

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 6382 OF 2021

RAM RAJU @ JATALYA UMAP)...PETITIONER

V/s.

THE COMMISSIONER OF POLICE)
PUNE AND OTHERS)...RESPONDENTS

Mr.Ashraf Ali A. Shaikh, Advocate for the Petitioner.

Mrs. M.H.Mhatre, APP for the Respondent - State.

**CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.**

DATE : 17th JUNE 2022

JUDGMENT : (PER : V. G. BISHT, J.)

1 Rule. Rule made returnable forthwith and heard finally with
the consent of learned counsel for the parties.

2 The Commissioner of Police, Pune City, in exercise of the
powers conferred 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 Essential Commodities Act, 1981, (M.P.D.A. Act for short) read with Government order, Home Department (Special) No.MPDA-No.0612/CR-151/Spl-3B dated 30th June 2021 has ordered the detention of Ram Raju alias Jatalya Umap, resident of Sr.No.54/2 Aannabhau Sathe Vasahat, Aranneshwar Pune (hereinafter referred to as the detenue) vide order No.PCB/DET/2357/2021 dated 3rd November 2021.

3 Pursuant to this order, the State Government vide order dated 6th November 2021 approved the detention and directed the detenue to be detained on the basis of record submitted by the Advisory Board constituted under M.P.D.A. Act. The detention order dated 3rd November 2021 is impugned in the present petition.

4 Facts, leading to the present petition, in brief, are as under :

(a) The first and second incident took place on 15th May 2021 wherein it is alleged that the petitioner and 150-200

unknown persons took out a huge rally/procession on account of death of accused, namely, Madhav Hanumant Waghate in contravention of lockdown guidelines issued by the State Government during COVID-19. Accordingly, Sahakar Nagar Police Station and Bharti Vidhyapeeth Police Station registered two different CRs viz., C.R.No.126 of 2021 and 419 of 2021 for the offences punishable under Section 308, 143, 332, 268, 269, 270, 188, 158, 120(B) of Indian Penal Code (IPC), under Section 37(1)(3) read with 135 of the Maharashtra Police Act, under Section 7 Criminal Law Amendment Act, under Section 51(B) of Disaster Management Act, under Section 3 of Epidemic Diseases Act, 1897 and under Section 11 of Maharashtra Covid Rules 2020.

5 Perused the reply affidavits of Commissioner of Police, Pune, Deputy Secretary, Government of Maharashtra, Home Department, Mantralaya, Mumbai and Superintendent, Yerwada Central Prison, Pune.

6 The validity of the impugned order has been challenged on various grounds enumerated in the petition but following main grounds have been pressed into service by the detainee :

“P. The Petitioner states that, he is not a person whose presence in the society would be dangerous to the respectable members of the society.”

“Q. The activities of the petitioner cannot be held to be capable of disturbing public peace when there is no sufficient material to show that the Petitioner is a dangerous person in accordance with the provisions of the said Act.”

7 Mr.Ashraf Shaikh, learned counsel for the petitioner, submitted before us that C.R.No.126 of 2021 registered by Sahakar Nagar Police Station and C.R.No. 419 of 2021 by Bharti Vidhyapeeth Police Station arise out of the same incident and in both the said CRs, detainee has been released on bail. The learned counsel then invited our attention to grounds (P) and (Q) referred hereinabove and vehemently submitted that the detainee has been wrongfully detained for the petty offences in violation of Article 21 of the Constitution of India. According to the learned counsel,

even statements of confidential witnesses recorded during investigation are baseless and have been only relied on in order to strengthen the case of the Detaining Authority. The learned counsel then lastly submitted that there is no material on record to show that the presence of the petitioner is not in the interest of the society and he is a dangerous person as per the provisions of M.P.D.A. Act. Thus, for all these reasons, writ petition deserves to be allowed. Mr.Ashraf Shaikh placed reliance in **Bharat Kisan Mekale vs. The Commissioner of Police, Solapur and Others**¹ and **Shubham Rajendra Hingade vs. State of Maharashtra and Others**².

8 Mrs.M.H.Mhatre, learned APP, on the other hand, vehemently opposed the submissions and invited our attention to antecedents of the detenue and also placed reliance on the in-camera statement of witnesses justifying the detention order. The learned APP argued that there being no merit in the petition, the same is liable to be dismissed.

1 2021 ALL MR(Cri) 3783

2 2021 ALL MR(Cri) 4092

9 The learned counsel for the petitioner has argued before us that there is no material on record which can by no stretch of imagination brand the detinue as a dangerous person qua maintenance of public order. In view of this, it is necessary to understand the concept of “public order” and “law order.”

10 In the case of **Harpreet Kaur (Mrs.) Harvinder Singh Bedi vs. State of Maharashtra and Another**³ the Hon'ble Apex Court in the context of provisions of M.P.D.A. Act, 1981, delineated the distinguishing features in following words :

“18. From the law laid by this Court, as noticed above, it follows that it is the degree and extent of the each 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

3 (1992) 2 SCC 177

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.”

11 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."

12 Keeping in mind the distinguishing features as explained and elaborated by the Hon'ble Apex Court it becomes necessary to find out whether the acts and conduct attributed on the part of the petitioner could have warranted his detention by invoking the provisions contained in Section 3 of the M.P.D.A. Act on the specious ground that those acts were prejudicial to the maintenance of public order.

13 The genesis of the detention order lies in the registration of two CRs viz., C.R.No.126 of 2021 by Sahakar Nagar Police Station and another 419 of 2021 by Bharti Vidhyapeeth Police Station. Both these CRs arise out of one incident and accusation against the detainee is that he along with others took out a rally / procession in contravention of lockdown guidelines issued by the State Government during COVID-19. It is also relevant to note

here that the said gathering/rally/procession was on account of death of accused, namely, Madhav Hanumant Waghate. On the face of it, we are unable to appreciate as to how this could have been one of the ground to detain the detainee.

14 The second ground which weighed in the mind of the Detaining Authority was in-camera statements of two witnesses filed on record at Annexure D.

15 Witness A in his statement states that on 8th July 2021 while he was having a chat with his two friends, the detainee along with two accomplices came on a two wheeler. He alleged that detainee came near him and asked “आमच्या कडे काय बघताय, आणी काय चर्चा चालु आहे. आयद्याल्यानो, कान फाडून काय ऐकत होता.” This witness then alleged that the said two accomplices of the detainee then started pushing him. According to him, the detainee then started searching his shirt and pant pockets and forcefully removed Rs.700/- and also threatened him.

16 Similarly, statement of witness B shows that on 19th July 2021, at about 7.30 p.m., while he was passing through Aranyashwar temple, he received a phone call from his friend and therefore, he took his motorcycle on one side of the road and started talking with his friend. Suddenly, he felt something had hit his vehicle seat and therefore he turned around and found detinue along with accomplice armed with a koyta. On being confronted, the detinue and his accomplices brandished the weapon on his motorcycle, petrol tank and damaged it.

17 Interestingly, there is nothing on record to show that either of the above said witnesses lodged any report against the detinue and his companions. While the first in-camera statement shows the act of extortion and robbery, the other unleashing a terror by means of weapon. As already noted, nothing of this sort was reported to the concerned Police station, we find this so called material to be insufficient to term the detinue as a dangerous person.

18 The last ground relied on by the learned APP are antecedents which are at page 31 of the compilation. Various C.R. nos. at Serial Nos.1 to 5 are still pending in the Court of law while C.R. no. at Serial No.6 is under investigation, which by itself will not further the case of the Detaining Authority.

19 In the light of above discussion and more specifically having regard to the accusation against the detainee vis-a-vis C.R.Nos.126 of 2021 and 419 of 2021, in our considered view, the necessary action could have been taken by the prosecuting agency with the help of ordinary laws of the land. Similar issues were raised in the judgment cited supra and this Court in the factual background of those CRs was of the opinion that the objectionable acts of the petitioner would not fall within the dragnet of “law and order” and could have been taken care of by ordinary laws. The ratio laid down therein is squarely applicable to the case in hand. Thus, we do not find any justification in slapping and applying the provisions of Section 3(2) of the M.P.D.A. Act.

20 For the aforesaid reasons, we pass the following order :

ORDER

- i) The writ petition is allowed.
- ii) The detention order dated 3rd November 2021 passed by the Respondent No.1 i.e. the Commissioner of Police, Pune City, is quashed and set aside.
- iii) The petitioner be set at liberty forthwith, if not required in any other case.
- iv) Rule is made absolute in the aforesaid terms.
- v) All concerned to act on the authenticated copy of this order.

(V. G. BISHT, J.)

(REVATI MOHITE DERE, J.)