

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

CRIMINAL WRIT PETITION NO.474 OF 2022

PETITIONER
(Detenu)

- : 1 Gopal S/o Madhkar Sawake,
Aged about 23 years, R/o Hanuman
Nagar, Near Hanuman Mandir Akot,
Tq Akot, Dist. Akola.
- 2 Chhaya W/o Madhukar Sawake,
Aged about 46 years, Occ: House wife,
R/o, Hanuman Nagar, Near Hanuman
Mandir, Akot, Dist Akola Mobile
No.8483028433

..VERSUS..

RESPONDENT

- : 1 State of Maharashtra,
Through its Joint Secretary, Home
Department (Special), Second Floor,
Main Building, Mantralaya, Mumbai
- (Detenu authority) 2 The District Magistrate Akola, Tq &
Dist. Akola.
- 3 The Superintendent of Jail, Central
Prison, Thane.
- 4 The State of Maharashtra,
Through its Police Station Officer,
Police Station Akot City, Dist. Akola.

Mr A. B. Mirza, Advocate for the Petitioners.
Mr S. S. Doifode, Addl. P. P. for the Respondent Nos.1 to 4.

CORAM

: **VINAY JOSHI AND**
VALMIKI SA MENEZES, JJ.

RESERVED ON

: **30th JANUARY, 2023.**

PRONOUNCED ON : **1st MARCH, 2023.**

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

. **Rule.** Rule made returnable forthwith. Heard finally by consent of both the learned counsel for the parties.

2. This is a writ petition invoking our jurisdiction under Article 226 of the Constitution of India, impugning detention order dated 14.02.2022, passed by the respondent No.2, under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981, (for short “the Act”), whereby the petitioner No.1, has been ordered to be detained for a period of 12 months under the said Act. The order dated 14.02.2022 has received approval and been confirmed by the Government of Maharashtra, respondent No.1 herein by order dated 22.03.2022 which has also been impugned herein by the petitioner.

3. The main grounds raised in the petition are as under:

(a) That there is no subjective satisfaction of the Sub-Divisional Police Officer of the in-camera statements recorded by the Sponsoring Authority or of the Detaining Authority as to the truthfulness of the statements ;

b) That the Detaining Authority has not properly recorded its subjective satisfaction as to the reasons and the material on the basis of which, it concluded that the detention of the petitioner was required on account of his act, being prejudicial to maintenance of public order.

c) That the impugned order is contrary to the provision Section 3(2) of the Act, since in the first instance, the detention order by the State Government was beyond a period of three months.

d) That since the six crimes which were taken into consideration against the Petitioner were all matters in which, Petitioner was set free on bail, the Petitioner cannot be

considered to be a threat to public order since he would have been arrested immediately for a breach of the conditions of bail in any of those crimes, instead of using powers under Section 3 of the Act.

4. In reply to the petition, the respondent No.4, had filed an affidavit, *inter alia*, recording therein that the truthfulness of the statements of the in-camera witness “A”, and the statement of in-camera witness “B” was verified by the concerned Sub-Divisional Police Officer and found true, after visited the spot of the offence on 09.02.2022 ; the affidavit further avers that the Detaining Authority has seen the statements and verified the same through the concerned Officer and only thereafter, has recorded its subjective satisfaction for passing of the impugned order.

The affidavit further states that even if the detention order does not specify the period of detention, the entire order would not be vitiated by lack of specifying the period as held by the Hon’ble Supreme Court in the case of *T. Devaki Vs. Government of Tamil Nadu and Ors. reported*

in 1990 (2) SCC 456. The affidavit further avers that the proposal for detention was placed before the Advisory Board constituted under the Act and after giving the petitioners herein, an opportunity of being heard, the Advisory Board consisting of High Court Judges, considered the petitioners' contentions and recommended continuation of the detention, to the State Government.

5. We have heard the learned counsel appearing for the petitioners and learned APP for respondents and perused the record.

6. Mr A. B. Mirza, learned counsel for petitioners submits that the Authority has relied upon six crimes alleged to have been committed by the petitioner, which have been enumerated in a chart contained in the order, in addition to which, there is one instance of preventive action against the petitioner. From the record, it appears that four out of six crimes relied upon by the Authority are pending investigation whilst in two, i.e. Crime No.976 of 2021 and 902 of 2021, a charge-sheet has been filed and the matter is

pending before a Competent Magistrate for trial. It is also submitted that the petitioner has been released on bail in Crime Nos.976 of 2021, 972 of 2021 and 911 of 2021. He further submits that the details of the six crimes which are relied upon have been alleged to have been committed within a period of two months of each other and more particularly Crime No.902 of 2021 on 05.11.2021, Crime No.911 of 2021 on 15.11.2021 (arrest on 21.11.2021), Crime No.972 of 2021 on 17.12.2021, Crime No.976 of 2021 on 18.12.2021, two witness statements recorded in third week of December, 2021, Crime No.46 of 2022 on 17.01.2022 and Crime No.95 of 2022 on 02.02.2022, raising a strong doubt as to whether the same have really been committed by the petitioner No.1, since all the crimes are in great proximity to each other, raising questions as to whether they could have at all been relied upon even before some of them have investigations complete.

7. The learned counsel for the petitioners submits that since the investigation was still underway in some of

these crimes, there was no cause for taking any preventive action under the Act, as regular criminal law would take care of all these crimes when charge-sheet if any, were filed before the concerned Court, pursuant to the investigations. He, therefore, submits that taking into consideration these five crimes, could not be a ground for proceeding and assuming jurisdiction under Section 3 of the Act.

8. It is further submitted by the learned counsel for the petitioners that the in-camera statements recorded by the Sponsoring Authority were unreliable, as they did not disclose any criminal activity of the petitioners in any public place or disclose any activity that could be termed as one against public order ; he argues that the specific criminal activity complained of by witness “A” and “B”, in their statements recorded in-camera do not disclose any acts, which are against public order and can at the most be termed as individual acts, at the most creating a law and order situation. Thus, the petitioner argues that there being no public order situation as seen from the in-camera statements,

the Authority has acted without jurisdiction vested in it under Section 3, as it could exercise such jurisdiction, only if the acts complained of were acts in breach of public order.

The learned counsel for the petitioners then submits that after being released on bail by the Sessions Court in December 2021, he was not arrested for any of the other crimes referred to in impugned order ; he submits that the impugned order does not specify the period of detention and that being so, the entire process under the Act is vitiated and the impugned orders become unsustainable.

9. The learned counsel for the petitioners relies upon the judgment of the Supreme Court of India in *Shaik Nazneen Vs. The State of Telangana & Ors.*, *MANU/TL/0386/2022*, to argue that there is a distinction between a law and order situation and a public order situation and orders of preventive detention are exceptional powers given to the Government to be exercised in an exceptional situation since they strike hard at the freedom and liberty of an individual and thus, cannot be exercised in a

routine manner. He further relied upon three judgments of this Court, the first in *Ganesh alias Gajaraj Sainath Patil Vs. State of Maharashtra and Ors.*, reported in *2022 (1) Mh.L.J. (Cri.) 464, Shahjahan w/o Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra and anr.*, reported in *2016 (5) All MR (Cri.) 4233 and Hanif Karim Luluwale Vs. State of Maharashtra and Ors.*, dated 28.06.2022 in Criminal Writ Petition No.75/2022, to contend that the order is silent with regard whether all the facts were ascertained by the Police Commissioner in the in-camera statements, and there was no subjective satisfaction recorded by the Authority on these statements while passing the impugned order.

10. The learned Additional Public Prosecutor for the respondents opposes the grant of reliefs in the petition and take us through the various averments in the affidavit filed by respondent No.4. The respondents contend that a bare reading of the facts contained in the five FIRs of the crimes relied upon by the Authority, would reveal that the acts of the petitioners have taken place in close proximity of each

other, the first being on 15.11.2021 and the last being on 04.02.2022, all within a period of less than two months and being crimes of serious nature, mainly of extortion of money from citizens at public places, naturally causing fear in the minds of citizens and terrorizing them. He further submits that the two in-camera statements recorded of the secret witnesses also clearly disclose that both alleged offences committed by the petitioner No.1 against those witnesses, are of extortion committed at public places i.e. at a market, and the effect of the incidents clearly cause fear and terror in the minds of citizens who refused to come forward to testify against the petitioner. He submits that the facts stated in the in-camera witness statements and a reading of the FIRs in the five criminal cases, which are under investigation, one of which resulted in the petitioner being enlarged on bail, if read cumulatively, would leave no manner of doubt that within a short span of two months the acts of the petitioners have wreaked terror in the area of Akot city, necessitating the passing of the impugned detention order.

11. It is further submissions of the respondents that the content of the in-camera statements were verified by the concerned police, as recorded on the statement itself and the subjective satisfaction on the content of the in-camera statements was specifically recorded by the concerned Authority, who has also recorded subjective satisfaction as to the grounds based upon the five criminal cases against the petitioners. The learned APP for the respondents therefore, submits that there is no reason for interference with the impugned orders.

12. The learned APP for respondents then relied upon the judgment of the Supreme Court in *Hasan Khan Ibne Haider Khan Vs. R.H. Mendnoca and Ors.*, reported in *(2000) 3 SCC 511*, to contend that merely because bail was granted in any of the offences relied upon by the Authority, and while passing the detention order there was some delay, the detention order would not in any manner be vitiated. He then cites two other judgments of this Court, the first in *Rohit @ Karan s/o Purshottam Naukariya Vs. State of*

Maharashtra, reported in *2022 LawSuit (Bom) 1020 and Vishal Ananda Mahabal Vs. State of Maharashtra*, reported in *2021 LawSuit (Bom) 1417*, to contend that there is no requirement for the Detaining Authority to personally verify the genuineness of the in-camera statements and their verification by an Independent Officer would be enough of compliance with the provisions of the Act ; he further contends that *Vishal Ananda Mahabal* (supra), has also held that verification of the in-camera statements by the SDPO and satisfaction of the identity of the witness was enough compliance to rely on the statements, and further that when the Detaining Authority has stated that it has personally seen the in-camera statements and endorsed the same, that in itself would be substantial compliance with the provisions of the said Act, for placing reliance on such statements as material for passing the detention orders.

13. For considering the various submissions made by the learned counsel for the rival parties, it would be apposite to the provisions of the Section 3(2) of the Maharashtra

Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981. Section 3(2) of the MPDA Act, which reads as under:

“3. (1).....

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section :

***Provided** that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed [six months] but the State Government may, if satisfied as aforesaid that it is necessary so to do amend such order to extend such period from time to time by any period not exceeding [six months] at any one time.”*

14. A bare reading of the provisions of Section 3 of the Act, would empower the Detaining Authority to assume

jurisdiction under this provisions, only if it comes to the subjective satisfaction based upon the material before it, that the acts of the petitioner No.1 would be prejudicial to the maintenance of the public order and preventive detention of the petitioner would be required to restrain him from acting in any manner prejudicial to public order. The jurisdiction could be assumed and exercised once the Authority records subjective satisfaction that the acts of the petitioner could be brought within of the definition of any of the unlawful activities under Section 3(1), in this case, within the definition of “Goonda” under Section 2(b-1) of the Act.

15. Section 2(b-1) of the Act defines “Goonda” to mean a person, who either by himself or as a member or a 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, or Chapter XXII of the Act.

16. In the present case, the petitioner No.1 is alleged to have committed various acts, which include the offences

under Sections 4 and 25 of the Arms Act, 1959, and under Sections 323, 324, 435, 436, 143, 156, 285, 120(b), 354, 506, 504, 392 and 384 read with Section 34 of the Indian Penal Code, 1860. Reading of the six FIRs which are relied upon by the Sponsoring Authority, some of which are under investigation while in two, the matter is pending for trial before the Magistrate, the allegations against the petitioner are that he had indulged in extortion of money, threats to kill, robbery and arson. A reading of these FIRs also discloses that most of these incidents have taken place in public view, at locations such as main city squares or at markets in broad view of the public, causing the public to panic. In one of the incidents in Crime No.911/2021, the petitioner No.1 has been accused of committing arson and burning the shop of the complainant, after which the petitioner was arrested and enlarged on bail, on 01.12.2021. Reading of these incidents would leave no doubt in our minds that the activities alleged in these crimes would clearly place the petitioner within the definition of “Goonda” under Section 2(b-1) of the Act.

17. Next we come to the in-camera statements of witness 'A' and 'B', which were considered as material for passing impugned order.

The first in-camera statement of witness 'A' was recorded on 05.02.2022, wherein the witness has alleged that in the fourth week of December, 2021 at 15:30 hours in the afternoon, the witness was selling fruits on a handcart by the side of Anjangaon Road, at Akot City, when the detenu, who was sitting on his motorcycle in that area along with his companions, bought fruit from the witness without paying for the same. The witness records that when he asked for the money due for the purchase of the fruits from the petitioner, the petitioner grabbed his collar and threatened him by asking the witness 'हरामखोरा तु मला ओळखत नाही का? मी कोण आहे'. After threatening the witness the petitioner abused and beat up to witness and further threatened him 'तुझे अगर याहा पे तेरी हातगाडी लगाके धंदा करना है, तो मुझे महीने का ३०००/- रु. हप्ता लगेगा वरना तु तेरा देख लें'. The witness further states that when he asked for help from the people in the vicinity, none volunteer to help

the witness due to the fear caused by the utterances of the petitioner.

The contents of the statements, if accepted, clearly demonstrates that the petitioner has not only committed an act of extortion but using threatening words such as “मी कोण आहे” informing the public at large, who the detenu has publicly intimidated the witness with a demand of extortion money of Rs.3,000/- per month as “Hafta”, if the witness desired to run his business at that location. This act itself would have been enough to cause fear in the hearts of all traders and people in that locality and would certainly spread terror at that place.

18. The statement of in-camera witness “B” was also recorded on 05.02.2022 and has stated that in the second week of January, 2022 at 20:00 hours at night, while he was returning home from his garment shop at Rajasthan Chowk of Akot City, the detenu along with his two companions, pulled out a knife and put it to the abdomen of the witness, forcibly snatched from his shirt pocket an amount of

Rs.1,200/-, after which they beat up the witness and abused him and threatened him with the words “*साले अगर तुने ये बात किसी को बताई तो अकोट मे रहना मुश्कील कर डालुंगा*” After committing this act of robbery and threatening the witness that he would not be permitted to live in Akot city, if he reported this incident to any one, the witness sought help from the people, who had come running from around the locality and witnessed the incident. However, hearing the threat of the detenu, all these people left the locality out of fear and were not ready to help the witness or stand-up to the act of robbery committed by the detenu.

19. A bare reading of these statements also clearly sets out that the incidents took place at a central locality of the city in broad public view. The incidents were one where the detenu is alleged to have committed robbery and threatened the witness with a knife and has clearly resulted in members of the public, who saw the incident reacting to the threats, and feeling a sense of fear of reprisal against them, if they would help that witness, thus prompting them to leave the

area. Such acts would clearly cause fear in the minds of the general public, of the presence of the detenu in their City.

20. The next question then would be whether the in-camera statements could not be relied upon, as argued by the petitioner, for reasons that the genuineness of the statements made by the two witnesses were not ascertained by the Superior Officers or their truthfulness verified or that the authority had not recorded subjective satisfaction on the question of verification of the said statements.

21. A reading of the in-camera statements would show that the same were recorded by the Police Inspector of the Police Station of the Akot City, and their contents were verified by the Sub-Divisional Police Officer, Akot, who has so recorded at the reverse of the statement. The statement of the SDPO for the records that the Officer visited the spot, where the incident took place and also ascertained from the witness that what he has stated is correct. The same SDPO has also recorded at the reverse of the in-camera statement of both witnesses about paying a visit to the spot where the

offence took place, confirming the contents of the statements from the secret witness.

22. *Vishal Aananda Mahabal* (supra), cited by the respondents was a case where the detenu has taken a specific arguments that there was no proper verification by a Superior Officer of the truth in the statements of the in-camera witnesses recorded, nor was there any subjective satisfaction recorded as to the identity of the witnesses and their truthfulness, as raised by the petitioner herein.

Whilst deciding this issue, this Court has held in *Vishal Aananda Mahabal* (supra) as under:

“21. The Petitioner's third ground of challenge is that there is no verification of the in-camera statements. It is submitted that the Detaining Authority has not personally verified the truthfulness of the in-camera statements, and there is no material on record to show that the Detaining Authority has personally verified the witnesses. The Detaining Authority has opened the in-camera statement at 2.00 pm., and on the same day, he has passed the detention order. He submitted that the Detaining Authority did not discuss the matter either with the Police Officer or Sub-divisional Police Officer to verify the authenticity. It was also submitted that the

Senior Inspector of Police recorded the statements, and the Sub-divisional Officer had verified them, and the Detaining Authority did not interact with either of the authorities who recorded or verified. The Petitioner has relied upon the decisions in Ravindrasing @ Mullasing, son of Sarwansing Gour vs. The Commissioner of Police, Nagpur (City), Nagpur & Ors., (Criminal Writ Petition No.660 of 2015 dated 29 February, 2016), Sanjay s/o Ramlal Shahu vs. State of Maharashtra & Anr. (Criminal Writ Petition No.768 of 2015, oral judgment dated 1 February, 2016) and Smt. Vijaya Raju Gupta vs. Shri. R.H. Mendonca & Ors., 2001 AllMR (Cri) 48.

22. The learned APP submitted that the Detaining Authority has recorded in subjective satisfaction about the truthfulness of in-camera statements as well as he has perused in-camera statements as can be seen from the endorsements. It was submitted that the verification is done on the back of the same page by the Sub Divisional Officer which is relied on by the Detaining Authority to reach his satisfaction.

23. In the case of Smt. Zebunnisa Abdul Majid vs. M.N. Singh & Ors. 2001 CrLJ 2759, the Division Bench noticed that the detaining authority there had stated in affidavit that the in-camera statements were verified by higher grade police officer of the rank of Assistant Commissioner of Police and in view of the verification of the in-camera statements made by Senior Police Officer of the rank of A.C.P., and

that he was subjectively satisfied that the contents of the in-camera statements were genuine. This was accepted as a sufficient compliance. In the case of Nagnarayan Saryu Singh, the Division Bench has observed thus:

"[20] The Assistant Commissioner of Police verifies the identity of the person making the statement i.e. the incamera witnesses are indeed real persons and not fictitious persons. After making enquiries with the incamera witnesses when the Assistant Commissioner of Police is satisfied about the genuineness of the statement made by the witness, he certifies the said incamera statement. The very purpose of an officer of the rank of Assistant Commissioner of Police verifying the statements of incamera witnesses is to lend assurance that the statements can be safely relied upon. Unless the incamera witnesses had indeed suffered at the hands of the detainee, there would be no reason for these persons to come forward and give statements against the detainee. In our view, verification of incamera witnesses by an Officer of the rank of the Assistant Commissioner of Police would provide a sufficient check & would lend sufficient assurance that the statements are genuine." (emphasis supplied)

As regards the decision relied upon by the learned Counsel for the Petitioner on the issue of verification is concerned, in the case of Ravindrasing @ Mullasing Sarwansing Gour, the commissioner had not put his initials or any remarks on the statements and the Court, as a matter of fact, found that there was no application of mind. Similar is the position in

the case of Sanjay Ramlal Shahu, where the Division Bench found from inspection of the original record that it did not contain any counter signature that the detaining authority has gone through the statement. These two decisions are not applicable as in the present case there is such endorsement shown to us. The case of Smt. Vijaya Raju Gupta is another decision where the Court found that neither in the detention order nor in the ground of detention the detaining authority had stated that he was satisfied with truthfulness of the statements made in-camera statement unlike the case at hand where the ground of detention expressly states so. In the case of Shahjahan w/o. Kalimkhan Samshadkhan Pathan vs. State of Maharashtra and anr. 2016 ALL Mr. (Cri.) 4233, the Division Bench found, as a matter of fact that the record did not indicate that statements were duly sealed and initialed by the Commissioner of Police. A specific ground was taken to challenge the order that Police Commissioner made no effort to discuss the matter to verify the authenticity, but no reply was filed in controverting the ground. Therefore, this issue is not decided as a proposition of law by the Division Bench, but the Division Bench drew attention to the fact that the reply was filed denying the assertion. Thus, the argument advanced by the Petitioner that the detaining authority must interact with the witnesses and the recording authority, has no basis in law. On the contrary, the Division Benches of this Court in Nagnarayan Saryu Singh and Smt. Zebunnisa Abdul Majid have held that if the detaining authority is satisfied that a higher grade police

officer verified the in-camera statements, the detaining authority can rely on the contents of the in-camera statements as authentic and genuine.

24. In the present case, the Detaining Authority has not only filed an affidavit but has recorded the subjective satisfaction in the detention order as well. The Detaining Authority has stated on the aspect of verification has stated that the said statements were verified by the Sub Divisional Police Officer, Miraj, Dist. Sangli. The Sub Divisional Police Officer, Miraj, District: Sangli was satisfied with the identity of the witnesses and also verified the truthfulness of the incident and fear expressed by visiting the place of incident SDPO submitted a report of verification to him dated 24 March 2021. The Detaining Authority has stated that given the verification done by the superior officer about the truthfulness and the apprehension expressed by the in-camera witnesses, he was satisfied that the statements of in-camera witnesses were authentic and genuine. The Detaining Authority has also stated that on 6 May 2021, he has personally seen the in-camera statements and endorsed the same. Thus in the present case, in the record, the grounds of detention and reply clearly show that there was an application of mind at the recording level, verification level and at the stage of passing the detention order. Thus there is there no merit in the third ground of challenge as well.”

23. Another co-ordinate Bench of this Court in Rohit @ Karan s/o Purshottam Naukariya (supra) has dealt with a similar submission and concluded that when the statements are verified for their genuineness by an Assistant Commissioner of Police and such statements were considered by the Detaining Authority after discussing the same in the impugned order, no law mandates that it is only the Detaining Authority, which must personally verify the genuineness of the statements. Rohit @ Karan (supra) holds as under :

“7. The statements of confidential witnesses were verified for their genuineness by the Assistant Commissioner of Police, Sadar Division, Nagpur and report to that effect was submitted by him to the Detaining Authority. The Detaining Authority has considered these statements and this is evident from the discussion made in the impugned order. There is no law, which mandates that it is only the Detaining Authority, which must personally verify the genuineness of the statements of the confidential witnesses. The principle of fairness would require that verification of in-camera statements is done by an independent Officer, who has not recorded the statements. This requirement of fairness has already been complied with in the present case. The statements were recorded by the senior Police Inspector, Police Station, Mankapur, Nagpur

while their verification was conducted by the Assistant Commissioner of Police, Sadar Division, Nagpur - an independent Police Officer. We, therefore, do not think that the verification conducted by an independent Officer, who was not the Detaining Authority in the present case was vitiated in law. This is also the view taken by the other coordinate Bench of this Case in the case of Pravin @ Bhayya Pratap Shinde vs. Commissioner of Police, Pune, State of Maharashtra; Superintendent, Yerwada Central Prison, Pune 2020 LawSuit (Bom) 50 wherein the Division Bench was satisfied with the verification of the in-camera statements made by the Assistant Commissioner of Police even though the Detaining Authority was different Officer.

8. About the argument of the learned Counsel for the petitioner that the in-camera statements are vague in nature, we must say that the argument is completely against the record of the case. The statements of witnesses "A" and "B" show that both of them have referred to the period, time and place of the incidents. It is also stated in sufficient details as to how the incident leading to instilling fear in the mind of witnesses took place. The material provided in the statements is of such a nature that proper verification of the incident is possible. This indeed has been done and the statements have been found to be genuine. Thus, we are of the view that there is no merit in the petition."

24. Applying the ratio of the judgments rendered by this Court in all these cases, to the facts of the present case, it is clear that both in-camera statements give details of the locality at which the detenu indulged in acts of extortion and threats, the incident having been seen by the public at large, who refused to help the witnesses due to the terror situation created by the presence of the detenu with his companions at such public place. By this, it is clearly established that the statements having been verified as to their genuineness by the higher officer, they could form the material for the Detaining Authority to arrive at its subjective satisfaction as to whether the detenu was required to be detained in terms of Section 3 of the Act. Clearly, from these in-camera statements and from the statements recorded of the complainants in the five FIRs relied upon by the Detaining Authority for passing the impugned order, the acts complained of against the detenu a such, that would cause fear and terror amongst the citizenry of the locality. It has been clearly established that the presence of the detenu would cause a public order problem.

25. *Ganesh alias Gajaraj Sainath Patil* (supra) cited by the learned counsel for petitioners, was a challenge to a detention order based on one solitary crime registered against the detenu and two in-camera statements. That case proceeded on the basis of a solitary criminal offence, which itself did not form the ground for arriving of the subjective satisfaction of the Detaining Authority.

A bare reading of paragraph 38 of the judgment clearly records that the grounds of detention neither appear to have any direct nexus nor a live link with the immediate need to detain the petitioner under the said Act. The judgment proceeded on the specific facts of the said case. Such is not the case before us, where not the Detaining Authority records its subjective satisfaction on the basis of **five crimes**, contents of the FIR of which are referred to as well as the two in-camera statements of witnesses which were verified. The conclusions of subjective satisfaction are based upon a live link with the incidents and the need for detention of the petitioner, since all the incidents are within a period of two months preceding the detention order. In our view, the ratio of *Ganesh Vs. State of*

Maharashtra (supra) would not be of any aid to the petitioner.

26. *Shaik Nazneen Vs. The State of Telangana & Ors.*

(supra), was a judgment rendered by the Supreme Court on the distinction between a 'law and order' situations and a 'public order' situation, after making reference to its earlier decision in the case of ***Ram Manohar Lohiya Vs. State of Bihar***.

The distinction drawn by the Hon'ble Supreme Court in that judgment and in the judgment of ***Ram Manohar Lohiya Vs.***

State of Bihar which are by now no more res *intigra* and well

known. In the present case, we have arrived at a clear

conclusion that all the incidents have taken place in broad

public view and at a public place within the city. Citizens have

reacted to the incidents and out of fear of the detenu have

refused to give statements or come forward to help the

witnesses. This is therefore, a clear case where the detenu

would be a direct threat to public order, and not a case of a law

and order situations. *Shaik Nazneen* (supra) would therefore,

support the respondents in that the ratio thereof would

substantiate the case of the detenu being one of breach of

public order.

27. The petitioner has then cited *Hanif Karim Luluwale* (supra), which was decided purely on the facts of that case. As noted in paragraphs 2 and 6 of that judgment, the only cases registered against the detenu were four bootlegging crimes for which no arrests were effective by the Investigation Officer, even though the crimes were cognizable in nature. In our considered opinion, *Hanif Karim Luluwale* (supra) does not lay down any ratio and was passed in the specific facts of that case and thus, cannot be cited as a precedent before us. We are of the considered opinion that the facts of the present case clearly justify the passing of the detention order, which is impugned herein.

28. *Shahjahan Kalimkahn Samshadkhan Pathan* (supra) was a judgment rendered by the Supreme Court which proceeded on the basis that the in-camera statements had not been ascertained by the Commissioner of Police. The facts of that case as recorded in paragraph 5 of the judgment proceeded on the basis that the higher police officer had not verified or ascertained the truth of the in-camera statements, which affected the subjective satisfaction recorded by the

Authority. Such are not the facts in the present case, where the statements were recorded and then a detailed verification has been done of the spot of the incident as well of the contents of the statements which were ascertained from the witnesses by the SDPO, who is the higher authority.

The judgment rendered in *Shahjahan Kalimkahn Samshadkhan Pathan* (supra) would not be applicable to the facts of the present case.

29. We then referred to a judgment of the Hon'ble Supreme Court in *Hasan Khan Ibne Haider Khan* (supra) cited by the respondents on the question of what would be the facts which would constitute material to conclude that the acts of the detenu were not in breach of "law and order" but were acts which amounted to breach of "public order". *Hasan Khan Ibne Haider Khan* (supra) records at paragraphs 7 to 12 thus:

"7. This Court in Amanulla Khan Kudeatalla Khan Pathan v. State of Gujarat MANU/SC/0396/1999 : 1999 Cri.L.J. 3504 considered the expression "acting in any manner prejudicial to the maintenance of public order" and referring to an earlier decision of this Court

in Mustakmiya Jabbarmiya Shaikh v. M.M Mehta, Commissioner of Police MANU/SC/0659/1995 ; (1995) 3 SCC 237 held that the fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him on to prevent his subversive activities affecting the community at large or a large section of society and it is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of “law and order” or it amounts to a breach of “public order”.

8. Mr Jain, learned Senior Counsel for the appellant has urged that the above activities of the appellant were stray incidents and as such did not disturb the public order.

9. Applying the above ratio to the grounds of detention, we find that the appellant extorted money from businessmen and also gave threats to the people at the public place and thereby undoubtedly affected the even tempo of life of the society, therefore, such activities cannot be said to be a mere disturbance of law and order. The contention of Mr Jain has no force.

10. Mr Jain has further urged that the criminal proceeding which was started on the complaint of Harishchandra Gupta was under Sections 341, 323, 334, 504, 506(11) and 34, IPC and all these sections were bailable and in fact bail was granted and, therefore, this act cannot be said to disturb public order. From the grounds of

detention, we find that when Harishchandra Gupta and his brother sought for help, none came forward to their help out of fear of the appellant and this fact would show that the activities of the appellant disturbed the life of the people of the area.

11. In the grounds of detention, reference was made to the conviction of the appellant under the Monopolies & Restrictive Trade Practices Act. According to Mr Jain, this cannot be a ground for detention of the appellant, Mr Dhabe, learned Senior Counsel for the respondent has rightly submitted that reference was made to the above conviction only to show the past criminal history of the appellant.

12. Mr Jain has further submitted that there was delay in passing the detention order. We find that the inquiry was completed during the last part of February at the level of Deputy Commissioner of Police and the final order was passed on 12-4-1999. It cannot be said that there was undue delay and action was being taken in a routine manner, as after completion of inquiry matter had to be examined at various levels and finally the orders were passed by the Commissioner.”

Thus, acts such as extortion of money from businessmen and giving threats to the people at a public place, undoubtedly affecting the even tempo of life of the society, in that locality, as held by the Supreme Court that are grounds on the basis of which one could arrive at a decision that such acts of

detenu would amount to acts, which would be in breach of “public order”.

Applying ratio laid down in the judgment of the *Hasan Khan Ibne Haider Khan* (supra) to the facts of the present case, we find that the Detaining Authority has rightly concluded and recorded its subjective satisfaction that the various acts of the detenu, which were in broad public views and would cause terror in the minds of the public and cause a public order situation cannot be faulted.

30. For all the reasons discussed by us herein above, we are of the firm view that the impugned orders do not call for interference by this Court in exercise of powers under Article 226 of the Constitution of India.

31. Accordingly, we dismiss the writ petition. No order as to costs.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)