



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

CRIMINAL WRIT PETITION NO. 434 OF 2023

Harshal Rakesh Brahmne

Aged about 22 years, Occu. - Labour,

R/o Plot no.22, Datey Lay Out,

Indraprastha Nagar, Nagpur.

.... **PETITIONER**

// VERSUS //

1) State of Maharashtra,
Through its Secretary,
Home Department (Special)
Mantralaya, Mumbai.

2) Commissioner of Police,
Nagpur City, District Nagpur.

.... **RESPONDENTS**

Mr. Mir Nagman Ali, Advocate for applicant.

Mr. S.S. Doifode, Additional Public Prosecutor for respondents.

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

DATED : 11.09.2023

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 23.02.2023 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 19.04.2023 passed by the respondent No.1 under Section 3 of the MPDA, confirming the order dated 23.02.2023 of the respondent No.2, detaining the petitioner for a period of twelve months.

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

- (a) That none of the five 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.

4. In answer to the allegations made in the petition, the respondents have filed affidavit in reply dated 13.07.2023, 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 five crimes, which form the basis of passing the detention order are all in the nature of personal disputes between the petitioner and the complainant. It is further contention of the petitioner that of the five crimes which are referred in para 8 of the impugned order, two crimes bearing N.C. No.215/2022 (Sonegaon) and NC NO.398/2022 (Dhantoli), were of non cognizable nature being offences alleged under Sections 504, 506 and 323 of the Indian Penal Code (IPC). Further, that in the other three cognizable offences which are Crime

No.800/2022 (M.I.D.C.), Crime No.190/2022 (Sonegaon) and Crime No.427/2022 (Ranapratap Nagar), 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) ***Kanu Biswas Vs. State of West Bangal***, reported in ***(1972) 3 SCC 831***;
- (b) ***Banka Sneha Sheela Vs. State of Telangana***, reported in ***(2021) 9 SCC 415***;
- (c) ***Ameena Begum Vs. State of Telangana***, reported in ***2023 Law Suit (SC) 881***;
- (d) ***Shaikh Husain @ Shahrukh Shaikh Fatru Vs. State of Maharashtra***, reported in ***2023 DGLS (Bombay) 1318***.

7. Per contra, learned APP appearing for the respondents has supported the impugned orders contending that the incidents relied upon being mainly under Chapter XVI of the IPC, justify the passing of the impugned orders. It was further contended that on going through the contents of the FIR's in the five 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** (supra) 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** (supra) 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 five 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.800/2022 is an altercation between the petitioner and his girlfriend, who he knew from school, and with whom he was in a relationship since 2020. The incident concerns a quarrel between them during which the petitioner attempted to choke the complainant and used abusive language with her. That incident took place in the house of the complainant and not in public view. Similarly, the incident in Crime No.215/2022 took place at 23.45 hours in the night between the complainant Shubham and the petitioner who were known to each other. It appears that the petitioner used abusive language and beat the complainant with fist blows, on the basis of which an N.C. complaint was lodged. This incident too does not have any impact on public order.

11. In the third incident in Crime No.190/2022, the complainant knew the petitioner who was a friend of her paramour Preet, with whom a quarrel took place in the house of the complainant. In that incident, the petitioner is alleged to have assaulted the

complainant by hitting a beer bottle on her forehead. Here again, the incident has taken place within the house of the complainant, and not in public view or such as to cause public alarm, justifying it to be termed as an act detrimental to maintenance a public order. The fourth incident under Crime No.427/2022 was registered at the behest of a police officer, who on information, attempted to detain the petitioner, who was stated to be carrying an iron sword inside a plastic sack. The petitioner was arrested and charged under the Arms Act. Here again, there was no incident or any act on the part of the petitioner where a commotion was caused to create alarm in the minds of the public. The last incident under Crime No.398/2022 was by the complainant's friend Preet who alleged that she had an argument with the petitioner at a public garden, where the petitioner beat the complainant and threatened her. This incident too was an altercation between two known persons based upon their differences could not be the basis for issuing a detention order or to hold that the same was in breach of public order.

12. We then examine the contents of the two in-camera statements. The first statement "A" refers to an incident that took place at 11.00 pm. at night inside a restaurant owned by the witness, wherein an altercation took place between the petitioner and the witness, since the petitioner claimed that he be served dinner even though the

premises was being shut down. During the altercation, the petitioner is alleged to threaten the complainant with a knife and used threatening language, after which he extorted Rs.13,000/- from the witness and left the premises. There is no allegation or fact recorded in that statement, that the incident took place in broad public view or that any citizens witness the same or that it caused any alarm or fear in the public at large.

The second anonymous statement of witness “B” is alleged to have taken place in a Hotel (restaurant); the specific date of the incident is not mentioned in the statement, however the allegation therein appear to be that the petitioner threaten the complainant, under the influence of liquor and extorted an amount to Rs.5,000/- at knife point. Here again, there was no mention as to the effect the incident had on the public at large or even whether there were witnesses who felt disturbed, fear or panic seeing the incident.

13. We also note that the impugned orders only specify that the authority has gone through the confidential statements and the verification report, but do not make any mention as to whether the detaining authority interacted with the said witnesses or whether the authenticity and genuineness of the statements recorded in-camera were true and genuine or whether the witnesses had expressed fear of lodging specific complaints.

We make reference to the judgment of this Court in **Shaikh Husain** (supra) wherein the following has been held :-

“18. First of all, it is observed that the grounds of detention nowhere discloses that the detaining authority interacted with the witnesses A and B so as to satisfy itself that the statements of these witnesses and genuine to be true and or instances which they disclosed were correct. There is no interaction by the detaining authority with the Assistant Superintendent of Police, who verified such statements. The copies of statements of witnesses A and attached to the petition and provided to the detainee, nowhere show any endorsement of the detaining authority so as to confirm that such statements were perused by the detaining authority and said authority considered that the witnesses were depicting true events. There is absolutely no whisper in the grounds of detention as to on what count the detaining authority found itself satisfied about the truthfulness or genuineness of such statements made by the witnesses.

19. This Court in the case of Shahjahan w/o Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra & Anr. 2016 ALL MR (cri) 4233 (supra), observed in para 5 that, in the absence of any record of the statements being seen by the Commissioner of the Police thereby affecting his subjective satisfaction, the petitioner is entitled to succeed in the petition. These observations are clearly attracted to the matter in hand. There is no contemporaneous material placed before us to show that the detaining authority had in fact verified the statements and had any interaction with the Assistant Superintendent of Police, who recorded his report. Similarly, by reproducing the contents of statements of witness A and B in the grounds of detention without the material to show that the detaining authority had in fact interacted either with the witnesses or discussed it with the authority,

who verified such statements, the order of detention stands vitiated.”

Applying the ratio laid down in **Shaikh Husain** (Supra), the subjective satisfaction of the detaining authority not having been arrived at after asserting either with a direct interaction with the Assistant Commissioner of Police or the authority who had recorded the in-camera statements, as to the genuineness of their contents, the two witness statements could not have formed the basis for recording satisfaction.

14. Having concluded that the five 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 are of the considered opinion that the impugned orders cannot be sustained. Consequently, we quash and set aside impugned orders dated 23.02.2023 and 19.04.2023 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.)