



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

CRIMINAL WRIT PETITION NO. 430 OF 2023

PETITIONER:

Mrs. Sarla Makhan Gupta
(Mother of the Detenu),
Age – 49, Mahakali Colari Ward
Near Bank, Near Budai Dafai,
Chandrapur, Maharashtra 442401.

V E R S U S

RESPONDENTS :

1. The District Magistrate,
Chandrapur.
2. The State of Maharashtra,
Through Addl. Chief Secretary to
Government of Maharashtra,
Mantralaya, Home Department,
Mantralaya, Mumbai.
3. The Superintendent,
Chandrapur District Jail,
Chandrapur.

Mrs. Vayashree Tripathi, Advocate with Shri Sukrut S. Sohoni,
Advocate for petitioner.

Shri S. S. Doifode, Additional Public Prosecutor for respondent
Nos.1 to 3.

CORAM:- VINAY JOSHI AND

VALMIKI SA MENEZES, JJ.

DATED : 03/10/2023.

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

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of learned counsel appearing for the parties.

2. By this petition under Articles 226 and 227 of the
Constitution of India the detenu Shri Amit Makhan Gupta through
his mother Mrs. Sarla Makhan Gupta, who has filed this petition

on his behalf, seeks to quash and set aside the impugned order dated 08/03/2023 passed by the District Magistrate, Chandrapur (respondent No.1) 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 detenu (who shall hereinafter be referred to as "the petitioner") further lays challenge to the order dated 04/05/2023 passed by the respondent No.2 under Section 3 of the MPDA, confirming the order dated 08/03/2023 of the respondent No.1.

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

- (a) That neither of the two 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; further, that there is unexplained delay in relying upon the first Crime No.304/2022 referred to in the detention order, which relates to an alleged offence committed on 02/06/2022, more than 9 months prior to the passing of the detention 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 be detrimental to maintenance of public order; the incident referred to in the in-camera statements cannot constitute material to justify arriving at subjective satisfaction for the purpose of holding the criminal act to be one affecting the maintenance of public order.

4. In answer to the allegations made in the petition, the respondents have filed affidavit-in-reply dated 21/09/2022, through the Collector, Chandrapur 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. Mrs.Vayashree Tripathi, learned Advocate for the petitioner primarily submits that the two crimes relied upon by the detaining authority under Crime No.304/2022 dated 02/06/2022 and Crime No.1197/2022 dated 25/11/2022 cannot constitute material for the authority to arrive at a subjective satisfaction to justify passing of the detention order; she further elaborates the

argument by submitting that there is gross unexplained delay for the first crime dated 02/06/2022, of more than 9 months to the passing of the detention order; thus, there is no live nexus between the crime and the purpose for passing the order. She further argues that with regard to the second crime which is dated 25/11/2022, the Additional Sessions Judge-4, Chandrapur whilst granting the anticipatory bail to the petitioner has considered the content of an affidavit and documents filed / produced by the complainant at Exh.4 of that file, wherein the complainant has stated that he was neither abducted nor beaten up by the accused / petitioner and that the complaint came to be filed by him in a fit of anger against the petitioner. It was submitted that the detaining authority has neither considered nor even made reference to the above observations of the Sessions Court, which were relevant, and if considered would have led to the conclusion that this crime could not be considered to be one affecting the maintenance of public order.

The learned Advocate for the petitioner has relied upon the Judgment of the Supreme Court in Pradeep Nilkanth Paturkar Vrs. S. Ramamurthi and others, reported in 1993 Supp (2) SCC 61, of this Court in Niyazuddin @ Sonu Sirajuddin Ansari Vrs. State of Maharashtra and another, reported in 2014 (2) Bom.C.R.

(Cri.) 826 and that of this Court in Siddant alias Siddharth Sanjay Marathe Vrs. Commissioner of Police, Pune City and others, in Criminal Writ Petition No.1162/2023 dated 25/07/2023 to submit that non-consideration of the reasons recorded by the Sessions Court while granting bail in a crime results in non-application of mind on the part of the detaining authority recording subjective satisfaction.

7. It was further argued by the petitioner that the in-camera statements relied upon by the detaining authority do not disclose any acts by the petitioner which could be termed as those contrary to the maintenance of public order, since neither of the incidents are alleged to have taken place within the view of any members of the public or record that such members of the public felt a sense of alarm or that the acts have resulted in disruption of normal life in the vicinity due to fear created by the petitioner. It is further the submission that neither statement can be considered an act prejudicial to the maintenance of public order.

8. Shri S. S. Doifode, learned APP for the respondents has supported the impugned orders, argued that there is no delay between the first offence / crimes / in-camera complaints relied upon, and further that the contents of the bail orders have been referred to in the detention order, thus, the subjective satisfaction

has been correctly arrived at. The learned APP further argued that the in-camera statements disclose the incident has taken place in a public place, where the petitioner extorted money from the complainant, and such act is clearly prejudicial to the maintenance of public order. He relied upon the Judgments of the Supreme Court in Abdul Sathar Ibrahim Manik Vrs. Union of India and others, reported in AIR 1991 SC 2261 and Haridas Amarchand Shah of Bombay Vrs. K. L. Verma and others, reported in AIR 1989 SC 497 to submit that even if documents annexed to the bail application were not submitted to the detaining authority, the same would make no difference to the subjective satisfaction of the authority.

9. 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 ? ”

10. 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.”

11. Applying the ratio laid down in the above judgments to the facts of the present case, one has to examine the contents of the in-camera statements to conclude whether the same would factually amount to acts disruptive of maintenance of public order. Perusal of both the statements clearly reveals that the acts, though have been alleged to have being committed in a public place, they nowhere refer to any member of the public having witnessed them or having experienced a sense of panic or that they have affected or disrupted the regular tempo of life in the area. Thus, the two statements cannot form material to arrive at subjective satisfaction required under Section 3 of the MPDA.

12. Further, there is no live nexus demonstrated on record between the first crime bearing No.304/2022 which has taken place on 02/06/2022 more than 9 months prior to the order. There is no justification on record as to why a stale crime of a time 9 months prior to the detaining order was taken into consideration for arriving at a subjective satisfaction.

The second Crime No.1197/2022, though alleged offences under Chapter XVI of the Indian Penal Code was found by the Sessions Court to be worthwhile of granting anticipatory bail

to the petitioner, on the ground that the complainant had filed Exh.4 before the Bail Court submitting an affidavit that he was never abducted or beaten up by the accused, and that he had filed the complaint out of anger towards the complainant. This finding of the Sessions Court, if considered by the detaining authority would have resulted in only one conclusion, being that the allegations in the complaint were not of acts which would constitute acts detrimental to maintenance of public order. There is no reference at all in the detention order to be very relevant finding, thus, vitiating the entire subjective satisfaction of the authority.

13. As held by the Supreme Court in Pradeep Nilkanth Paturkar (Supra) at Paragraph Nos.13 and 14, and by this Court in Siddant alis Siddharth Sanjay Marathe (supra) at Paragraph No.9, non-consideration of the reasons recorded by the Sessions Judge while granting bail, even though all relevant documents were placed before the detaining authority, shows non-application of mind on the part of the detaining authority whilst recording subjective satisfaction. Applying the ratio of these judgments to the facts of the present case, the subjective satisfaction is vitiated in this case by non-consideration of the vital finding of the Sessions Court that the complainant in the second crime had admitted that

he had not been abducted or being assaulted by the petitioner. Thus, we conclude, that none of the crimes relied upon or contents of the in-camera statements would constitute material to justify the conclusions that the acts of the petitioner are detrimental to the maintenance of public order.

The Judgments cited by the learned APP do not further the case of the respondents as they vastly differ in their facts.

14. 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 is 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 08/03/2023 and 04/05/2023 passed by the respondents.

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

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]