



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**CRIMINAL WRIT PETITION NO. 307 OF 2023**

**PETITIONER:** Govind S/o. Banduji Tulsewar,  
Age 33 years, Occ. Labour,  
R/o. In front of Sariputra Baudh Vihar,  
Pandharboadi, Sanjay Nagar,  
Nagpur.

**V E R S U S**

**RESPONDENTS :**

1. The State of Maharashtra,  
Home Department (Special),  
Through its Section Officer,  
Second Floor, Main Building,  
Mantralaya, Mumbai – 32.
2. Commissioner of Police  
Nagpur (City), Nagpur.

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Mr. Siddhant Ghatte, Advocate for petitioner.  
Shri S.S. Doifode, Additional Public Prosecutor for respondents.  
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**CORAM:- VINAY JOSHI AND  
VALMIKI SA MENEZES, JJ.**

**JUDGMENT RESERVED ON : 05/07/2023**  
**JUDGMENT PRONOUNCED ON : 29/09/2023**

**JUDGMENT** : (Per Valmiki Sa Menezes, J.)

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.
2. By this petition under Article 226 of the Constitution of India the petitioner seeks to quash and set aside the impugned order dated 13.03.2023 passed by the Commissioner of Police,

Nagpur City (respondent No.2) 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(hereinafter referred to as “MPDA”); the petitioner further lays challenge to order dated 24.03.2023 passed by the respondent No.1 under Section 3 of the MPDA, confirming the order dated 13.03.2023 of the respondent No.2.

3. Three main grounds raised in challenge to these orders in the petition are :

- (a) That none of the three offences relied upon by the detaining authority, forming basis for passing the detaining order concern an alleged act which is detrimental to the maintenance of the public order, and further the acts alleged in those offences can be at most termed as acts which are disruptive of law and order.
- (b) That the in-camera/anonymous statements relied upon by the detaining authority do not disclose any incident which has taken place either in broad public view or allege acts on the part of the detenu that would

amount to disturbance of public order; the authenticity and contents of the statements have not been verified by the detaining authority, who has neither interacted personally with the witnesses or even ascertained the genuineness of the contents thereof from the concerned ACP.

- (c) That of three offences considered for passing the detention order, the first two offences, according to the police, only warranted issuance of a notice under Clause (a) of sub-Section (1) of Section 41 of the Code of Criminal Procedure and therefore, could not be termed to be a serious nature; the third offence was one under the Arms Act, for which the petitioner has been granted bail and could be dealt with under Regular Criminal Laws. As such, none of these offences could form be material for subjective satisfaction of the detaining authority, and thus, the impugned order is passed without any jurisdiction under Section 3 of the MPDA.

4. In answer to the allegations made in the petition, the respondents have filed affidavit in reply dated 20.06.2023, through the Commissioner of Police, Nagpur City reiterating their

stand that the petitioner was considered as a “dangerous person” under the MPDA and sought to justify his detention and support the impugned orders.

5. We have heard the learned counsel for the parties, perused the record of the detaining authority, and both the impugned orders.

6. The main contention of the petitioner appears to be that the three crimes, which form the basis of passing the detention order are all in the nature of personal disputes between the petitioner and the complainants. It is further the contention of the petitioner that of the three crimes which are referred in para 8 of the impugned order, two crimes bearing No.305/2022 (Ambazari) and No.480/2022 (Ambazari), were of such nature being offences as to only require issuance of a notice under Clause (a) of sub-Section (1) of Section 41 of the Code of Criminal Procedure to the petitioner. Further, that in the third cognizable offences which is Crime No.13/2023 (Ambazari), the petitioner was released on bail by the concerned Magistrate and there was no cause for the authorities to proceed with any action in terms of the MPDA since the matters would proceed under regular Penal Laws. The learned counsel for the petitioner relies upon the following judgments to buttress his argument that the nature of

the offences relied upon by the detaining authority do not fall within the meaning of offences which are prejudicial to maintenance of “public order” :-

- (a) ***Shaikh Husain @ Shahrukh Shaikh Fatru Vs. State of Maharashtra***, reported in ***2023 DGLS (Bombay) 1318***.
- (b) Judgment dated 13.03.2023, of the Bombay High Court in ***Chandbee W/o. Usmaan Patel Vs. State of Maharashtra***, in ***Criminal Writ Petition No.697/2022***.
- (c) ***Anil Tukaram Mohite Vs. The Commissioner of Police Pimpri Chinchwad and Ors***, reported in ***2021 ALL MR (Cri.) 3794***,
- (d) ***Gajanan Pundlik Londhe Vs. State of Maharashtra and Ors.***, reported in ***2023(2) AIR Bom. R. (Cri.) 378***.

7. Per contra, learned APP appearing for the respondents has supported the impugned orders contending that the incidents relied upon justify the passing of the impugned orders. It was further contended that on going through the contents of the FIR's in the three offences, has considered that they disclose acts which could be considered detrimental to the maintenance of public order and would justify the passing of the impugned orders. He further submits that a perusal of the in-camera statements “A” and “B” disclose that the involvement of the petitioner in those

incidents at a public place, causing alarm to the people in the vicinity and that the same were relied upon by the detaining authority only after being verified.

8. At the outset, we quote the Hon'ble Supreme Court in the judgment of ***Kanu Biswas Vs. State of West Bengal***, reported in ***(1972) 3 SCC 831*** on the question of what constitutes breach of "public order" as opposed to breach of "law and order" :-

*"6. The distinction between the concept of public order and that of law and order has been adverted to by this Court in a number of cases. In the case of Dr. Ram Manohar Lohia v. State of Bihar, [1966] 1 S.C.R. 709, Hidayatullah J. (as he then was) said that any contravention of law always affected order, but before it could be said to affect public order, it must affect the community at large. He considered three concepts, law and order, public order and the security of the State, and observed that to appreciate the scope and extent of each one of them, one should imagine the concentric circles. The largest of them represented law and order, next represented public order and the smallest represented the security order, just as an act might affect public order but not the security of the State. In the subsequent case of Arun Ghosh v. State of West Bengal, [1970] 3 S.C.R. 288, the Court dealt with the matter in the following words: "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 effect 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."*

*7. The question where 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, according to the dictum laid down in the above case is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call "order publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above, case, is : Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order, or does it affect merely an individual leaving the tranquillity of the society undisturbed ?”*

9. In *Banka Sneha Sheela Vs. State of Telangana*, reported in **(2021) 9 SCC 415** the Supreme Court has considered the very same question and has set down the distinction between what acts constitute of breach of public order and those which are, in contradistinction, to be in-contravention of law and order in the following terms :-

*“13. There can be no doubt that 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.*

*14. There can be no doubt that what is alleged in the five FIRs pertain to the realm of ‘law and order’ in that various acts of cheating are ascribed to the Detenu which are punishable under the three sections of the Indian Penal Code set out in the five FIRs. A close reading of the Detention Order would make it clear that the reason for the said Order is not any apprehension of widespread public harm, danger or alarm but is only because the Detenu was successful in obtaining anticipatory bail/bail from the Courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the Detenu, there can be no doubt that the harm, danger or alarm or feeling of security among the general public spoken of in Section 2(a) of the*

*Telangana Prevention of Dangerous Activities Act is make believe and totally absent in the facts of the present case.”*

10. Going by the ratio laid down in the above referred two judgments, the facts alleged in the three offences referred to in the detention order, which formed basis for arriving at a subjective satisfaction by the authority, would require analysis, to determine whether they would be disruptive of public order or they would only constitute breach of law and order.

The first offence bearing Crime No.305/2022 (Ambazari) is an altercation between the petitioner and one Rahim Shaikh, who knew the petitioner very well as he was running Pan kiosk near Ravi nagar, Nagpur. The incident took place as a sequel to an earlier quarrel between the complainant and the petitioner; due to their earlier quarrel on 28.08.2022 the petitioner is alleged to have abused the complainant and assaulted him with fist blows after which an offence was registered. During the investigation, the incident was found to be of such nature as to only require issuance of a notice under Clause (a) of sub-Section (1) of Section 41 of the Code of Criminal Procedure to the petitioner. The second incident under Crime No.480/2022 (Ambazari) is registered at the behest of Ravindra Mogarwar who also run a Paan Kisok close to the one run by the petitioner; the

complainant alleges that on 23.12.2022 the petitioner has thrown some garbage in front of complaint Kisok and two day later, on 25.12.2022 at 20.50 hours when the complainant was urinating on the open ground, an argument broke out between the complainant and the petitioner, after which the petitioner beat the complainant with fist blows. This act too necessitated only issuance of a notice under Clause (a) of sub-Section (1) of Section 41 of the Code of Criminal Procedure to the petitioner. Neither of these incidents can be considered to have any impact or can be said to be disruptive of maintenance of on public order. The contents of the complaint do not disclose there was cause for any alarm amongst the members of the public of the area or that the acts complaint caused disturbance of normal life in the area of the incident. In fact, the crimes were not even felt to be of serious nature and were felt too warrant issuance of a notice under Clause (a) of sub-Section (1) of Section 41 of the Code of Criminal Procedure to the petitioner.

11. In the third incident of 09.01.2023 in Crime No.13/2023, the complainant was chased by the Police in after being caught was searched and one iron knife (sattur) was found in his possession and seized from him; the allegation in the complaint which was filed at the behest of a Police Officer was that by

carrying the weapon, the petitioner had violated the conditions of a prohibitory order against him. The incident by itself does not disclose any act of violence or one which may be termed to be disruptive of maintenance of public order. It is not the case of the complainant therein that the petitioner has indulged in any acts of violence of a manner that is caused public alarm. After being arrested in this crime, the petitioner has been released on bail and the Criminal Case is pending trial before a Magistrate.

12. In *Chandbee Patel* (supra) this Court was considering a similar fact situation where the crimes relied upon as material for passing a detention order only required a notice under Clause (a) of sub-Section (1) of Section 41 of the Code of Criminal Procedure to the petitioner. In that judgment, while relying on a earlier judgment in this Court in *Kasam Kalu Nimsurwale Vs. State of Maharashtra* passed on 26.07.2022 in *Criminal Writ Petition No.269/2022*, this Court has held that where the crimes relied upon were of such nature that warranted only issuance a notice under Section 41 of the Code, they could not be construed as crimes of a nature to form the material for recording subjective satisfaction in terms of Section 3 of the MPDA.

Applying the ratio of the above two judgments to the facts of this case, in our considered opinion, the three crimes relied

upon could not form the basis or material for recording subjective satisfaction by the authority in terms of Section 3 of the MPDA as none of the acts would either be termed to be disruptive of maintenance of public order or any manner detrimental to its maintenance. Clearly in this case regular Penal Laws would deal with the three offences, on or which are under trial before the concerned Court.

13. The second contention of the petitioner was that the in-camera statements “A” and “B” recorded by the concerned Police Inspector could not be relied upon for passing the impugned detention order. Going to the fact that the detaining authority had neither asserting from the Officer who had recorded the statements, as to genuineness of their contents or as to the unwillingness of the witnesses to come forward and make a formal complaint; it was further contended that the statements are from the month of November 2022 and December 2022, more than three months prior to passing of the detention order and therefore, no live-link has been established between their contents and the other.

14. We have gone through the contents to the two in-camera statements. Statement “A” does not even specify the date of the incident but only refers to the time of the incident. The

statement records that the petitioner had committed murder and used to snatch money from people at knife point. It further records that the witness was abused by the petitioner and assaulted with fist blows; it was further alleged that the petitioner extorted Rs.2,000/- from the petitioner and cause fears amongst the people of the locality.

In-camera statement “B” refers to the incident of last week of December 2022 of similar nature. The impugned order records that the statements were verified by the concerned Inspector and that the Assistant Commissioner of Police has verified the statements and submitted his report to the authority. A perusal of the statements discloses the Assistant Commissioner of Police recorded that he has visited the concerned site on 18.01.2023, two months after the first statement was recorded and a month after second statement was recorded. The statements only record that the detaining authority has seen the verification but, do not record that the authority has asserting from the Officers was recorded the statements or verifying the authority that their contents were genuine or that the officers had asserting from the witnesses that they were in fact not willing to give a complaint against the petitioner.

15. In *Shaikh Husain* (supra), this Court has dealt with a

similar fact situation, wherein it has observed that a detaining authority must record its satisfaction that the statements of the witnesses were genuine and that it had interacted with the Assistant Commissioner of Police to verify such a statement.

Applying the ration laid down in ***Shaikh Husain*** (supra) to the present case, wherein the authority has nowhere recorded its satisfaction that it has passed the order after interacting with the Officer who has verified the statements or that it was satisfied that the contents were genuine, we have no alternative left but to hold that such statements could not be relied upon as material for passing a detention order.

16. Under these circumstances, on the two grounds held by us above, in favour of the petitioner, we are of the opinion that the impugned detention order is not sustainable and it passed contrary to the provisions of Section 3 of the MPDA. In that view of the matter, the petition is allowed. We hereby quash and set aside impugned orders dated 13.03.2023 and 24.03.2023 passed by the respondents.

Rule is made absolute in terms of prayer clause (i) of the petition. No costs.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]