

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

CRIMINAL WRIT PETITION NO.1531 OF 2023

Vilas Ramesh Shinde

..Petitioner

Vs.

The State of Maharashtra
and others

..Respondents

Mr.Sk. Wajed Ahmed, Advocate for petitioner
Mr.P.N.Kutti, APP for respondents - State

**CORAM : R.G.AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATE : NOVEMBER 11, 2023**

ORDER :-

The challenge in this petition under Article 226 of the Constitution of India, is to the order dated 28.06.2023, passed by respondent no.2 - District Magistrate, Hingoli, detaining the petitioner under Section 3(1) 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 ("the Act", for short).

2. The order of detention has been confirmed by the State of Maharashtra in Department of Home. The period of detention is for 12

months. The petitioner has been detained on the ground of he being a danger person within the meaning of Section 2(b-1) of the Act and his activities, as such, were prejudicial for maintenance of public order.

3. Heard learned counsel for the parties.

4. The order has been challenged on very many grounds. Perusal of the affidavit-in-reply and the documents shown to us through WhatsApp message, indicate the State to have had received the order of detention forthwith. Learned counsel for the petitioner came around to submit that the material relied on for passing the order of detention, would no way lead to observe the petitioner to be a dangerous person. According to him, the detaining authority did not apply its mind. The material relied on was not sufficient for the detaining authority to arrive at subjective satisfaction to pass the order of detention. Learned counsel then took us through the police papers of the crimes relied on and two in-camera statements. A detail reference thereto would be made while appreciating his submissions. Suffice it to say, the order of detention is sought to be set aside on the ground of non-subjective satisfaction by the detaining authority.

5. Learned APP would, on the other hand, submit that the petitioner was a dangerous person. He took us through a chart, indicating the eight crimes registered against the petitioner during the period from 2012 to 2023. According to him, all the crimes registered against the petitioner were under Chapters XVII and XVIII of Indian Penal code. The petitioner committed said crimes in association with others. Learned APP then adverted our attention to two in-camera statements. He then read out the order of detention, to ultimately submit that the activities of the petitioner were prejudicial to maintaining public order. According to him, the subjective satisfaction of the detaining authority cannot be the subject matter of judicial review. The question of inadequacy of material relied on cannot be gone into. In short, according to learned APP, this Court, in exercise of the jurisdiction under Article 226 of the Constitution of India, can not seat in appeal over the order of preventive detention. He, therefore, urged for dismissal of the petition.

6. Considered the submissions advanced.

7. Section 2 of the Act reads thus:-

2. In this Act, unless the context otherwise requires,—
 - (a) “acting in any manner prejudicial to the maintenance of

public order” means-

- (i)
- (ii)
- (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.
- (iv-a)
- (iv-b)
- (v)

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 administrations.

2(b)

(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.

8. The Apex Court in the case of **Mallada K. Sri Ram Vs. State of Telangana and ors., 2022 SCC OnLine SC 424**, observed thus:-

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.....

Moreover, in paragraph 12 of the very judgment, the Apex Court observed:-

12. The distinction between a disturbance to law and order and a disturbance to public order has been clearly settled by a Constitution Bench in *Ram Manohar Lohia v. State of Bihar*, AIR 1966 SC 740. The Court has held that every disorder does not meet the threshold of a disturbance to public order, unless it affects the community at large. The Constitution Bench held:-

“51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression “public order” take in every kind of disorders or only some of them? 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.

52. 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. By using the expression “maintenance of law and order” the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.”

9. Needless to mention, recourse to the action of preventive detention is made when the ordinary law of the land falls short to curb criminal activities of a detainee. Let us, therefore, now, advert to the material relied on for passing of the order of detention.

10. True, eight crimes have been registered against the petitioner during the period from 2012 to 2023. Only last two crimes, being Crime No.105 of 2023 and Crime No.167 of 2023, were alleged to have been committed by him within the period of last six months next before passing of the order of detention. The other crimes, which have been registered against the petitioner,

could not be looked into for passing the order of detention, on the ground of there being no proximity/live-link between those crimes and the order of detention. For ready reference, the chart of the crimes registered against the petitioner is given below:-

Sr. No.	Police Station	C.R. No. & filed on	Sections	RCC/SCC No.	Arrest Date	Bail date	Present status
1	Kurunda	167/2023 20.05.2023	457, 380, 511 of IPC	—	18.06.2023		Police Investigation
2	Jintur	105/2023 27.03.2023	394, 427, 34 IPC	-	20.06.2023		Police Investigation
3	Hatta	251/2022 16.06.2022	457, 380 IPC	175/2023 21.06.2023	23.07.2022		Court pending
4	Kalamnuri	266/2019 16.07.2019	399, 402 IPC & 4/25 Arms Act	233/2019 16.12.2019	04.10.2019		Court pending
5	Aundha Nagnath	03/2019 05.01.2019	279, 337 IPC & 130/177 MV Act	93/2021 29.07.2021	11.09.2020		Court pending
6	Vasmat Shahar	408/2018 05.12.2018	302, 323, 504, 34 IPC	24/2020 08.01.2020	10.10.2019		Court pending
7	Vasmat Shahar	301/2018 05.10.2018	392 IPC	448/2019 30.12.2019	09.10.2019		Court pending
8	Vasmat Shahar	165/2012 11.11.2012	457, 380, 411, 34 IPC	101/2013 05.04.2013	13.11.2012		Court pending

11. One of the two crimes registered in the recent past is for the offences punishable under Sections 457, 380 and 511 of Indian Penal Code, while the other one is for the offences punishable under Sections 394, 427 read with Section 34 of IPC. We have perused the FIRs of both the crimes. Those have been registered against

unknown persons. We have also perused the police papers of both the crimes, which were placed before the detaining authority. We do not come across any material, which could be termed to be admissible in evidence, to indicate the petitioner's involvement in both the crimes. The petitioner came to be made accused in both the crimes relying on the statements made by co-accused. All the offices of the District Magistrates in the State of Maharashtra have Law Officers. Even, rational thinking leads us to observe that the detaining authority ought not to have relied on these two crimes to pass the order of detention against the petitioner since there was no admissible material suggesting his involvement in those crimes.

12. Then, what remains is two in-camera statements of the witnesses 'A' and 'B'. We have perused both statements.

Witness 'A' only describes the petitioner being a criminal. Said witness is not victim of any of the crimes committed by the petitioner. His statement is as vague as it could be.

Witness 'B' has stated in his statement that about six months before, he was proceeding from Madina Chowk. Present petitioner was accompanied by an unknown person. The petitioner was armed with a tommy (weapon). Having seen the witness, the

petitioner stopped and gave him threats if the witness disclose anything to anyone about the petitioner. We fail to understand, as to how this statement could be relied on for passing the impugned order. The witness had, admittedly, not seen the petitioner committing any crime against anyone. Therefore, the petitioner had no reason to threaten the said witness. Moreover, the statement of the said witness is very vague. The witness did not disclose the day, date and time when the petitioner had intercepted him and gave threats.

13. Moreover, both in-camera statements have not been duly verified by the Sub-Divisional Police Officer. Below both statements, the S.D.P.O. has simply endorsed as 'verified' and then put up his signature. It is not known, as to what he has verified. Whether he has verified the signatures or identity of witnesses 'A' or 'B' or has he verified the truthfulness of the statements. In our view, therefore, the two in-camera statements should not have been relied on by the detaining authority.

14. For all the aforesaid reasons, we find the material relied on to have no potential to arrive at subjective satisfaction for passing of the impugned order. In our view, the detaining authority

has not applied its mind. Interference with the order impugned herein is, therefore, warranted.

15. In the result, the petition succeeds. Hence, the following 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.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP