

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

CRIMINAL WRIT PETITION NO. 258 OF 2022

Akshay Kishor Madavi, : **PETITIONER**
Age – 24 years, Occp :- Daily Wages,
R/o New Futala, in front of Neelkamal
Apartment, near Najma Hair Saloon,
Nagpur

VERSUS

- 1 State of Maharashtra, through its The Addl.
Chief Secretary, Home Department,
Mantralaya, Mumbai-400032
- 2 Chairman, Advisory Board C/o. Secretary,
Advisory Board, (Preventive Detention),
Home Department (Special), Mantralaya, : **RESPONDENTS**
Mumbai
- 3 State of Maharashtra Through
Commissioner of Police Office of
Commissioner of Police, Nagpur
- 4 Jail Superintendent, Nagpur District Prison,
Nagpur

Mr. S.S. Bhende, Advocate for Applicant

Mr. S.S. Doifode, A.P.P. for Respondent Nos.1 to 4

CORAM : MANISH PITALE AND
G.A. SANAP, J.J.

DATE : 19th AUGUST, 2022

ORAL JUDGMENT (PER : MANISH PITALE, J.)

At the outset, the learned counsel for the petitioner (detenue)
submits that since the petitioner was not aware about the order of

confirmation dated 04/02/2022, passed by the respondent – State of Maharashtra through the Home Department, a specific challenge to the same could not be raised in the present petition and only the detention order as also approval order were challenged. In this backdrop, an oral prayer was made for amending the prayer clause to add a challenge to the said order of confirmation dated 04/02/2022. In the interest of justice, the oral prayer is granted. Amendment be carried out forthwith.

2. By this petition the petitioner (detenue) has challenged the detention order dated 14/12/2021, passed by the respondent No.3, the approval order dated 21/12/2021, passed by the respondent No.1 and the aforesaid order of confirmation dated 04/02/2022, passed by the respondent – State under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (hereinafter referred to as “MPDA Act”)

3. Mr. S.S. Bhende, learned counsel appearing for the petitioner submitted that the impugned orders deserve to be set aside, for the reason that in the light of the settled position of law laid down by the Hon’ble Supreme Court and this Court in a number of judgments making a distinction between “law and order” and “public order”, the present petition deserves to be allowed because, at worst, the activities

attributable to the petitioner could be said to be a “law and order” issue, capable of being dealt with under ordinary law and not a situation of disturbance of the “public order”, justifying invoking of the provisions of MPDA Act. It was further submitted that the petitioner suffers from medical condition of psoriasis, which is an aspect not taken into consideration at all by the authorities while passing the impugned orders.

4. In order to support the contentions raised on behalf of the petitioner, the learned counsel invited attention of this Court to paragraph No. 10 of the impugned detention order dated 14/12/2021, which refers to three specific offences. By referring to the oral reports leading to registration of the said offences, it was submitted that these were not offences that could justify issuance of detention order against the petitioner for disturbance of “public order”. It was further submitted that witness statements recorded in November, 2021, were not in harmony with the offences earlier alleged against the petitioner and further that no report was lodged as regards the said alleged incidents stated by the witnesses whose in camera statements were recorded. Reliance was placed on the judgment of the Division Bench of this Court in the case of **Bharat Kisan Mekale Vs. The Commissioner of Police, Solapur and others** (judgment and order dated 03/09/2021,

passed in Writ Petition No.2336/2021).

5. On the other hand, Mr. S.S. Doifode, learned Assistant Public Prosecutor vehemently opposed the contentions raised on behalf of the petitioner. It was submitted that the petitioner had indulged in serious offence concerning abduction of a young lady for which offence dated 15/06/2021, was registered against him and another person. It was submitted that thereafter, in the months of August and September 2021 also, the aforementioned offences were registered and in camera statements were recorded in November 2021, indicating the dangerous activities being undertaken by the petitioner, thereby justifying the issuance of the impugned detention order. On the aspect of the seriousness of the offences and the criminal background of the petitioner, attention was also invited to paragraph No.4 of the impugned detention order, which records five other offences registered against the petitioner between July, 2015 to February, 2020. On this basis, the learned APP sought to justify issuance of the said detention order.

6. Before adverting to the rival contentions raised on behalf of the petitioner and the respondents, it would be appropriate to refer to the position of law on which the learned counsel for the petitioner has

placed much reliance. It is no longer *res integra* that there is a clear distinction between “law and order” and “public order”. 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 “public order” if the detainee is permitted to roam around free in the society.

7. The Hon’ble Supreme 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” as opposed to “law and 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 in 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 paragraph No.10 of the impugned detention order, the respondent No.3 has relied upon specific offences attributable to the petitioner between June, 2021 to September 2021. Amongst these three offences, only in one case i.e. FIR registered on 15/06/2021, serious offence in the nature of Section 363 of the Indian Penal Code has been invoked against the petitioner. Even with regard to the said case, the Magistrate granted bail to the petitioner and the co-accused, specifically observing that considering the nature of offence, a case for grant of bail was made

out. In this backdrop, we have perused the oral report of the alleged victim, leading to registration of FIR against the petitioner. It reveals that the victim and the petitioner were on talking terms with each other, they used to interact on phone and otherwise also. It appears that out of such relationship having not worked out, the alleged offence seems to have occurred. This material does indicate that the alleged offence cannot be said to be of a nature where the petitioner had simply picked up a young lady, causing her abduction for any further criminal activity or at the behest of some other person. The nature of the offence, therefore, was taken into consideration by the Magistrate while granting bail.

10. As regards the other two offences registered against the petitioner on 13/08/2021 and 21/09/2021, it is found that they were comparatively minor offences and in any case there is no specific allegation of extortion levelled against the petitioner.

11. As opposed to this, when the in camera statements recorded in November, 2021, are taken into consideration, the alleged witnesses have claimed that the petitioner threatened them and acted in such a manner, which would indicate an attempt on his part to extort money. Even if the earlier list of offences mentioned in paragraph 4 of the

impugned detention order are to be taken into consideration, along with those mentioned in paragraph 10 of the order, we find that the in camera statements are striking a discordant note and there does not appear to be a specific live link leading up to issuance of the impugned detention order.

12. Applying the position of law laid down by the Hon'ble Supreme Court in the aforementioned judgment and the same being followed by the Division Bench of this Court in the above referred judgment in the case of **Bharat Kisan Mekale Vs. The Commissioner of Police, Solapur** (supra), we are of the opinion that in the present case, it cannot be said that the petitioner deserved to be detained under the provisions of the MPDA Act because his roaming free in the society would lead to "public disorder". The satisfaction arrived at by the detaining authority does not appear to be in consonance with the position of law in the context of "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 subversive 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 orders approving and confirming the same also

deserve to be set aside on the said grounds.

13. In view of the above, the writ petition is allowed.

14. The impugned detention order, approval order and confirmation order issued against the petitioner are quashed and set aside. Consequently, it is directed that the petitioner shall be released from detention forthwith, if not required in any other case.

Rule is made absolute in above terms.

(G.A. SANAP, J.)

(MANISH PITALE, J.)

MP Deshpande