

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1287 OF 2023

Kajal @ Rafiq Shaikh Rashid
Age 40 years,
R/o Gandlipura, Amalner,
District Jalgaon
(Presently lodged in
Central Prison, Amravati)

... PETITIONER

VERSUS

- 1) The State of Maharashtra
through its Additional Secretary,
Home Department (Special),
Mantralaya, Mumbai
- 2) The District Magistrate, Jalgaon
Detaining Authority
- 3) Superintendent of Central Prison,
Amravati Central Jail

... RESPONDENTS

.....
Mr. R.R. Kazi, Advocate for petitioner
Mr. M.M. Nerlikar, A.P.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
KISHORE C. SANT, JJ.**

Date of reserving judgment : 1st November, 2023

Date of pronouncing judgment : 8th November, 2023

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith and taken up for
final hearing at admission stage with the consent of learned counsel
for the parties.

2. The challenge in this Writ Petition, under Article 226 of the Constitution of India, is to an order of detention dated 22/5/2023, passed by District Magistrate, Jalgaon (respondent No.2) under 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 (M.P.D.A. Act for short). The order of detention has been confirmed by the State of Maharashtra in Department of Home. The period of detention is 12 months. The order of detention has been passed as the activities of the petitioner, as a dangerous person, were found to be prejudicial to the maintenance of public order.

3. The order of detention records as under :

7. On perusal of the documents placed before me I am satisfied that there are various criminal cases registered under Chapter XVI and XVII of Penal Code for various sections and other enactments against you in Jalgaon district at Amalner Police Station. The said offences are of serious nature against the personal safety and property of citizens. Due to these offences there is fear in the mind of common people. Even after arrest and release on bail you along with your henchmen repeat your indulgence in criminal activities. You invariably indulge in commission of crimes. Hence, it is necessary to curb your frequent criminal activities.

8. I am also satisfied that taking into consideration your criminal activities in Amalner city of district

Jalgaon it is apparent that due to your criminal notoriety and not respecting the law and order create terror, therefore, you falls within the meaning of ‘dangerous person’ as defined in the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Robber and Black Marketing of Essential Commodities Act, 1981 (Mah. Act No.LV of 1981) (amendment Act, 2015) (Amendment of 1996). Thus, your acts come within the meaning of Section 2(a)(iv) i.e. “activities which affect adversely or are likely to affect adversely the maintenance of public order ... public health”. Thus, you are a ‘**dangerous person**’ for lives of general public, likely to cause damage to the private/ public properties, extortionist, and likely to disturb public tranquility and damaging smooth law and order and general public peace.”

4. The crimes and other preventive actions taken against the petitioner and referred to in the order of detention are as follows:

Information of Offences registered at Amalner Police Station of Jalgaon District

Sr. No.	Police Station	Cr.No.	Sections	Date of registration of offence	Date of arrest	Present status
1	Amalner	Cr.No.151/04	Under sections 448, 325, 323, 504, 506 of IPC	18/11/04	24/11/04	Not proved
2	Amalner	Cr.No.137/06	Under sections 324, 323, 504, 506, 34 of IPC	06/09/06	07/09/06	Not proved
3	Amalner	Cr.No.14/08	Under Sections 325, 323, 504, of IPC	05/02/08	11/02/08	Not proved
4	Amalner	Cr.No.79/09	Under Sections 448, 427, 323, 504, 506 of IPC	26/05/09	27/05/09	Not proved

5	Amalner	Cr.No.90/09	Under sections 143, 147, 148, 323, 504 of IPC	03/06/09	16/06/09	Not proved
6	Amalner	Cr.No.29/10	Under sections 452, 294, 324, 323, 504, 506, 34 of IPC	01/02/10	06/03/10	Not proved
7	Amalner	Cr.No.74/11	Under sections 307 etc. of IPC	24/04/11	24/04/11	Not proved
8	Amalner	Cr.No. 495/2019	Under sections of PITA Act	1/12/19	2/12/19	Pending trial
9	Amalner	Cr.No. 159/2021	Under Sections 457, 380, 454 of IPC	03/04/2021	08/04/21	Pending trial
10	Amalner	Cr.No. 528/2021	Under sections 324, 504, 506, 510 of IPC	09/12/21	27/01/22	Pending trial

**Details of preventive actions by Amalner Police Station,
Dist. Jalgaon**

Sr. No.	Name of Police Station	Date of registration	Crime No.	Sections
12	Amalner	08/01/2015	04/15	Under section 110(e)(g) of Cr.P.C.
13	Amalner	27/06/2016	02/2016	Under section 110(e)(g) of Cr.P.C.
14	Amalner	20/10/2016	214/2016	Under section 117 of Cr.P.C.
15	Amalner	19/09/2017	100/2017	Under section 110(e)(g) of Cr.P.C.
16	Amalner	24/09/2019	217/2019	Under section 107 of Cr.P.C.

**Details of non-cognizable offences at Amalner Police Station,
District Jalgaon**

Sr. No.	Name of Police Station	Date of registration	Crime No.	Sections
16	Amalner	12/06/2004	297/2004	Under sections 323, 504, 506 of IPC

17	Amalner	12/01/2008	28/2008	Under Sections 323, 504, 506 of IPC
18	Amalner	26/05/2009	266/2009	Under sections 323, 504, 506 of IPC
19	Amalner	26/05/2009	267/2009	Under Sections 504, 506, 510 of IPC
20	Amalner	06/05/2010	227/2010	Under Sections 323, 504, 506, 510 of IPC
21	Amalner	25/05/2013	198/2013	Under sections 323, 504, 506, 510, 427 of IPC

Details of the offences

Sr. No.	Name of Police Station	Crime Number	Sections	Date of registration of offence	Date of arrest	Present status
22	Amalner	77/2023	Under Section 307 of IPC	Registered on 11/03/2023 at 02:55 Hours	Arrested on 11/03/2023 at 10:21 Hours	Under investigation

5. The close reading of the order, however, indicates that, the last 4 crimes registered against the petitioner, and 2 in-camera statements of the witnesses have mainly been relied on.

6. Learned counsel for the petitioner took exception to the order of detention, contending that the petitioner was granted bail in a crime, being C.R. No.77/2023. The reasons for granting him bail have not been taken into consideration by the detaining authority. He would further submit that, there is no live link inter-se the crimes relied on for passing the detention order. According to learned counsel, the criminal activities of the petitioner relied on for passing

the order of detention did not have potential to affect maintenance of public order. According to him, the petitioner was the only earning member in the family. His wife, 3 grown up children and a son taking education were dependent on him. A marriage of one of the daughter was scheduled in the month of October 2023. The marriage could not take place for the petitioner being behind the bars. Learned counsel ultimately urged for allowing the petition.

7. The learned A.P.P. would, on the other hand, took us through the entire order of detention. According to him, the criminal activities of the petitioner indicate to have an ascending graph. There was lull for a year due to Corona Pandemic Covid-19. According to him, the orders granting the petitioner bail have all been referred to. Our attention has also been drawn to in-camera statements of Witness 'A' and Witness 'B'. Had no action against the petitioner been taken, there was every possibility of his indulging in other criminal activities, causing disturbance in maintenance of public order. Learned A.P.P. then took us through the affidavit-in-reply, and referred to certain dates to suggest all the statutory mandatory provisions of the Act have been complied with. According to him, a glance at the number of crimes registered against the petitioner would undoubtedly suggest the detaining authority to have arrived at subjective satisfaction in passing the order. He ultimately urged for dismissal of the petition.

8. Considered the submissions advanced. Perused the order of detention and the material relied on. Before appreciating the grounds of detention and the submissions advanced, it would be apposite to have a glance at the relevant provisions of the M.P.D.A. Act.

9. Section 2(a) of the M.P.D.A. Act reads as under :

“2. In this Act, unless the context otherwise requires, –

(a) “acting in any manner prejudicial to the maintenance of public order” means –

(i) to (iii)

(iv) in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.

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(b-1) “dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.”

Explanation :- For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be

affected adversely, inter alia if any of the activities of any of the persons referred to in this clause, directly or 'indirectly' is causing or 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 widespread danger to life or public health or disturbance in public safety and tranquility or disturbs the day to day life of the community by black-marketing in the essential commodities which is resulting in the artificial scarcity in the supply of such commodities and rises in the prices of essential commodities which ultimately causes inflation or disturbs the life of the community by producing and distributing pirated copies of music or film products, thereby resulting in a loss of confidence in administration.

10. It needs no mention that there has to be a live link or proximity inter-se the criminal activities relied on and the date of the order of detention. In the case in hand, first 3 out of 4 crimes registered against the petitioner are of the year 2019-2021. While the order of detention has been passed on 22/5/2023. There is a gap of not less than one and half year between the crimes, being C.R. No.528/2021 and the order of detention. On this sole ground, these 3 crimes ought not to have been made a foundation for passing of the order of detention.

11. Even we take into consideration the facts and circumstances of those crimes, a question would be whether these crimes did have potential to cause disturbance to maintenance of public order. The crime, being C.R. No.495/2019 was registered for

the offences punishable under the Prevention of Immoral Trafficking Act (PITA for short). As seen above, from the definition of “dangerous person”, for describing a person to be a dangerous person, crimes registered against him must have been under Chapter XVI and XVII of the Indian Penal Code or under Chapter VI of the Arms Act. Relying on a crime registered under the PITA, for passing the detention order, goes a long way to observe the detaining authority to have not applied its mind.

12. The other crime, being C.R. No.159/2021 was for offences punishable under Sections 457, 380 and 454 of the Indian Penal Code. The papers of investigation of the said crime would indicate the F.I.R. was registered against an unknown person. The petitioner was arrested 8 days after the registration of the crime. His arrest was based on suspicion. Close reading of all the police papers of the said crime would indicate that, the same are inadmissible in law to prosecute the petitioner for the said crime. In our view, while passing the order of detention based on the criminal activities, the material thereof collected during investigation ought to have been scrutinized by the detaining authority as to whether there is really an iota of material to make him stand the trial.

13. The third such crime, being C.R. No.528/2021 was registered for the offences punishable under Sections 324, 504, 506 of the Indian Penal Code. F.I.R. of the said crime indicates

that, there was a quarrel between the petitioner and his friend. The informant intervened to work out the truce. The petitioner got enraged thereby and gave the informant two blows with a fighter. This crime took place all of a sudden.

14. The last crime which has been heavily relied on was for offence punishable under Section 307 of the Indian Penal Code. We have perused the F.I.R. and the related papers of the said crime. It appears that, the injury certificate of the informant therein was not placed on record by the sponsoring authority. The Court granting the petitioner bail in the said crime observed that, there was nothing to indicate the informant to have suffered serious injury on the vital part of his body. Although the detaining authority has observed in the order of detention the petitioner to have been released on bail in the said crime, the reasons for granting the petitioner bail appear to have not been considered by the detaining authority.

15. In case of Rushikesh Tanaji Bhoite v. State of Maharashtra & ors. (2012 CRI.L.J. 1334), it has been observed thus :

“13. A reference to the decision of the majority view in the case of Vijay Narain Singh v. State of Bihar and others, reported in (1984) 3 SCC 14 : (AIR 1984 SC 1334), may not be out of context. In paragraph 32 of the Judgment, Venkata-ramiah, J. (as His Lordship

then was) speaking for the majority observed as follows :

“When a person is enlarged on bail by a competent criminal Court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal Court.”

16. In case of Mallada K Sri Ram Vs. State of Telangana & ors., (2022 SCC OnLine SC 424), the Hon’ble Supreme Court observed in paragraph No.15 as follows :

“15. A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the “maintenance of public order”. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the

exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. . . .”

17. Moreover, a three Judge Bench of the Apex Court, in case of *Pesala Nookaraju Vs. The Government of Andhra Pradesh & ors.* (MANU/SC/0893/2023) has observed :

“55. The distinction between “public order” and “law and order” has been carefully defined in a Constitution Bench judgment of this Court in the case of *Dr. Ram Manohar Lohia v. State of Bihar and Ors.* MANU/SC/0054/1965 : (1966) 1 SCR 709. In this judgment, Hidayatullah, J. by giving various illustrations clearly defined the “public order” and “law and order”. Relevant portion of the judgment reads thus :

...Does the expression “public order” take in every kind of disorder or only some? The answer to this serves to distinguish “public order” from “law and order” because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The

contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

It will thus appear that just as “public order” in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting “security of State”, “law and order” also comprehends disorders of less gravity than those affecting “public order”. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. . .

64. Thus, from the various decisions referred to above, it is evident that there is a very thin line between the question of law and order situation and a public order situation, and some times, the acts of a person relating to law and order situation can turn into a question of public order situation. What is decisive for determining the connection of ground of detention with the maintenance of public order, the object of detention, is not an intrinsic quality of the act but rather its latent potentiality. Therefore, for determining whether the ground of detention is relevant for the

purposes of public order or not, merely an objective test based on the intrinsic quality of an act would not be a safe guide. The potentiality of the act has to be examined in the light of the surrounding circumstances, posterior and anterior for the offences under the Prohibition Act.

65. Just because four cases have been registered against the appellant detenu under the Prohibition Act, by itself, may not have any bearing on the maintenance of public order. The detenu may be punished for the offences which have been registered against him. To put it in other words, if the detention is on the ground that the detenu is indulging in manufacture or transport or sale of liquor then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Prohibition Act but if the liquor sold by the detenu is dangerous to public health then under the Act 1986, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to it that the liquor dealt with by the detenu is liquor which is dangerous to public health to attract the provisions of the 1986 Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.”

18. Needless to mention, a recourse to law of preventive detention is made when ordinary law falls short to curb the activities of a detenu.

19. True, there are 2 in-camera statements of the witnesses, indicating the petitioner and his two associates had threatened and assaulted them over purchase of liquor bottle and the bill of the dinner in a hotel they dined on a particular day. We are conscious of the fact that an order of detention can solely be based on in-camera statements. In our view, however, it would be very risky to uphold the order of detention solely based on such material.

20. The learned A.P.P. would submit that, the subjective satisfaction of the detaining authority cannot be a subject of judicial review. The Court cannot go into a question as to adequacy or inadequacy of the material relied on in support of an order of detention. The learned A.P.P. might be right. The facts of the present case, however, indicate that there was no proximity between the first 3 of the 4 crimes relied on and the order of detention. The last crime, under Section 307 of the Indian Penal Code had at the most a potential to create law and order problem. The Sessions Court had granted the petitioner bail within a month of his arrest. The grounds on which the petitioner was granted bail have not been considered by the detaining authority. We are not inclined to sustain the order of detention solely relying on the in-camera statements. As such, in our view, interference with the order impugned herein is warranted.

21. In the result, the petition succeeds. The same is allowed in terms of prayer clause (B). The petitioner be set at liberty forthwith if not required in any other case. Rule made absolute in above terms.

(KISHORE C. SANT, J.)

(R.G. AVACHAT, J.)

fmp/-