

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

CRIMINAL WRIT PETITION NO. 484 OF 2022

PETITIONER: Aniket s/o Dilip Kale,
aged 31 years, resident of plot no.983,
Ashirwad Nagar, Nagpur,
Police Station Sakkardara,
Nagpur.

V E R S U S

RESPONDENTS :

1. State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. State of Maharashtra
Through Police Commissioner,
Nagpur, District Nagpur.
3. State of Maharashtra,
Through Police Station,
Sakkardara, Nagpur.

Shri U. P. Dable, Advocate for petitioner.
Shri S. S. Doifode, Additional Public Prosecutor for respondent
Nos.1 to 3.

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

RESERVED ON : 23/01/2023.

PRONOUNCED ON : 02/02/2023.

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 writ petition under Article 226 of the Constitution of India, the petitioner challenges the order dated 31/03/2022 passed by the Commissioner of Police, Nagpur City under Section 3 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 Act"), of preventive detention of the petitioner, since 31/03/2022. The petitioner further impugns order dated 05/05/2022 passed by the Home Department of the Government of Maharashtra, confirming the detention of the petitioner under order dated 31/03/2022.

3. It is the case of the petitioner that the order of detention dated 31/03/2022 is essentially based upon two offences alleged against him the first being Crime No.662/2021 alleged to have been committed by the petitioner at Hudkeshwar on 04/10/2021 for the offences punishable under Sections 252, 294, 506, 323 r/w Section 34 of the Indian Penal Code (Hereinafter referred to as "the first offence") and the second offence, which is alleged to have been taken place at Sakkardara in Crime No.530/2021 on 05/10/2021 for the offences punishable under Sections 386, 143, 147, 149 and 427 of the Indian Penal

Code (Hereinafter referred to as "the second offence").

It is contended by the petitioner that on the first offence, Criminal Case No.1056/2022 was filed before the Judicial Magistrate First Class at Nagpur on 02/03/2022, wherein the petitioner was enlarged on bail by the order of Magistrate dated 11/10/2021. On the second offence, Criminal Case No.367/2022 was filed against the petitioner before the Judicial Magistrate, First Class, Nagpur on 08/01/2022, wherein the petitioner was enlarged on bail by order dated 07/10/2021 by the Judicial Magistrate First Class (M.V. Court) Nagpur. According to the record of the Detaining Authority, both these cases were pending before the concerned Magistrate as on the date of passing of the impugned order.

4. That the record before the Detaining Authority further also discloses that the authority relied upon the statements of two witnesses, which were recorded in camera by the authority, in order to protect their identity, for the purpose of passing the impugned order. It is the contention of the petitioner that though both the orders of granting bail to the petitioner formed part of the record before the Detaining Authority, there is total non-consideration of the reasons contained in the bail orders for enlarging the petitioner on bail. It is further submitted that the

complete non-consideration by the Detaining Authority of the reasoning given by the Magistrates in both these bail orders, would imply that there was no application of mind, while passing the impugned order, nor was there subjective satisfaction recorded by the Detaining Authority on the basis of the actual material placed before it.

5. It is further submitted by the petitioner, as can be seen from the grounds urged in the petition, that the two in camera statements recorded by the Detaining Authority were both stale instances of alleged offence against the petitioner and they could not be relied upon since consideration of such stale allegations would not give the Detaining Authority a live cause for proceeding against the petitioner under the MPDA Act.

A further ground is urged in the petition that apart from the fact that none of the offences alleged to have been committed by the petitioner, took place at a public place, as is required by the provisions of the MPDA Act, and as such the incidents could not have been considered by the Detaining Authority as forming the ground for the action contemplated. It was the further ground raised in the petition that neither the first offence nor the second offence referred to in the impugned order would be considered a "public order" situation and at the most, the

allegations about the said two offences could be termed as law and order situation. In the absence of any of the allegations of a public order situation, the Detaining Authority would lack jurisdiction to proceed with an action in terms of Section 3(1) of the MPDA Act.

6. Relying upon the Judgment of the Hon'ble Supreme Court in **Shaik Nazneen Versus The State of Telangana and others**, reported in **2022 Live Law (SC) 559** and the Judgment of this Court dated 17/11/2021 in Criminal Writ Petition No.457/2021 (Shri Yash s/o Anil Tekam Vrs. State of Maharashtra and others) for the proposition that the preventive detention being an exceptional power, could be exercised only after recording satisfaction and based on incidents, which constitute a breach of public order situation and not otherwise.

7. The respondents filed an affidavit-in-reply dated 29/08/2022 supporting the impugned orders.

8. We have heard Shri Dable, learned counsel for the petitioner and Shri Doifode, learned Additional Public Prosecutor for respondent Nos.1 to 3. We have perused the record of the petition.

9. Learned counsel for the petitioner submits that the impugned order passed by the respondent No.2 is vitiated by the

fact that it has not made any reference to, or even considered the reasoning contained in the two bail orders passed by the Judicial Magistrate First Class in favour of the petitioner, while releasing him on first and second offences. He further submits that in camera statements relied upon by the Detaining Authority are completely devoid of the details, such as the place of alleged offence committed by the petitioner, or the time or that the alleged acts were committed in public place in a manner that would directly be prejudicial to the maintenance of public order. Learned counsel for the petitioner further argues that the impugned order makes no reference to the particulars of the offences alleged against the petitioner that constitute the first and second offence, which was pending trial before the Magistrate. He contends that neither of the two offences would constitute an offence that would be prejudicial to the maintenance of public order or would be of a nature that creates a public order situation, but at the most, would be termed as law and order situation. He further contends that the incidents alleged in camera statements for both witnesses are stale statements having no proximity in time to the impugned order, the first statement being one dated 21/02/2021, which is more than a year before the impugned order was passed. The second in camera statement, which is dated 25/02/2022 appears to have been

created only to cover the gap between the two alleged offences dated 04/10/2021 and 05/10/2021 which were themselves more than five months prior in point of time to the passing of the impugned order. Therefore, there is no live connection between the passing of the impugned order and the incidents complained of.

10. Shri Doifode, learned Additional Public Prosecutor appearing for respondent Nos.1 to 3 has supported the impugned order and taken us through various Paragraphs contained therein, which make reference to the bail orders passed by the Judicial Magistrate First Class on the first offence and the second offence and contends that by referring to all these orders, the Detaining Authority has considered the reasoning contained in the bail orders. He further argues that in camera statements referred to, in the impugned order clearly set out the acts of extortion committed by the petitioner and the fear wreaked by the petitioner amongst the public at large and therefore, this constitutes a public order situation. He then took us through the order dated 05/05/2022 of the Government of Maharashtra confirming the detention order and submits that the same was passed after considering all the material forming an opinion, which was also based on the report of the Advisory Board, which opined in favour of confirmation of

the detention order.

11. Section 3 of the MPDA Act reads as under :

"3. Power to make orders detaining certain persons

(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(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 ¹[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 ¹[six months] at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall

forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

12. A plain reading of sub-section (1) of Section 3 of the MPDA Act clearly sets out that invocation of this provision can be only for the purpose of preventing a person from acting in any manner prejudicial to the maintenance of public order. The provision does not empower the State Government to detain a person for any other reason than for maintaining public order and when it intends to do so, it must record its satisfaction on the basis of material before it, for concluding why such order required to be made.

A plain reading of the above provision also leaves no doubt that, where a person commits any offence, which can be dealt with by regular penal law before a Magistrate, and such situation is a law and order situation and does not contemplate breach of public order, the authorities would lack jurisdiction to proceed under these provisions.

13. While considering similar provision contained in Section 3(1) of the Telangana Prevention of Dangerous Activities

of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders and White Collar or Financial Offenders Act, 1986 (hereinafter referred to as "TPDA Act), the Hon'ble Supreme Court in the case of **Shaik Nazneen Vrs. the State of Telangana and others**, reported in **2022 Live Law (SC) 559** has held in Paragraph Nos.9, 10, 12 and 15 as under :-

"9. A bare reading of the aforesaid provision shows that the "maintenance of public order" has a crucial bearing here and unless the Government is justified in holding that the act of the detenu is prejudicial to the maintenance of public order, the preventive detention would be bad and would be in violation of Articles 21 and 22 of the Constitution of India as it encroaches upon the liberty and freedom of an individual.

10. The detention order was challenged by the wife of the detenu in a Habeas Corpus petition before the Division Bench of the Telangana High Court. The ground taken by the petitioner before the High Court was that reliance has been taken by the Authority of four cases of chain snatching, as already mentioned

above. The admitted position is that in all these four cases the detenu has been released on bail by the Magistrate. Moreover, in any case, the nature of crime as alleged against the petitioner can at best be said to be a law and order situation and not the public order situation, which would have justified invoking the powers under the Preventive Detention Law. This, however did not find favour with the Division Bench of the High Court, which dismissed the petition, upholding the validity of the detention order.

12. There is absolutely no doubt in our mind that the facts and circumstances of the case as alleged in the detention order dated 28.10.2021 though does reflect a law and order situation which can be dealt with under the ordinary law of land, and there was absolutely no occasion for invoking the extraordinary powers under the law of Preventive Detention. The reasons assigned by the authority in its detention, justifying the invocation of the provisions of the detention law are that the detenu has been granted bail in all the four cases and since he is likely to indulge in similar crime, hence the order of preventive detention.

15. Having heard the learned counsel for the petitioner and learned counsel for the State of Telangana, we are of the considered view that in the present case invocation of the Preventive Detention Law against the petitioner was not justified. The powers to be exercised under the Preventive Detention

Law are exceptional powers which have been given to the Government for its exercise in an exceptional situation as it strikes hard on the freedom and liberty of an individual, and thus cannot be exercised in a routine manner. The distinction between law and order situation and a public order situation has been dealt with by the Supreme Court in a catena of decisions."

14. This Court in Judgment dated 17/11/2021 in Criminal Writ Petition No.457/2021 (Shri Yash s/o Anil Tekam Vrs. State of Maharashtra and others), whilst considering the powers of the Detaining Authority under Section 3 of the MPDA Act, has considered the effect of in camera statements, which were devoid of details and were vague, and were recorded at a time not so proximate to the passing of the order of detention, has held in Paragraph Nos.13 and 14, 15 as under :-

"13. Mr. Doifode, the learned APP, however, submitted that the two instances cannot be read in isolation but have to be considered along with the two 'in camera' statements. The 'in camera' statements, unfortunately, provide no significant details and to a great extent are quite vague. The 'in camera' statements came to be recorded a month after the petitioner was released on bail in Crime No.28/2021.

14. The 'in-camera statements' speak about some instances in the third week of February 2021. Again,

from the perusal of the transcript, it does appear that the allegations are not quite specific and consequently verifiable. In Rakesh Gadekar (supra), the Division Bench of this Court did not approve reliance on similar generalized and unverifiable statements to sustain the order of detention.

15. The order granting bail had imposed several stringent conditions. If the impugned detention order or rather the grounds in support of the impugned detention order are perused, it is apparent that the detaining authority had not applied its mind to such stringent conditions imposed upon the petitioner in the order dated 25.1.2021, by which the petitioner was enlarged on bail. The bail order dated 25.1.2021 had directed the petitioner to remain in his residential house during the lockdown period. The order had also directed the petitioner to attend the Police Station as and when called by the Investigating Officer in writing and to co-operate with the investigating agency. The order was made on 25.1.2021 and the impugned detention order has been made on 17.4.2021. There is no allegation that the petitioner had breached the conditions on which he was enlarged on bail."

15. The reliance placed by the learned Additional Public Prosecutor for the respondent Nos.1 to 3 on the Judgment of this Court in Vishal Aananda Mahabab Vrs. the State of Maharashtra and others, reported in 2022 ALL MR (Cri) 2494, wherein the detention order under MPDA Act was challenged, is

distinguishable on the facts of that case. **Vishal Aananda Mahabal** (supra), was a case where the incidents relied upon by the authority took place in a public area where the accused threatened people and chased them away. In that case, the High Court concluded that the incident complained of caused disturbance to the public peace and order and acts of the detainee caused a direct threat to the public. This Court considered the specific instances wherein the detainee was involved clearly establishing that he was causing terror in the minds of the people who were gathered in the locality and that incident was not an ordinary law and order issue, but was calculated to create a breach of public order. The facts of the present case are quite different and therefore, the case of **Vishal Aananda Mahabal** (supra) would not apply in the present facts before us.

16. A perusal of the impugned order would first reveal that though there is reference made to the two offences in which the petitioner obtained bail from the Magistrate, there is no reference made to the contents of the orders of the Magistrate while granting bail. The detention order does not make any reference to the reasons given by the Magistrate in the orders of bail, leaving no doubt in our mind that the Detaining Authority has not recorded its subjective satisfaction for considering the reasons set

out in the bail orders.

17. The second ground raised by the petitioner is that in camera statements of the two witnesses were vague and unreliable and could not form the source of information on the basis of which the Detaining Authority could conclude that the petitioner was acting in a manner prejudicial to the maintenance of public order. A reading of the first in camera statement, which is as old as 21/02/2021, over a year prior to passing of the detention order, does not set out the specific time of incident or the specific location where the same has taken place. A plain reading of the statement leaves great doubt as to whether it is genuine or actually concocted by the Sponsoring Authority.

The second in camera statement dated 25/02/2022 is also vague as to the details of the year where incident took place i.e. whether the same was a public area and aimed to cause disturbance of public order. Applying the ratio of the Judgment of **Shri Yash s/o Anil Tekam** (supra) to the facts of this case, one can conclude that the first in camera statement came to be recorded a year prior to the passing of the detention order and could hardly be said to have any live nexus for the Detaining Authority to arrive at a subjective satisfaction that the petitioner needed to be detained as a preventive measure in order to maintain public

order. As held in the same Judgment, the second in camera statement, not having any specific details as to the allegations, reliance on such a general and unverifiable statement could not be placed to sustain the order of detention under Section 3 of the MPDA Act.

18. We are also of the opinion that various Sections of the Indian Penal Code under which the petitioner has alleged to have been committed offences, in the first and second offence, the trial of which is pending before the Judicial Magistrate First Class, could be termed to be offences dealing with law and order situation, and not a public order situation. On a reading of the impugned order of detention, there appears to be no recording of the authorities subjective satisfaction on consideration of acts of the petitioner which may constitute a public order situation. Applying the ratio as laid down by the Hon'ble Supreme Court in **Shaik Nazneen** (supra) to these facts, we are of the considered opinion that the authority, not having recorded its subjective satisfaction on the basis of consideration of any material before it to arrive at a finding that the acts of the petitioner were prejudicial to the maintenance of public order, we conclude that passing of the impugned detention order was unjustified and contrary to the provisions of Section 3 of the MPDA Act.

19. We accordingly quash and set aside the impugned orders dated 31/03/2022 and 05/05/2022. Rule is made absolute in terms of Prayer Clauses (b) and (c) of the petition, which read as under :-

b) Quash and set aside the order passed by respondent no.2, the Commissioner of Police, Nagpur city bearing D.O.No.DET/MPDA/PCB/Zone-IV/09/2022 dated 31.3.2022 - Annexure-A.

c) Quash and set aside the order passed by Advisory Board at Mantralaya Mumbai in Case No.MPDA-0422/Change Report-114/Spl-3B dated 5.5.2022 - Annexure-B thereby confirming the order of detention passed by respondent no.2.

20. No costs.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

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