

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3642 OF 2022**

Sachin @ Bobby Sambhaji Shinde

... Petitioner

V/s.

1. The State of Maharashtra
2. Commissioner of Police, Solapur.
3. Senior Inspector of Police,
Fouzdar Chawdi Police Station, Solapur.
4. Assistant Commissioner of Police, Division -1,
Solapur

... Respondents

Mr. Priyal G. Sarda, Advocate for Petitioner.

Ms. S.D Shinde, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

**ORDER RESERVED ON : 6th JANUARY 2023
ORDER PRONOUNCED ON : 24th JANUARY 2023**

JUDGMENT : (Per : Prakash D. Naik, J.)

1. The Petitioner has challenged the Order of Detention dated 12th July 2022 issued by the Commissioner of Police, Solapur under 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 (for short, "M.P.D.A. Act"). The impugned Order has been issued with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of the public Order.

2. Along with the Order of Detention, Petitioner was served upon the Grounds of Detention dated 12th July 2022 and the documents relied upon by the Detaining Authority while issuing the Order of Detention. From the Grounds of Detention it is apparent that, the Detention is based on C.R. No.231 of 2022 registered with Faujdar Chawadi Police Station, Solapur, for offences punishable under Sections 332, 353, 143, 147, 149, 504 & 506 of Indian Penal Code (*for short "IPC"*) read with Section 142 of Maharashtra Police Act, 1951 and statements of two witnesses recorded in-camera and described as witness 'A' and witness 'B'.

3. Learned Advocate Mr. Sarda, appearing for Petitioner urged two grounds to challenge the impugned Order of Detention. The first ground advanced by learned Advocate for Petitioner is that, neither C.R.No.231 of 2022 registered with Faujdar Chawadi Police Station, Solapur, nor the statements of two witnesses affect the maintenance of public Order. The incidents would at the most disturb the law and Order situation. The First Information Report (*for short 'FIR'*) and other material on record would show that, the Petitioner was not armed with any weapon. Although it is alleged that, Complainant was assaulted and he went to Civil Hospital for treatment, his injury certificate is not on record. The Petitioner was not armed with any weapon. The statement of witness 'A' was recorded on 2nd June 2022. He has referred to the alleged incident of first week of April, 2022. Whereas, statement of witness 'B' was recorded on 4th June

2022 and he has referred to the alleged incident of second week of April, 2022. The statements are false. There is no proper verification of statements. In the FIR relating to C.R.No.231 of 2022 it is alleged that, the Petitioner had allegedly entered the jurisdiction of Faujdar Chawadi Police Station, Solapur, on 17th April 2022 in breach of externment Order. It is difficult to believe that, the Petitioner had entered the area referred by two witnesses in first week of April, 2022 and second week of April 2022. The version of witness 'A' and 'B' do not inspire confidence.

4. Learned Advocate for Petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of *Banka Sneha Sheela Vs. State of Telangana and Others* reported in (2021) 9 SCC 415 and the the decision of this Court in the case of *Lakhan Rohidas Jagtap Vs. The Commissioner of Police, Pune & Others*, reported in 2019 ALL MR (Cri) 5261.

5. The second ground advanced by learned Advocate for Petitioner is that, the Detaining Authority has considered the proposal sent by sponsoring authority and thereby passed the Detention Order against the detenu. The said proposal has not been supplied to the detenu, which has affected the right of detenu under Article 22(5) of the Constitution of India. In the Grounds of Detention it is stated that, the Detaining Authority have gone through the proposal and other documents and satisfied about the truthfulness of incident and fear expressed by the witnesses of in-camera statements. Hence, it was incumbent upon the Detaining Authority to

supply a copy of proposal to the detenu.

6. Learned A.P.P. submitted that, incident referred to in C.R.No.231 of 2022 registered with Faujdar Chawadi Police Station, Solapur and the statements of witnesses 'A' and 'B' affect the maintenance of public order. It cannot be said that, statements of witnesses recorded in-camera are false. The truthfulness of the statements was verified by higher authority. The acts attributed to Petitioner in the incidents referred to by in-camera witnesses and complainant in C.R.No.231 of 2022 are causing disturbance to public order.

7. Learned A.P.P. has relied upon the decision of this Court in the case of *Smt. Zebunnisa Abdul Majid Vs. M.N.Singh and Others* reported in 2001 CRI. L.J. 2759.

8. In reply to the second ground urged by Petitioner, learned A.P.P. submitted that, it was not necessary to supply the copy of proposal to the Petitioner. It is submitted that, the proposal is an internal communication and it is not mandatory that, it should be supplied to detenu. The documents which are relied upon for issuing the Order of Detention are supplied to the Petitioner. Hence, there is no violation of the right of detenu under Article 22(5) of the Constitution of India.

9. Learned A.P.P. has relied upon the decision of this Court in the case of *Mohd. Aslam Abdul Sattar Shaikh Vs. M.N.Singh, Commissioner of Police* reported in Supp 1 BCR (Cri)585.

10. The Grounds of Detention stipulate that, the detention is based on C.R.No.231 of 2022 registered with Faujdar Chawadi Police Station, Solapur and statements of two in-camera witnesses referred to as witnesses 'A' and 'B'.

11. The Detaining Authority on the basis of material on record placed before him has recorded subjective satisfaction that, the material shows detenu's consistency of criminal activities. He has proved himself as 'Dangerous person' within the meaning of Section 2(b-1) of the M.P.D.A. Act. The C.R. mentioned in Paragraph No. 5.1 and in-camera statements in Paragraph Nos. 5.3 and 5.4 are carefully considered by the Detaining Authority and subjectively satisfied that, the Petitioner is acting in a manner prejudicial to the maintenance of public Order. The Petitioner was externed from two districts vide Order dated 16.12.2020. He was involved in C.R. No.231 of 2022 registered with Faujdar Chawadi Police Station, Solapur, by committing breach of externment the Order accompanying him obstructed the Police from discharging their duty. One of them grabbed the shirt's collar of the Complainant/Police and pulled him. Petitioner pushed the Complainant/Police Constable and assaulted him with kicks. Witness 'A' in his statement dated 2nd June 2022 has stated that, the Petitioner had visited his hotel along with his associates holding weapons, like knife and iron pipe. He was threatened and questioned for not giving 'hafta' and demand

was made for 'hafta'. He was threatened that, he would be killed and his hotel would be burnt. The Petitioner's associates damaged the articles from the hotel with iron rod and hockey sticks. Customers from hotel ran away. Neighbouring shopkeepers, customers, people moving on the road and people living nearby gathered in front of hotel. The Petitioner rushed towards the gathered people by threatening them with knife and his associates assaulted the gathered people. People got frightened and started running helter-skelter. While running some people fell down and neighbouring shopkeepers shut down their shops. No one came for the help of witness 'A'. He was assaulted and amount of Rs.2,000/- was taken away by the Petitioner and his associates. Witness 'B' in his statement dated 4th June 2022 has stated that, the Petitioner and his associates came to his shop holding sword, iron pipe and lathies. They demanded Rs.10,000/- from the witness. He was abused and threatened. Petitioner gave blow of sword, which was evaded by the witness. Petitioner's associates started pelting stones on the shops of said witness and other shopkeepers. The shops were closed. Some persons were injured due to pelting stones. People living nearby closed their doors, windows of houses. People on the road ran away helter-skelter. Due to the fear and terror of detenu and his associates, no one came for the help of witness. Damage was caused to the shop of witness. The Petitioner forcibly took money from the cash counter of shop run by the witness. He was threatened that, if he

makes complaint to Police, he would be killed. All the aforesaid incidents definitely affects even tempo of the society, which would fall within the purview of public Order. It is also pertinent to note that, as per Section 5A of the M.P.D.A. Act, the grounds are severable when a Detention Order has been made on two or more grounds, such Order of Detention shall be deemed to be made separately on each of such grounds and accordingly such Order shall not be deemed to be invalid if one ground is vague, non-existent, not relevant, not connected or not proximately connected with such person or invalid for any other reason. The in-camera statements were verified by the Assistant Commissioner of Police. The detaining Authority in its Affidavit in reply has stated that, careful perusal of proposal dated 10.06.2022 and verification by A.C.P Division-I, he was satisfied regarding the truthfulness and genuineness of the incident and fear expressed by the witnesses of in-camera statements. He believed that, the contents of in-camera statements are true and taken into consideration for issuing Detention Order. The truthfulness of statements was verified by Assistant Commissioner of Police on 03.06.2022 and 06.06.2022. The verification of in-camera statement by A.C.P is sufficient to remove any doubt or suspicion regarding statements of witnesses.

12. In the case of *Lakhan Rohidas Jagtap Vs. The Commissioner of Police, Pune & Others* (supra) this Court had observed that, Assistant

Commissioner of Police while recording the statement of witness 'A' has only mentioned that, the said witness was called in the office of Commissioner of Police and inquiry about his name and address was made. In order to verify his statement, the Assistant Commissioner of Police made inquiry with other people residing in the vicinity and it was revealed that, the incident stated by witness 'A' is correct. The Assistant Commissioner of Police has not recorded satisfaction to the effect that, the incidents stated by the witnesses are true and genuine. We have perused verification of the statement of witnesses 'A' & 'B' recorded by Assistant Commissioner Police, Solapur and we do not find any infirmity in the said verification. The verification by Assistant Commissioner ascertains that, the statement of witness is voluntary and without coercion. Enquiry with citizens from the area has confirmed the incidents and it is also revealed that, people are not willing to depose against detenu. Due to fear and terror of detenu and his associates the identity of witness be kept secret. In the case of Smt. Zebunnisa Abdul Majid V/s. M.N. Singh and Others (supra) it is observed that, it is not necessary for the detaining Authority to expressly State in the grounds of detention that, he had verified the contents of Statements and found to be true. The Assistant Commissioner of Police has personally inquired with both the witnesses and also verified the truthfulness of the incidents.

13. In the case of *Banka Sneha Sheela Vs. State of Telangana and*

Others (supra) the apex Court has observed that, the expression 'law and Order', 'Public Order' and 'security of State' are different from one another. For 'public order' to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects 'law and order' but before it can be said to affect 'public order', it must affect the community or the public at large. The factual matrix of the incidents considered by Detaining Authority are squarely covered by the concept of public Order.

14. The other submission advanced by learned Advocate for Petitioner is that, the copy of proposal is not supplied to Petitioner. The detaining Authority has rightly stated that, proposal is an internal communication and therefore it is not mandatory that, the report of sponsoring Authority should be supplied to the detenu. In the case of *Mohd. Aslam Abdul Sattar Shaikh Vs. M. N.Singh, Commissioner of Police* (supra) this Court has observed that, the detenu is not entitled for the copy of the proposal. The detenu has got no right to demand the copies of other documents since they are not vital documents. We find that, all the documents on the basis of which Order of Detention has been issued are supplied to the detenu/Petitioner. The proposal is administrative communication between sponsoring authority and the detaining Authority. The detaining Authority has relied upon C.R.No.231 of 2022 registered with Faujdar Chavdi Police Station and statements of witness 'A' and 'B'. All

the documents relating to the aforesaid grounds are supplied to Petitioner.

It was not necessary to supply proposal to detenu.

15. In the light of aforesaid observations, we do not find any merits in the contentions of Petitioner and hence, the Petition is required to be dismissed.

ORDER

- i) Criminal Writ Petition No.3642 of 2022 is dismissed.
- ii) Rule is discharged.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]

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JAMADAR

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