submitted that the crimes alleged against the Petitioner are not directed against the individuals but against the members of general public without there being any previous enmity. The learned APP thus supported the order impugned.

5. The Respondent No.1 to reach to the decision that the Petitioner needs to be detained has relied upon the case registered against the Petitioner at Dahisar Police Station in relation to incident dated 8 July 2021 and two in-camera statement. As regards the incident dated 8 July 2021, the allegations against the Petitioner are that on that day at about 11:45 a.m., the Petitioner wrongfully restrained the Complainant Mannalal M. Chauhan, the owner of Lottery Shop near Omsai Building, Rawalpada, Dahisar (E) and demanded Rs.15,000/- from him. The Complainant told the Petitioner that he did not have money; the Petitioner thereupon whipped out a knife and threatened to kill him. It is further alleged that on hearing the commotion, the shopkeepers and pedestrians gathered at the place of incident. It is alleged that the people gathered at the place of incident were also threatened by brandishing the knife. It is alleged that due to fear, the people gathered at the place of incident ran away and the shopkeepers were required to close their shops. The allegations against the Petitioner in the in-

camera statements recorded on 19 July 2021 and 22 July 2021 are of similar nature.

6. The Hon'ble Supreme Court in the case of *Arun Ghosh vs. State of West Bengal*<sup>2</sup> has observed that 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 society. The test is : Does it lead to disturbance of even tempo and current of life of the community so as to amount a disturbance of the public order, or does it affect merely an individual without affecting the tranquility of the society. The distinction between the area of law and order and public order is one of degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of the public order. If the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of the public, it would raise a problem of law and order only. These concentric concepts of law and order and public order may have a common epicenter, but it is the length, magnitude and intensity of the terror-wave unleashed by a particular eruption of disorder that helps distinguish it as an affecting public order from that concerning law and order.

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2 1970 Cri.L.J.1136

7. The Petitioner is involved in multiple crimes. The allegations against the Petitioner are that he causes terror and extorts money from the businessmen, hawkers etc. of the locality at the point of weapons. It appears from the in-camera statements that due to terror created by the Petitioner and his associates, the people are afraid of to report the matter to the police. The crimes alleged against the Petitioner are not directed against the specified individuals. Thus, the test laid down by the Hon'ble Supreme Court in *Arun Ghosh* in relation to disturbance of public order is fully satisfied in the present case. Therefore, the contention that the nature of crimes as alleged against the Petitioner can at the most said to be law and order problem and not public order problem cannot be accepted.

8. As regards the decision in *Shaikh Nazneen*, cited by the learned Counsel for the Petitioner, the detenu therein was involved in gold chain snatching offence. Considering this fact the Hon'ble Supreme Court has observed that the facts and circumstances of the case though reflects a law and order situation, which can be dealt with under the ordinary law of land and there was absolutely no occasion for invoking the extraordinary powers under the law of preventive detention. The offences in *Shaikh Nazeen's* case were, thus directed against the individuals, which is not the situation in the present case.

9. The next ground of challenge is delay in passing the order of detention. The learned Counsel for the Petitioner submits that there is delay of more than two months in passing the order of detention from the date of recording of alleged in-camera statements. It is submitted that there is no explanation at all with regard to the said delay of two months in the order impugned and therefore, the order of detention cannot be sustained. In support of his submission, the learned Counsel for the Petitioner has relied upon the unreported judgment of this Court in the case of *Shivkumar M. Devendra v. The State of Maharashtra and ors.*<sup>3</sup>.

10. On the other hand, the learned APP submits that after the incident dated 8 July 2021, confidential enquiry was made against the Petitioner and during the course of said enquiry, many people were found to be victims of criminal activities of the Petitioner and his associates and due to fear of retaliation they were not ready to lodge the complaint against the Petitioner and his associates. It is submitted that the two victims, however, on assurance that their names and identity would be kept secret, showed their willingness to disclose about the atrocities of the Petitioner and his associates and gave statements on 19 July 2021 and 22 July 2021.

11. The learned APP submits that immediately thereafter on 24 July 2021 the proposal for detention was prepared by Sponsoring

<sup>3</sup> Criminal Writ Petition No. 3309 of 2021 decided on 15 June 2022

Authority. Thereafter, on 26 July 2021 the authenticity of in-camera statements was verified by Assistant Commissioner of Police, Dahisar Division. It is submitted that the proposal was then scrutinized at various levels and ultimately, it was placed before the Respondent No.1 on 2 September 2021, who approved it on 22 September 2021. It is submitted that after further compliances, the order of detention was passed on 4 October 2021. The learned APP submits that thus there is no delay as alleged.

12. In *Shivkumar M. Devendra (supra)*, the explanation offered by the Respondent – authority for delay of more than three months was found not satisfactory. However, in the present case, the order of detention came to be passed within three months from the date of recording of in-camera statements. Considering the fact that the proposal of detention is required to be scrutinized at various levels, it cannot be said that the order of detention has been passed after abnormal delay.

13. The learned Counsel for the Petitioner has urged one more ground that is delay in deciding representation. The learned Counsel for the Petitioner submits that against the order of detention, the representation dated 5 November 2021 was sent to (i) The Secretary, Home Department (Preventive Detention) Government of Maharashtra, Mantralaya, Mumbai (ii) The Commissioner of

Police, Brihanmumbai and (iii) The Chairman, Advisory Board, Home Department ( Preventive Detention), Government of Maharashtra, Mumbai. It is submitted that in view of Article 22(5) of Constitution of India, the representation of the Petitioner was required to be considered without any delay. It is submitted that the representation of the Petitioner, however, came to be rejected on 30 November 2021, i.e., after 25 days from the date of making representation. It is submitted that the order of detention thus needs to be set aside.

14. On the other hand, the learned APP by inviting our attention to the affidavits filed by Respondent Nos.1 to 3 submits that the Respondent No.3 had received the representation on 5 November 2021. On the very same day, the Respondent No.3 took the signature of the Petitioner and forwarded to the authorities mentioned in the representation, on 8 November by speed post as 6 November 2021 and 7 November 2021 were Saturday and Sunday. It is submitted that though in the impugned order, the Petitioner was informed as to whom he should make representation and their address was given, the Petitioner has, however, made representation to different authorities and it was sent on different address. The learned APP submits that the Respondent No.2 had received the representation of the Petitioner only on 18 November 2021 through Senior Police Inspector, Preventive Crime Branch, CID, Mumbai

and thereafter, remarks of Respondent No.1 were called on the very same day. The remarks of Respondent No.1 were received on 25 November 2021. As 27 November 2021 (Saturday) and 28 November 2021 (Sunday) were holidays, the representation was placed before the Additional Chief Secretary (Home) on 29 November 2021. It is submitted that the Additional Chief Secretary rejected the representation on 30 November 2021.

15. In our view the Petitioner ought to have made the representation to the authorities mentioned in the impugned order. The Respondent No.2 received the representation only on 18 November 2021 and then remarks of Respondent No.1 were called which were received on 25 November 2021. The representation was then decided on 30 November 2021. In our view, there is no delay.

16. No other ground is raised. Considering the overall facts and circumstances, there is no merit in the present petition. The Writ Petition is thus dismissed. Rule discharged.

**(N.R. BORKAR, J.)**

**(NITIN JAMDAR, J.)**