

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

CRIMINAL WRIT PETITION NO.140 OF 2022

Farid Hasan Lange,
Aged about 45 years,
Occupation–Labourer,
R/o Sanjay Nagar,
Mohta Mill Road, Akola
District Akola

...PETITIONER

VERSUS

1. The State of Maharashtra,
Home Department (Special),
through its Section Officer,
Second Floor, Main Building,
Mantralaya, Mumbai – 32
2. Collector & District Magistrate,
Akola, District Akola

...RESPONDENTS

Shri U.J. Deshpande, Advocate for the petitioner.
Shri M.K. Pathan, Additional Public Prosecutor for the
respondents/State.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : OCTOBER 13, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard finally with the consent of learned Counsel for the parties.

2. By this petition, the petitioner has challenged the order passed by respondent No.1 by virtue of which the petitioner is detained for a period of 12 months under Section 12(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers & Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (hereinafter referred to as 'the MPDA Act'). The contention of the petitioner is that the order passed by respondent No.1 is illegal and unconstitutional which affects the fundamental rights of the petitioner and, therefore, the petitioner constrained to challenge this order by invoking the writ jurisdiction.

3. Heard Shri U.J. Deshpande, learned Counsel for the petitioner. He submitted that the impugned order deserves to be set aside for the reason that the settled position of law laid down by this Court and the Hon'ble Apex Court in various judgments making distinction between "law and order" and "public order". The present petition deserves to be allowed because the activities attributable to the petitioner could not be said to be a "law and order" issue. The activities which are levelled against the petitioner as a dangerous activities are not within the definition of dangerous person. It is further contended that the order is passed by the authority without application of mind and deserves to be set aside.

4. On the other hand, learned Additional Public Prosecutor submitted that the confidential statements recorded show that the petitioner was creating terror in the locality by abusing and assaulting to the members of the society. The witnesses are not coming forward considering the terror created by the petitioner and, therefore, the order passed by the authority is justifiable one and no interference is called for.

5. After giving thoughtful consideration to the submission made on behalf of the petitioner as well as the respondents it would be appropriate to refer to the position of law on which the learned Counsel for the petitioner has placed reliance. The provisions of the MPDA Act can be invoked when there is a situation of public disorder likely to be created by the presence of the detainee in the society at large. The material upon which the detaining authority has placed reliance must indicate that the alleged activities of the detainee are such that ordinary law is unable to deal with such subversive activities and there is every likelihood of disturbance of the “public order” if the detainee is permitted to set free in the society.

6. Learned Counsel for the petitioner has placed reliance on *Hanif Karim Luluwale Vs. State of Maharashtra, thr. Additional Chief Secretary and ors 2022 SCC OnLine Bom 1367* wherein this Court has

held that no period of the incident has been mentioned and, therefore, it cannot be ascertained that the incident stated therein had occurred in the recent past so as to have any material bearing upon the satisfaction to be reached by the detaining authority.

7. The Hon'ble Apex Court in the case of ***Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and others reported in (1995) 3 SCC 237***, referred to and elaborated upon on the aforesaid concept of "public order". Relevant portion of the said judgment reads as under :

"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. In the case of Arun Ghosh V. State of W.B.(1970) 1 SCC 98 this Court had an occasion to deal with the distinction between law and order and public order. Hidayatullah, C.J. (as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amount only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different, Again in the case of Piyush Kantilal Mehta v. Commissioner of Police, [1989] Supp (1) SCC 322, this Court took the view that to order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land.”

8. A Division Bench of this Court in the case of Bharat Kisan Mekale Vs. The Commissioner of Police, Solapur (supra), referred to and

relied upon above quoted portion, in order to hold in favour of the petitioner therein. It was also observed in the said judgment of the Division Bench of this Court that the material on record indicated that when the criminal activities relied upon can be said to be fragile, it would not be safe to rely only upon the in camera statements.

9. In the light of the aforementioned position of law, when the material on record in the present case is perused, it is found that in the detention order, respondent No.2 has relied upon the chart of offences which are registered against the petitioner. The offences registered against the petitioner at Ramdaspath police station in the year 2017 and some offences are registered in the year 2021. The preventive actions initiated against the petitioner in the year 2016 and 2019. As per para No.5, the detention is based on the offences which are registered at Ramdaspath police station on 21/07/2021, 27/08/2021 and 04/09/2021 under Section 65(d) and 65(e) of the Maharashtra Prohibition Act, 1949. The gist of the in camera statements show that only allegation against the petitioner is that he abused and assaulted the witnesses. He also threatened the witnesses who asked him to close the liquor business which was run by the petitioner. This material nowhere indicate that the alleged offence is of the nature which cause the terror in the vicinity.

10. After applying the position of law laid down by the Hon'ble Apex Court and the decision given by this Court in Bharat Kisan Mekale Vs. The Commissioner of Police, Solapur (*supra*) it cannot be said that the petitioner deserves to be detained under the provisions of MPDA Act because he is roaming free in the society would lead to public disorder. The satisfaction arrived at by the detaining authority does not appear to be inconsonance with the position of law which would show that it would affect "public order" as against "law and order". The material on record does not really indicate that the ordinary law would be insufficient to take care of the alleged criminal activities of the petitioner and it cannot be said that the activities are of such a nature that the extreme power available under Section 3 of the MPDA Act could have been invoked for issuance of the impugned detention order. The order passed by respondent No.1 deserves to be quashed and set aside on the said grounds.

11. In the result, we proceed to pass the following order:

- (a) The writ petition is allowed.
- (b) The impugned detention order passed by respondent No.2 dated 25/11/2021 and the approval order passed by respondent No.1 dated 05/01/2022 against the petitioner are quashed and set aside.

(c) Consequently, it is directed that the petitioner shall be released from detention forthwith, if not required in any other case.

12. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Divya*