



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

CRIMINAL WRIT PETITION NO.1383 OF 2023

Ibrahim @ Tipu @ Tipya s/o
Sattar Maniyar, Age 29 years,
Occu. Labour, R/o Varadsim,
Tal. Bhusawal, District Jalgaon

... PETITIONER

VERSUS

- 1) The State of Maharashtra
through the Secretary,
Home Department,
Mantralaya, Mumbai – 400 032
- 2) The District Magistrate,
Jalgaon, District Jalgaon.
- 3) The Superintendent of Police,
Jalgaon, at S.P. Office,
In front of Bus Stand,
Taluka and District Jalgaon.
- 4) The Sub-Divisional Police Officer,
Bhusawal Sub-Division,
Bhusawal, Taluka Bhusawal,
District Jalgaon

(Copy to be served on P.P. Office,
Bombay High Court, Bench at Aurangabad)... **RESPONDENTS**

.....
Mr. N.R. Shaikh, Advocate holding for
Mr. F.N. Shaikh, Advocate for petitioner
Mr. A.R. Kale, A.P.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATED : 28th 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 dated 17/8/2023, passed by the District Magistrate, Jalgaon (respondent No.2), detaining the petitioner 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 (respondent No.1) vide order dated 25/8/2023. The period of detention is for 12 months. The detention is on the ground of the activities of the petitioner, being a dangerous person, were prejudicial to maintenance of public order.

3. The challenge is mainly on the ground of non-subjective satisfaction by the detaining authority. Learned counsel for the petitioner would submit that, although there were several crimes registered against the petitioner, he was acquitted in two of them. Those two crimes have also been relied on for passing of the

order impugned. The preventive action proposed against the petitioner in terms of Section 110 of the Code of Criminal Procedure was turned down by the Court of Judicial Magistrate, First Class. The said proceedings have also been relied on as one of the grounds to detain the petitioner under the M.P.D.A. Act. So far as regards two crimes registered in the immediate past of initiating proposal for prevention detention of the petitioner are concerned, those crimes were individual centric. Even in one of the two crimes, the investigating officer did not prefer to arrest the petitioner. He was served with a notice under Section 41-A of the Code of Criminal Procedure. So far as regards two in-camera statements are concerned, learned counsel would submit that, those are as vague as could be. Learned counsel placed reliance on the judgment of the Apex Court in case of **Amina Begum Vs. State of Telangana (2023 INSE 788)** to ultimately urge for allowing the Writ Petition.

4. The learned A.P.P. would, on the other hand, submit that, the subjective satisfaction of the detaining authority cannot be a matter of judicial review. According to him, sufficiency or insufficiency of the material relied on can also not be a subject of judicial review. According to him, in case of a conflict between private interest and public interest, the latter shall prevail. The learned A.P.P. first took us through the order of detention and then

read out the in-camera statements. It was also submitted that, a preventive action under Section 110 of the Code of Criminal Procedure was taken against the petitioner. Still there was no lull in his criminal activities. The petitioner has indulged in variety of criminal acts. All the police papers of the respective crimes were placed before the detaining authority. After having gone through the same, the detaining authority has arrived at a subjective satisfaction to detain the petitioner so as to prevent him in indulging in similar activities, causing disturbance to maintenance of public order. According to learned A.P.P., who will protect the interest of victims. He would further submit that, all the mandatory statutory provisions as regards the time lines have been complied with. According to him, this Court cannot sit in appeal in exercise of jurisdiction under Article 226 of the Constitution of India. Learned A.P.P. ultimately urged for dismissal of the petition.

5. 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.

.....

(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.

6. Considered the submissions advanced. Perused the order of detention, papers of investigation of the crimes relied on and the in-camera statements. Charts indicating the crimes relied on for passing the impugned order are as follows :

**Information of offences registered at various police stations of
Jalgaon district**

Sr. No.	Police Station	Cr. No.	Date of registration of offence	Date of arrest	Sections	Present status
1.	Bhusawal Taluka	41/2023	23/03/2023	24/03/2023	Under Sections 324, 323, 504, 506, 34 of IPC	Not proved
2.	MIDC, Jalgaon	729/2021	14/11/2021	18/03/2022	Under Section 392 of IPC	Pending trial
3.	MIDC, Jalgaon	83/2022	04/02/2022	10/03/2022	Under Sections 379, 406 of IPC	Not proved
4.	Faizpur	35/2022	23/02/2022	19/03/2022	Under Sections 406, 420 of IPC	Pending trial
5.	Shani Peth, Jalgaon	43/2022	04/03/2022	16/03/2023	Under Section 420 of IPC	Pending trial

**Details of preventive action taken by Bhusawal Taluka Police
Station of Dist. Jalgaon**

Sr. No.	Name of Police Station	Date of registration	Registration No.	Sections
6.	Bhusawal Taluka	14/04/2023	02/2023	As per Section 110(e)(g) of Criminal Procedure Code, 1973

**Details of offences registered at various Police Stations of
Jalgaon District**

Sr. No.	Police Station	Cr. No.	Date of registration of offence	Date of arrest	Sections	Present status
7.	Bhusawal Taluka	46/2023	05/04/2023	05/04/2023	Under Sections 354, 354(d), 294, 509 IPC	Pending trial

8.	Bhusawal Taluka	97/2023	20/05/2023	No arrest	Under Sections 354(d), 509, 294 of IPC	Under police investigation
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7. Close reading of the aforesaid charts would indicate, in two of the five crimes in the first chart, the petitioner was acquitted. Still those crimes have been relied on, if not, at least referred to. The same suggests non-application of mind by the detaining authority. Close reading of the police papers of rest of the three crimes would suggest, two of the crimes were registered against unknown persons. It is not known as to how the involvement of the petitioner in those crimes came to be surfaced. Needless to mention, these observations are made so far as regards deciding the present petition is concerned. The trial Court dealing with those crimes shall not be influenced by observations made herein.

8. So far as regards preventive measure taken against the petitioner under Section 110 of the Code of Criminal Procedure is concerned, the record indicates that, the Court of Judicial Magistrate, First Class had turned down the said proposal with a reasoned order. For better appreciation, the reasons given by the learned Magistrate for turning down the said proposal are reproduced hereinbelow :

As to point Nos.1 to 3 :

04. In order to allow the present application

ingredients of Section 151(3) of Cr.P.C. is to be fulfilled. For ready reference it is referred as under :-

3(a) Where a person is arrested under this Section and the officer making the arrest, or the officer in charge of the police station before whom the arrested person is produced, has reasonable grounds to believe that the detention of the arrested person for a period longer than twenty-four hours from the time of arrest (excluding the time required to take the arrested person from the place of arrest to the Court of a Judicial Magistrate) is necessary, by reason that -

(i) the person is likely continue the design to commit, or is likely to commit, the cognizable offence referred to in sub-section (1) after his release and

(ii) the circumstances of the case are such that his being at large is likely to be prejudicial to the maintenance of public order, the officer making the arrest, or the officer in charge of the police station, shall produce such arrested person before the nearest Judicial Magistrate together with a report in writing stating the reason for the continued detention of such person for a period longer than twenty-four hours.

05. It is pertinent to note that detenu is not arrested in two offences u/s 354 of IPC on the basis of which police has apprehension as to future involvement of the accused in similar offences. So mere possibility of increasing resentment in two community does not mean that the detenu is designing to commit the offence. Unless both conditions of Section 151 (3)(a) (i)(ii) of Cr.P.C. are satisfied, the order of remand can not be passed. So there are no grounds at all to keep the detenu behind bar. Hence, I answer these points in the negative.

As to point No.4 :-

06. In view of my findings to points No.1 to 3 in negative, I pass the following order.

ORDER

1. The application is rejected.
2. Detenu namely Ibrahim @ Tipu @ Tipya Abdul Sattar be released forthwith.
3. Copy of order be supplied to the concerned Police Officer.”

9. The sponsoring authority did not challenge the said order. Action under Section 151(3) was proposed mainly on the ground of registration of the last two crimes namely C.R. No.46/2023 and C.R. No.97/2023. Based on the very crimes, the petitioner has been detained under Section 3 of the M.P.D.A. Act. In our view, when the police authorities were unsuccessful in taking preventive measure against the petitioner under Section 110 of the Code of Criminal Procedure based on those two crimes registered against the petitioner, the very crimes ought not to have been relied on to detain the petitioner under Section 3 of the M.P.D.A. Act. Be that as it may.

10. We have perused the F.I.R. of both the crimes (C.R. No.46/2023 and C.R. No.97/2023). Those pertain to offences punishable under Sections 354, 354(D), 294, 509 of the Indian Penal Code. The allegations therein indicate the petitioner would abuse and talk obscene with both the informants (females). True, in first of those two crimes the petitioner was arrested. He was

granted bail by the trial Court within a week of his arrest. So far as the petitioner's involvement in the similar crimes post his release, it appears, the investigating officer did not apply for cancellation of the petitioner's bail granted in C.R. No.46/2023. Admittedly, the offence under Section 354(D) of the Indian Penal Code is non-bailable. By recording reasons, the petitioner could have been arrested in subsequent crime. For the reasons best known, the sponsoring authority preferred not to arrest the petitioner. He issued the petitioner notice under Section 41-A of the Code of Criminal Procedure. The same suggests the sponsoring authority found it to be not a case fit even to arrest the petitioner for some time. Then how could it be the very crime being relied on by the very authority to put up the proposal for the petitioner's detention under Section 3 of the M.P.D.A. Act.

11. Moreover, close reading of the F.I.Rs. of both the crimes would indicate that the offences were against individuals. Those crimes do not appear to have potential to cause disturbance to maintenance of public order. In case of **Amina Begum Vs. State of Telangana (2023 INSE 788)**, it has been observed :

“32. We may refer to the decision of the Constitution Bench of this Court in **ram manohar Lohia v. State of bihar (1966) 1 SCR 709**, where the difference between “law and order” and “public order” was lucidly expressed by Hon’ble M. Hidayatullah, J. (as the Chief Justice then was)

in the following words :

“54. *** 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.

55. 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.”

12. So far as regards two in-camera statements are concerned, the first one pertains to the incident alleged to have taken place in the second week of June 2023. No date and time thereof has been given. The petitioner allegedly intercepted the said witness and robbed him of Rs.200/- at a knife point. In our view, the said statement is very vague. Had the date and time of the incident been given by the witness, the petitioner could have had an opportunity to defend the same. He could have made out a case of his defence of alibi, if any. The said in-camera statements being vague, ought not to have found the basis for the order of detention. True, the second in-camera statement gives the date of the incident when the petitioner robbed the said witness of Rs.500/-, in our view, relying on in-camera statement to uphold the order of detention is risky. More so, when the order of detention indicates non-subjective satisfaction by the detaining authority since the crimes wherein the petitioner was acquitted have been relied on. Furthermore, the action initiated against the petitioner under Section 110 of the Code of Criminal Procedure was turned down by the learned Magistrate, the same too was relied on. Moreover, the last two crimes which were committed by the petitioner some days before the order of detention was passed, indicate that those were against the individual victims. In one of those crimes, the petitioner was not even arrested. No proposal was put up for cancellation of bail granted in other of those two crimes. In this factual backdrop,

the order impugned herein needs to be interfered with. In the result, the petition succeeds. Hence the order :

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause (b).
- (ii) The petitioner be set at liberty forthwith if not required in any other case.

Rule made absolute in above terms.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-