



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

CRIMINAL WRIT PETITION NO.338 OF 2023

PETITIONER : Abdul Soheli @ Shobu Abdul Khalid
Aged about 23 years, Occ- Labour, R/o
Satranjipura, Near Badi Masjid,
Lakadganj, Nagpur

..VERSUS..

RESPONDENTS : 1 State of Maharashtra,
Through its Secretary, Home
Department (Special) Mantralaya,
Mumbai.
2 The Commissioner of Police, Nagpur
City, Nagpur.

Mr M. N. Ali, Advocate for Petitioner.
Mr S. M. Ghodeswar, APP for Respondents.

CORAM : **NITIN W. SAMBRE AND**
VALMIKI SA MENEZES, JJ.

DATED : **25th SEPTEMBER, 2023.**

JUDGMENT : (PER : VALMIKI SA MENEZES, J.)

. 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 31.01.2023 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 27.03.2023 passed by the Respondent No.1 – Secretary, Home Department (Special) under sub-section 1 of Section 12 of the MPDA, confirming the order dated 31.01.2023 of the Respondent No.2 – Commissioner of Police, detaining the Petitioner for a period of twelve months.

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

(a) That none of the four 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; the acts alleged in those offences can be at most termed as acts which are disruptive of law and order.

(b) That the two in-camera/anonymous statements relied upon by the Detaining Authority dated 05.11.2022 and 06.11.2022, have been respectively recorded one month later on 05.12.2022 and 06.12.2022 by the Police Inspector, Lakadganj, Nagpur; that these two in-camera statements are purported to have been verified by the Assistant Commissioner of Police, Lakadganj Division, Nagpur only on 09.01.2023 i.e. more than two months after the same were first recorded, though the statements refer to incidents for which dates are left blank, but are

alleged to have taken place in the month of October 2022 and November 2022. The impugned order having been passed on 31.01.2023, almost three months after the date of the incident referred to in these statements, there was no live link established between the incident and the requirement for detention under the impugned order.

(c) That the four offences relied upon are all alleged to have taken place between 07.08.2022 and 15.08.2022, within a span of seven days, there being a delay of more than five months from the last offence alleged on 15.08.2022, there was no live link established between the committing of the offences and the requirement for detention of the petitioner under the MPDA.

4. In answer to the allegations made in the Petition, the Respondents have filed an affidavit-in-reply dated 30.06.2023, 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.

An affidavit dated 20.07.2023 of Anil Eknath Kulkarni, Joint Secretary to the Respondent No.1 was also filed on record setting out the various dates to substantiate the movement of the concerned file from 06.02.2023 to the date of confirmation of the order of detention on 23.03.2023. Both affidavits are, however, silent as to the reasons why the proposal/report under Section 3(3) of the MPDA dated 06.02.2023 was filed more than six months after the last alleged offence which is relied upon in impugned order.

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 is that the four crimes which form the basis of passing the detention order are all in the nature of personal disputes between the Petitioner and the complainants in which 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. It is further the Petitioner's contention that there is delay of almost six months in passing the impugned order on 31.01.2023, since the date of the last alleged offence on 15.08.2022, and thus, there is no live link established between the incidents alleged to be the basis for the order, and the requirement of detention of the Petitioner.

It was further argued that none of the four offences relied upon could constitute an act which is to the detriment of maintenance of public order, and therefore, the impugned orders are passed in total absence of jurisdiction under Section 3 read with Section 12 of the

MPDA. It is further the Petitioner's contention that the two in-camera statements, which are dated 05.11.2022 and 06.11.2022 state the same to be recorded on 05.12.2022 and 06.12.2022, when the incident referred to therein is of the month of October-2022 and November-2022; that these statements appear from the record, to be verified only on 09.01.2023, almost three months after the date of the alleged incident. Thus, the impugned order was passed with gross unexplained delay as from the date of the alleged incident. 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) Niyazuddin @ Sonu Ansari vs. State of Maharashtra,
reported in 2014 (2) Bom. C.R. (Criminal) 826,

(b) Judgment dated 11.09.2023 of the Bombay High

Court (Nagpur Bench) in **Harshal Rakesh Brahme vs. State of Maharashtra**, in Criminal Writ Petition 434 of 2023,

7. Per contra, learned Additional Public Prosecutor Mr Ghodeswar appearing for the Respondents has supported the impugned orders contending that the incidents relied upon 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 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.

In support of his contentions, Mr Ghodeswar, learned Addl. P. P. has relied upon the following judgments of this Court:

(a) Judgment dated 28.06.2023 in **Kartik Aannadurai Devendar vs. The State of Maharashtra and Anr**, passed in

Criminal Writ Petition No.1088 of 2023,

(b) Judgment dated 04.12.2021 in **Vishal Aananda Mahabal vs. The State of Maharashtra and Ors.**, passed in Criminal Writ Petition No.2702 of 2021.

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 Hon'ble 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. Analyzing the four crimes which are alleged to have taken place between 07.08.2022 and 15.08.2022,

have been relied upon by the Detaining Authorities in passing the impugned order, we find that Crime No.505/2022 refers to an assault by the Petitioner on the complainant, whose brother Harshal was married to the complainant's sister Afreen. The assault is alleged to have taken place pursuant to the messages posted by the Petitioner on Social Media. The second incident registered under Crime No.506/2022 was directly connected with the first incident, where the Petitioner threatened the complainant after entering her house. The third incident under Crime No.320/2022 alleges that the Petitioner committed a theft of the complainant's two wheeler and on conducting search of the vehicle found the Petitioner in possession of a knife in the trunk of the vehicle. The fourth incident alleged to have taken place on 15.08.2022, is related directly to the incident of theft of the two wheeler, but records a separate crime for possessing arms (knife).

Reading the FIRs in the above four crimes forming the basis for detention order, clearly sets out that

the four incidents relate to either personal/private rivalries or a case of theft and possession of a dangerous weapon and offence under the Arms Act. Applying the ratio laid down by the Hon'ble Supreme Court in Kanu Biswas (supra) and in Banka Sneha Sheela (supra) to the facts of a present case, we have no doubt in our mind that the incidents alleged against the petitioner could, in no manner be referred to as acts which would be in detriment of maintenance of public order, and at most can be termed as acts in breach of law and order, for which appropriate criminal case are pending before a Competent Court. Thus, we are of the firm view that there is total non-application of mind in the impugned orders in arriving at the satisfaction required in terms of Section 3 of the MPDA, in concluding that the incidents can form the basis of a detention order or that such incidents could be termed as acts prejudicial to the maintenance of public order.

11. Of the four crimes alleged against the petitioner, relied upon for passing the impugned order, two are dated

07.08.2022 under Crime No.505/2022 and Crime No.506/2022, while of the later two, one is registered on 13.08.2022 under Crime No.320/2022 while the second is registered on 15.08.2022 under Crime No.498/2022. All four crimes have taken place between 07.08.2022 and 15.08.2022 in which Court proceedings are pending before the Magistrate in last three, whilst in the first, investigation was still in progress. There is thus a time lapse of five months and fifteen days from the date of the last offence to the date on which the impugned order was passed on 31.01.2023.

Similarly, the two in-camera statements are dated 05.11.2022 and 06.11.2022, though recorded, respectively on 05.12.2022 and 06.12.2022, and both verified by the concerned Police Commissioner on 09.01.2023. Thus, there is a time lapse of two months and twenty five days between the alleged incidents and the passing of the impugned order.

12. This Court in Niyazudddin Ansari (supra) has held that unexplained delay in moving the proposal for detention of a petitioner immediately after the last alleged offence, renders the detention order a nullity, as every date of delayed would be required to be justified by the Authority seeking detention as the detention order, by its very nature impinges upon the liberty of the detenu.

In the present case there has been absolutely no reason stated in the proposal for detention or for that matter even a reference as to why the detention order has been passed almost six months after the last incident on which the proposal is based. We are unable to countenance the passing of such detention orders, which would amount to suspending the Petitioner's fundamental right to liberty when there is no justification for such delay. On this count alone, the impugned order cannot be sustained and is required to be set aside.

13. We conclude that the four offences which formed basis of arriving at subjective satisfaction by the Detaining Authority do not disclose any acts which could be termed as acts prejudicial to or in breach of the maintenance of public order; we further conclude there is no live link demonstrated by the detaining Authority between the four alleged incidents of August 2022 and passing of the detention order on 31.01.2023. Thus, we are of the considered opinion that the impugned orders cannot be sustained. Consequently, we quash and set aside impugned orders dated 31.01.2023 and 27.03.2023 passed by the respondents.

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

(VALMIKI SA MENEZES, J.) (NITIN W. SAMBRE, J.)