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

CRIMINAL WRIT PETITION NO.245 OF 2022

Rahul @ Kalu Ghanshyam Yadav (Chaudhari),
Age – 25 years,
R/o Ravi Nagar, Paratwada, Amravati,
At Present Amravati Central Prison. **Petitioner.**

:: V E R S U S ::

1. The State of Maharashtra,
(Through Secretary of Home Department,
Mantralaya, Mumbai].

2. District Magistrate, Amravati
Camp, Amravati, District – Amravati.

3. SDPO, Achalpur, Division,
Amravati Rural, District – Amravati.

4. Superintendent of Police
Amravati Rural, District – Amravati.

5. Senior Police Inspector,
Paratwada Police Station,
District Amravati. **Respondents.**

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Shri Vishnu B.Gawali, Counsel for the Petitioner.
Shri M.J.Khan, Additional Public Prosecutor for Respondents/State.
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CORAM : ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.
CLOSED ON : 15/11/2022
PRONOUNCED ON : 25/11/2022

ORAL JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard learned counsel Shri Vishnu B.Gawali for the
petitioner and learned Additional Public Prosecutor Shri M.J.Khan for

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respondents/State. **Rule.** Rule made returnable forthwith and heard finally by consent of learned counsel for parties.

2. By this petition, the petitioner (detenue) challenges detention order dated 19.11.2021 passed by respondent No.2 - the District Magistrate, Amravati and approval order passed by respondent No.1. The orders impugned are passed under Sub-section (2) of Section 3 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 (for short, the said Act).

3. It is submitted by learned counsel Shri Vishnu B.Gawali for the petitioner that while passing the detention order, the Authority i.e. respondent No.2 had not recorded subjective satisfaction that witnesses "A" and "B", whose statements have been recorded in-camera, were not willing to come forward and depose because of fear of the petitioner. It is further submitted that the impugned orders deserve to be quashed and set aside for reason that in the light of settled position of law laid down by the Honourable Supreme Court and by this Court in number of judgments making distinction between law and order of public, the present petition deserves to be allowed as activities attributable to

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the petitioner could not be said to be law and order issue incapable of being dealt with under ordinary law and not a situation of disturbance of public order justifying invoking provisions of the said Act.

4. On the other hands, learned Additional Public Prosecutor Shri M.J.Khan for the State supported the orders impugned passed by detaining Authorities.

5. We have gone through the orders impugned in the petition and considered the submissions canvassed before us by respective parties

6. Firstly, the SDPO at Achalpur Division, district Amravati, who have verified the correctness and truthfulness of the incident narrated, have not enquired and satisfied themselves on the point whether witnesses are unwilling to come forward and depose because of the fear of the petitioner. Secondly, detaining Authorities, who have passed orders impugned, have not interacted with verifying authority i.e. SDPO or the Assistant Commissioner of Police for recording their subjective satisfaction of the correctness and truthfulness of the incident stated by witnesses so also unwillingness of witnesses to come forward and depose because of the fear of the petitioner. In the said context, it is useful to refer

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observations of the Constitution Bench of the Honourable Apex Court in the case of Rameshwar Shaw vs. District Magistrate, Burdwan and anr, reported at 1964 SC 334 wherein the Honourable Apex Court, while considering detention of detenu under the order of detention passed under Section 3(1) of the Preventive Detention Act, 1950 observed that, *"it is true that in deciding the question as to whether it is necessary to detain a person, the authority has to be satisfied that if the said person is not detained, he may act in a prejudicial manner, and this conclusion can be reasonably reached by the authority generally in the light of the evidence about the past prejudicial activities of the said person. When evidence is placed before the authority in respect of such past conduct of the person, the authority has to examine the said evidence and decide whether it is necessary to detain the said person in order to prevent him from acting in a prejudicial manner."*

7. It is quite clear that the detaining Authorities have appropriately relied upon past activities and material pertaining to the same for arriving at their subjective satisfaction. The particular events to the incident mentioned in paragraph Nos.3, 4.1, and 4.2. are emphasized on the necessity to pass detention orders as the detenu's activities were prejudicial to the maintenance of public order. The position of law regarding distinction between law and

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order and public order is well settled. The material, upon which detaining Authorities have placed reliance, indicates that the alleged activities of the detainee are such that ordinary law is unable to deal with such subversive activities and there likelihood of disturbance of public order if the detainee is permitted to roam around free in the society. The Honourable Apex Court in the case of **Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and others** , reported at **(1995)3 SCC 237** referred to and elaborated upon the aforesaid concept of "public order" as opposed to "law and order". The relevant position 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

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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 ad 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 b order that an activity may be said to affect adversely the

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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. In the light of the aforesaid position of law and upon perusal of material on record, it is found that in paragraph Nos.4.1 and 4.2 of the order of detention respondent No.2 has relied upon specific offences attributable to the petitioner committed in the year 2021 i.e. 8.8.2021 and 28.6.2021. Thus, the specific two offences i.e. Crime No.246/2021 and Crime No.419/2021 relied by respondent No.2 are referred. The said offences are registered under Sections 143, 147, 148, 149, 324, 326, 385, 394, 323, 504, and 506 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act, 1959. Amongst these offences, the offence registered vide Crime No.246/2021 is of a serious in nature in which Section 326 of the Indian Penal Code is invoked. The petitioner was granted bail in the said crime. When in-camera statements were recorded, the alleged witnesses "A" and "B" claimed that they were threatened by the petitioner to face dire consequences. Even, if the said threatening is considered and offences mentioned in the detention

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order is taken into consideration, we find that there is no live like between in-camera statements and the detention orders impugned in the petition. The impugned orders are, therefore, do not comply with the dictum of judgments passed by this Court. The petitioner has relied upon the judgments passed by the co-ordinate Bench of this Court. The co-ordinate Bench of this Court in the case of Rajkumar @ Anda s/o Jaglal Jaiswal vs. State of Mah. and others, reported at 2017(3) MhLJ (Cri) 475 and judgments passed in Criminal Writ Petition Nos.73, 279, and 288 of 2022 has set aside the detention orders on the ground that subjective satisfaction has not been recorded by the detaining Authority by doing exercise of verification of statements. We find no reason to take a different view in the matter inasmuch as the respondents have not placed before us any ruling which is contrary or any other material that would require us to take a different view in the matter.

9. In this view of the matter, we pass following order:

ORDER

(1) The criminal writ petition is allowed.

(2) The impugned order of detention passed by respondent No.2 and approval order passed by respondent No.1 are hereby quashed and set aside.

(3) The petitioner is set at liberty forthwith, if not required by the Police in any other offence.

Rule is made absolute in the aforesaid terms.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DEO, J.)

!! BrWankhede !!

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