

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

CRIMINAL WRIT PETITION NO. 1501 OF 2023

Pintu @ Sidharth Bhagwan Devde,
Age : 38 years, Occu. Labour,
R/o. Ashok Nagar, Parli Vaijinath,
Tq. Parli Vaijinath, Dist. Beed.
(The detenu is presently
in Jail from 20/08/2023)

....Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Home Department, Second Floor,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai.
2. The District Magistrate,
Collector Office, Nagar Road,
Beed.
3. The Police Inspector,
Police Station, Sambhaji Nagar,
Parli (V), Tq. Parli (V), Dist. Beed.

....Respondents

.....
Mr. Irfan D. Maniyar – Advocate for the petitioner
Mr. M. M. Nerlikar – APP for respondent/State
.....

**CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, JJ.**

**RESERVED ON : 27TH OCTOBER 2023
PRONOUNCED ON : 06TH NOVEMBER, 2023**

JUDGMENT [Per : Neeraj P. Dhote, J.] :-

1. Heard both the sides finally. Perused the papers.

2. Impugned in the petition is the order dated 10.08.2023 passed by the respondent no. 2 detaining the petitioner in exercise of the powers vested under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons and Video Pirates Act, 1981 [hereinafter referred to as 'MPDA Act'] and the approval to the same by the respondent no.1 vide communication dated 21.08.2023.

3. It is submitted by the learned advocate for the Petitioner that, even if registration of criminal cases against the petitioner is considered, it does not adversely affect the maintenance of the public order and is not prejudicial to the maintenance of public order. He further contends that the crimes registered against the petitioner do not endorse that the petitioner is a dangerous person and because of his movement there would be a law and order situation. He further contends that the offences and the incidences relied by the Detaining Authority for passing the impugned order do not warrant preventive detention of the petitioner. He further contends that the impugned order is against the provisions of the MPDA Act and the settled principles of law relating to the matters of preventive detention. He further contends that the impugned order be quashed and set aside.

4. The learned APP supports the impugned order and contends that, after going through the available record and on

subjective satisfaction the Competent Authority has passed the impugned order. He further contends that the impugned order is well reasoned and shows application of mind by the Detaining Authority and, hence, it does not call for any interference in the writ jurisdiction.

5. Perusal of the papers shows that, the impugned order in vernacular (i.e. in Marathi, Pg. 163) speaks that the Competent Authority has passed the impugned order by considering the petitioner as a bootlegger. Whereas, the impugned order which is in English (Pg. 173) speaks that the Competent Authority has passed the said order by considering the petitioner as a dangerous person. The MPDA Act defines the bootlegger and dangerous person in Section 2(b) and (b-1). From the definition, it is clear that both the terms are altogether different. The requirement to label a person as a bootlegger and dangerous person are altogether different. However, finally the impugned order is passed by considering the petitioner as a Bootlegger. What is gathered is that the English version is the translation. This gives the impression that the Competent Authority has passed the impugned order in a casual manner. Be that as it may.

6. The impugned order shows that the respondent no. 2 observed that after carefully going through the material placed before her, she was subjectively satisfied that the petitioner was acting in a "*manner prejudicial to the maintenance of public order*",

therefore, it was necessary to detain the petitioner. As per Section 2(a) of the MPDA Act, the term "*acting in any manner prejudicial to the maintenance of public order*" means -

(i)

(ii) *in the case of a bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order;*

7. Before considering the merit of the matter, it is necessary to refer the recent Judgment of the Hon'ble Apex Court in **Pesala Nookaraju Versus The Government of Andhra Pradesh & Ors** reported in 2023 SCC OnLine SC 1003, wherein the term 'public order' has been considered by referring to the various judgments. The relevant paragraph nos. 53 to 64 of the said judgment are reproduced as under: -

"53. This Court on several occasions examined the concepts of "law and order" and "public Order". Immediately after the Constitution came into force, a Constitution Bench of this Court in the case of Brij Bhushan and Another v. The State of Delhi, (1950) SCR 605, dealt with a case pertaining to public order. The Court observed that "public order" may well be paraphrased in the context as "public tranquility".

54. Another celebrated Constitution Bench judgment of this Court is in the case of Romesh Thappar v. The State of Madras, (1950) SCR 594. In this case, Romesh Thappar, a printer, publisher and editor of weekly journal in English called Cross Roads printed and published in Bombay was detained under the Madras Maintenance of Public Order Act, 1949. The detention order was challenged directly in this Court by filing a writ petition under Article 32 of the Constitution. The allegation was that the detenu circulated documents to disturb the public tranquility and to create 63 disturbance of public order and tranquility. This Court observed:-

"Public order' is an expression of wide connotation and signifies that state of tranquillity which prevails among the

members of a political society as a result of internal regulations enforced by the Government which they have established it must be taken that 'public safety' is used as a part of the wider concept of public order."

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 Others, (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(l) (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."

56. *In the case of Arun Ghosh v. State of West Bengal, (1970) 1 SCC 98, Hidayatullah, J. again had an occasion to deal with the question of "public order" and "law and order". In this judgment, by giving various illustrations, very serious effort has been made to explain the basic distinction between "public order" and "law and order". The relevant portion reads as under:-*

"Public order was said to 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 affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order.

Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications 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. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only.

Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquility there is a vast difference.

The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the

community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies.

It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society."

57. *The concept of 'public order' and 'law and order' has been dealt with in the case of Pushkar Mukherjee & Others v. The State of West Bengal, AIR 1970 SC 852. In this case, this Court had relied on the important work of Dr. Allen on 'Legal Duties' and spelled out the distinction between 'public' and 'private' crimes in the realm of jurisprudence. In considering the material elements of crime, the historic tests which each community applies are intrinsic wrongfulness and social expediency which are the two most important factors which have led to the designation of certain conduct as criminal.*

Dr. Allen has distinguished 'public' and 'private' crimes in the sense that some offences primarily injure specific persons and only secondarily the public interest, while others directly injure the public interest and affect individuals only remotely. There is a broad distinction along these lines, but differences naturally arise in the application of any such test.

58. *This Court in the case of Babul Mitra alias Anil Mitra v. State of West Bengal & Others, (1973) 1 SCC 393, had an occasion to deal with the question of "public order" and "law and order". This Court observed that the true distinction between the areas of "law and order" and "public Order" is one of degree and extent of the reach of the act in question upon society. The Court pointed out that the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different.*

59. *In Dipak Bose alias Naripada v. State of West Bengal, (1973) 4 SCC 43, a three-Judge Bench of this Court explained the distinction between "law and order" and "public order" by giving illustrations. Relevant portion reads as under:*

"Every assault in a public place like a public road and terminating in the death of a victim is likely to cause horror and even panic and terror in those who are the spectators. But that does not mean that all of such incidents do necessarily cause disturbance or dislocation of the community life of the localities in which they are committed.

There is nothing in the two incidents set out in the grounds in the present case to suggest that either of them was of that kind

and gravity which would jeopardise the maintenance of public order. No doubt bombs were said to have been carried by those who are alleged to have committed the two acts stated in the grounds. Possibly that was done to terrify the respective victims and prevent them from offering resistance.

But it is not alleged in the grounds that they were exploded to cause terror in the locality so that those living there would be prevented from following their usual avocations of life. The two incidents alleged against the petitioner, thus, pertained to specific individuals, and therefore, related to and fell within the area of law and order. In respect of such acts the drastic provisions of the Act are not contemplated to be resorted to and the ordinary provisions of our penal laws would be sufficient to cope with them."

60. *In Kuso Sah v. The State of Bihar & Others, (1974) 1 SCC 185, this Court had also considered the issue of "public order". The Court observed thus:-*

"These acts may raise problems of law and order but we find it impossible to see their impact on public order. The two concepts have well defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder."

61. *This Court in yet another important case of Ashok Kumar v. Delhi Administration & Others, (1982) 2 SCC 403, clearly spelled out a distinction between "law and order" and "public order". In this case, the Court observed as under:-*

"13. The true distinction between the areas of "public order" and "law and order" lies not in the nature or quality of the act, but in the degree and extent of its reach upon society. The distinction between the two concepts of "law and order" and "public order" is a fine one but this does not mean that there can be no overlapping. Acts similar in nature but committed in different contexts and circumstances might cause different reactions.

In one case it might affect specific individuals only and therefore touch the problem of law and order, while in another it might affect public order. The act by itself therefore is not detrimental of its own gravity. It is the potentiality of the act to disturb the even tempo of the life of the community which makes it prejudicial to the maintenance of public order."

62. *It has to be seen whether the detenu's activity had any impact on the local community, or to put it in the words of Hidayatullah, J., had the act of the detenu disturbed the even tempo of the life of the community of that specified locality?*

63. *In Commissioner of Police & Others, v. C. Anita (Smt.), (2004) 7 SCC 467, this Court again examined the issue of "public order" and "law and order" and observed thus:-*

"7. The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society.

It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is:

"Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?"

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."

8. Further, in **Mallada K. Sri Ram Versus The State of Telangana & others** reported in MANU/SC/0444/2022, the Hon'ble Apex Court has observed that, *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". 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.*

9. Coming to the case in hand, the order impugned shows that the respondent no. 2 referred four cases at Sr. No. 1 to 4 in the chart at page no. 2 of the impugned order, registered against the petitioner in order to show his history of crimes. The said chart shows that the three offences are of the year 2020 and one offence is of the year 2021 and they all are *subjudiced*. The said offences are registered under the provisions of the Maharashtra Prohibition Act, 1949 and the Indian Penal Code, 1860. Admittedly, for the purpose of impugned order, the respondent no. 2 took into consideration the two offences

registered against the petitioner which are shown at sr. nos. 5 and 6 in the said chart and the confidential statements of two witnesses recorded in-camera. The said two offences are of the year 2023. One is registered on 26.02.2023 by the Excise Department vide C.R. No. 42/2023 for the offences punishable under Sections 65 (ABCDEF), 80, 81, 83, 90 of the Maharashtra Prohibition Act, 1949 & Section 328 of the IPC, and it is pending investigation. In this case, the informant who is in the services of the State Excise Department got secret information that the petitioner was transporting the liquor and based on the said information, the petitioner was apprehended with the said liquor. The second offence is registered on 03.07.2023 vide C.R. No. 116/2023 for the offence punishable under Sections 452, 324, 323, 504, 506 of the Indian Penal Code and it is also pending investigation. In this case, the informant reported that the petitioner had come to her house in the night and assaulted her grandson as he refused to transport the liquor at the instance of the petitioner. From the above chart it becomes clear, that after the first four offences which are shown as the history of the petitioner, the two crimes which are taken into consideration by the Detaining Authority are committed after fourteen months after the last crime was registered against the petitioner in November, 2021. As such, there was a lull in the criminal activities of the Petitioner for fourteen months. The impugned order further shows that the preventive action was initiated against the petitioner. The Detaining Authority further observed that in view of

registration of said two crimes which are taken into consideration for passing the impugned order, the preventive actions are insufficient to curtail the dangerous criminal activities. It is seen from the chart in paragraph no. 3.2 of the impugned order that in one chapter case the proposal for externment was submitted, in second chapter case there was final bond and in third chapter case the proposal was cancelled. Admittedly, it is not the case of the State / Detaining Authority that the externment was executed and the Petitioner committed breach of the externment order and indulged in criminal activity. Therefore, the conclusion that the preventive action was insufficient lack the required foundation.

10. Perusal of the gist of the in-camera statement of two witnesses shows that the first witness stated that on 02.01.2023 at about 19:30 hrs., the petitioner entered in his house and assaulted his family members saying that as to why they are giving information about him to Excise Police. The second witness stated that on 04.02.2023 at about 20:00 hrs., when he was passing from the Railway Fly bridge, Parali for his work, the petitioner restrained him and caught hold his hand and started to assault by saying that why he was giving information to police regarding illegal liquor business and threatened him to kill. From the statement of both the witnesses it becomes clear, that both the incidents are not of the broad day light in public view so as to create fear in the minds of the public at large.

11. The aforesaid two offences registered against the petitioner and which are taken into consideration for passing the impugned order of detention, taking individually and/or collectively, coupled with the statements of two witnesses referred in the impugned order cannot be held to have the potential to be prejudicial to the maintenance of public order. It is nowhere the case of Detaining Authority that the Law under which the petitioner is booked or the General Laws are not capable to contain the activities of the petitioner. Considering the above referred legal position and the material taken into consideration by the Respondent No. 2 Detaining Authority, the impugned order does not disclose such acts which could be termed as 'prejudicial to the maintenance of public order'. Thus, we are inclined to allow the writ petition and hence the following order.

ORDER

- [i] Petition is allowed.
- [ii] The impugned order dated 20th August, 2023 passed by respondent no. 2 and confirmed by the Government of Maharashtra is hereby quashed and set aside.
- [iii] The petitioner be set at liberty forthwith, if not required in any other case.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE