



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

CRIMINAL WRIT PETITION NO.474 OF 2023

Samrat s/o. Vijay Sawale
Aged about 30 years, Occ. Labouror,
r/o. Bhim Chowk Akot Fail, Akola,
District – Akola.

..... **PETITIONER.**

VERSUS

1. State of Maharashtra,
Through its Department of Home,
Mantralaya Mumbai.
2. District Magistrate,
Akola, Dist. Akola,
3. Superintendent of
Central Prison, Thane-Dist-Thane. **RESPONDENTS.**

Shri Ankush M. Tirukh, Advocate for the Petitioner.
Shri M.J. Khan, Addl. Public Prosecutor for Respondents No.1 to 3.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

RESERVED ON : 12/10/2023.

PRONOUNCED ON : 31/10/2023.

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

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel appearing for the parties.

2. This is a writ petition filed under Article 226 of the Constitution of India which impugns the order bearing No.MPDA-0123/CR-12/Spl-3B dated 17/1/2023 passed by the Respondent No.2, District Magistrate, Akola in exercise of powers conferred by Sub-Section (3) of 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, 1982 (the Act), ordering the detention of the Petitioner for a period of 12 months from the date of detention i.e. 09/01/2023. The Petition also challenges order dated 17/1/2023 of the Respondent No.1, Government of Maharashtra approving the order of 9/1/2023, thereby confirming the detention of the Petitioner.

3. The primary grounds on which the Petition is based, are the following:

(A) That there is inordinate and unexplained delay between the dates of the incident and the detention order,

and therefore, there is no live-link shown between crimes relied upon in the proposal to detain the Petitioner, and the necessity to detain him.

(B) That the crimes on which reliance has been placed for obtaining the detention order, are not of a nature that could permit the authority to exercise powers under Section 3 of the Act, in that the allegations do not constitute the acts which would disturb public order, and at most, could be considered to be the acts which are disruptive of law and order.

(C) That the order of detention suffers from non-application of mind, in that it does not consider the reasons for grant of bail in one of the crimes relied upon, nor does it consider the content of the notice under Section 41 Cr.P.C. with respect to not requiring the arrest of the Petitioner in respect of the second crime relied upon; the subjective satisfaction of the detaining authority is, therefore, not based upon the correct record.

4. After notice was issued to the State, the Respondents

preferred to proceed with the hearing of the matter without controverting any of the facts by filing an affidavit-in-reply. We have, therefore, proceeded to hear the matter finally after grant of Rule, with the consent of the parties and on the basis of the record produced along with the Petition, on which submissions have been made by the parties.

5. It is the submission of the learned Advocate of the Petitioner that of the two alleged crimes relied upon by the Police Station, Khadam, Akola City, the first crime bearing Cr.No.747/2022 dated 16/10/2022 was registered under Section 4 and Section 25 of the Arms Act for which the Petitioner was detained and searched and was found carrying an iron “koyta” along with some cash. Since the offence was punishable with imprisonment of less than seven years, no arrest was effected, but a notice was issued to the Petitioner under Section 41(1)(a) of the Cr.P.C. Since even the Investigating Officer did not consider the Petitioner to be a dangerous criminal, so as to warrant his arrest for this crime, which was otherwise non-bailable, the crime could not constitute the material for the Petitioner’s

detention under the Act.

It was further submitted that the second alleged crime bearing Cr.No.744/2022 dated 15/10/2022 instituted under Sections 353, 332, 333, 504, 506 read with 34 I.P.C. and Sections 4 and 25 of the Arms Act was under investigation and was an incident where the Petitioner and another person were in a scuffle, and whilst the Petitioner was being rescued by the Police, he attempted to run away and was thereafter arrested; in this offence, the Petitioner was granted bail by the Court of Addl. Sessions Judge, Akola, where reasons have been specified for his release, stating that his detention was not required during the trial as the allegations are in the nature where the hurt sustained appears to be simple. It is the Petitioner's submission that the detaining authority has not even considered the reasons for the release of the Petitioner in the bail order, for arriving at a subjective satisfaction as to the need for his detention and as such, has transgressed the jurisdiction vested in it under Section 3 of the Act.

6. It was further submitted by the Petitioner that the in-camera statements “A” and “B” relied upon for the purpose of passing the detention order, though were both recorded on 19/10/2022, respectively pertain to incidents of the second week of August 2022 and of the second week of July 2022, while the proposal for the Petitioner’s detention was made to the Authority only on 2/1/2023, almost five months after the incident. It was submitted that there was no explanation placed before the detaining authority or even by an affidavit before this Court to justify such inordinate time spent in preparing a proposal.

It was submitted that in any event, the in-camera statements and the allegations made in the two criminal cases which are pending investigation, do not disclose any acts by the Petitioner which would constitute acts detrimental to the maintenance of public order to vest the Authority with jurisdiction to proceed under provisions of Section 3 of the Act. Reliance was placed by the learned Counsel for the Petitioner on the following Judgments:

- (1) ***Elizabeth vs State***, reported in 2021 ALL M.R. (Cri.) 1394,
- (2) ***Ratnamala vs. State***, reported in MANU/MH/2155/2022,
- (3) ***Mohd. Ishaq vs. Sanjay Barwe***, reported in 2020 ALL M.R. (Cri.) 1930,
- (4) ***Vilas Pawar vs. State***, reported in MANU/MH/2340/2022,
- (5) ***Hanif vs. State***, reported in MANU/MH/2146/2022,
- (6) ***Ashokrao vs. State***, reported in 2023 ALL M.R. (Cri.) 2818; and
- (7) ***Mallada K. Sri Ram vs. State of Telangana***, reported in Live Law (SC) 358.

7. Countering the submissions made on behalf the Petitioner, the learned Shri M.J. Khan, A.P.P. appearing for Respondents No.1 to 3 has submitted that a perusal of the F.I.R. in the two crimes relied upon by the Respondents, would clearly indicate that the Petitioner is a “dangerous person” under the meaning assigned to the word in its definition, under the Act. He further submits that all the incidents, including the incidents described in the in-camera statement, have taken place in broad view of the public, act at public place and are likely to cause alarm to the citizens, justifying the detention of the Petitioner, they

being acts disruptive of public order. The learned A.P.P. relies upon the judgments of this Court in ***Pravin @ Bhayya Pratap Shinde vs. Commissioner of Police, Pune & anr.*** reported in 2020 (6) Mh.L.J.(Cri.) 328, ***Viki Baban Galte vs. Commissioner of Police, Pune & ors.*** reported in 2019 All M.R. (Cri.) 1349, and ***Phulwari Pathak (Smt.) vs. R.H. Mendonca & ors.***, reported in (2000) 6 SCC 751 to contend that not only in-camera statements can be relied upon as reliable material for arriving at subjective satisfaction by the authority, in addition to which, if the incident occurred in a public place, likely to cause alarm to the witnesses, it would be justified to pass a detention order.

8. Crime No.747/2022 relied upon by the Respondents under Sections 4 and 25 of the Arms Act did not require the detention or arrest of the Petitioner, since, from the record, it appears that the Investigating Authority itself felt the need to issue a notice under Section 41(1)(a) of Cr.P.C. Reading the contents of that FIR also leaves no doubt that there was no incident but a weapon was found by the

Police after search was conducted on the person of the Petitioner. On the face of it, therefore, there was no element of this incident being termed as one which could be an act causing breach of “public order”.

As far as Crime No.744/2022 is concerned, the Petitioner had a scuffle with another person and there was no allegation that other than a private fight between two persons, the Petitioner threatened or acted against any other member of the public, so as to cause alarm or a fear psychosis in the minds of the public. In fact, a perusal of the bail order dated 11/2/2022, would bear out that during the scuffle between the Petitioner and the other accused, a blow was dealt on the hand of the policeman and the nature of hurt was simple, not justifying the further detention of the Petitioner.

A perusal of the impugned order bears out that the detaining authority has not delved into the reasons assigned by the Sessions Court for the release of the Petitioner, which, if considered, would certainly could have

led to arriving at a different subjective satisfaction on the part of the Authority. The Authority has, therefore, clearly not applied its mind whilst passing the impugned order, in that it has failed to consider a very material fact, being the reasons assigned by the Court whilst releasing the Petitioner.

9. In *Ratnamala Balkhande* (supra), this Court has considered in an identical case where the Authority has reached its subjective satisfaction without considering the reasons for which the detenu was granted bail, and held that non-consideration of the reasons directly vitiates the process of arriving at a subjective satisfaction. Relevant parts of the Judgment are quoted below:

“8. In this case, although, seven crimes registered against the detenu formed the material for reaching the subjective satisfaction of the detaining authority, admittedly, in five of the crimes, in which the detenu was on bail, no bail orders were placed before the detaining authority. This lacuna, in our opinion, has vitiated the satisfaction reached by the detaining authority as it was deprived of opportunity to

consider relevant material, though available.

9. *Of course, it is submitted by learned APP that these five crimes were only considered as indicative of the previous criminal activity and therefore it was not necessary for the detaining authority to consider the reasons for which the detenu was granted bail in each of these crimes. In our respectful submission the argument cannot be accepted. The law settled by Hon'ble Apex Court in the case of Abdul Sathar Ibrahim Manik (supra), is clear in this regard. Hon'ble Supreme Court has in clear terms observed that in the case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. Hon'ble Supreme Court further held that in such a case, the bail application and the order granting bail must necessarily be placed before the authority and the copies should also be supplied to the detenu. It would then mean that, whenever previous crimes registered against the detenu are considered as indicative of continuous criminal activity of the detenu, the detaining authority must also consider the reasons for which the detenu was granted bail in*

those previously registered crimes. This is because of the fact that those reasons would enable the detaining authority to reach proper satisfaction upon knowing existence of prima facie case against the detenu or otherwise in those previously registered crimes. Besides, as held by this Court in the case of Elizabeth Ranibhai Prabhudas Gaikwad (supra) there should not be any mismatch or unexplained inconsistency between the order passed by one authority granting bail and the order passed by another authority directing detention of that person for the very criminal activity. Consideration of the reasons of bail would help the detaining authority bridge the gap, in some cases, between the reasons for which bail was granted and the reasons for which preventive detention is ordered. Thus, we find no substance in the argument of learned APP made in this regard.”

10. In *Vilas Kisan Pawar* (supra), this Court has taken a view as to what are the considerations that the detaining authority has to take into account subjective satisfaction in referring to an intimation to the Petitioner under Sedition 41(1)(a) of Cr.P.C., which are quoted bellow:

“7. Apart from what is stated above, in two crimes

registered against the petitioner, the petitioner was not arrested and was clearly given an intimation under Section 41(1)(a) of the Code of Criminal Procedure, thereby creating an impression that the Investigating Officer did not consider the petitioner as so dangerous a criminal as would warrant his arrest in the crimes resisted against him, which were non bailable. This is important aspect of the matter which has not been taken into consideration by the detaining authority”

Taking a similar view, in *Hanif Karim Luluwale* (supra), this Court has held as under :

“6. This is for the reason that for these very crimes, the Investigating Officer did not think it fit to arrest the petitioner. Arrest for these crimes, which are cognizable, was possible for the Investigating Officer by recording his requisites satisfaction under [Section 41-\(1\)\(ii\)\(a\)](#) of the Cr.P.C. which lays down that Police Officer may without an order of Magistrate and without a warrant, arrest any person if he is satisfied that such arrest is necessary, for the reason inter-alia, of preventing such from committing any further offence. Such being the nature of the power of the Investigating Officer, which power Investigating Officer has not exercised in the present

case, it cannot be said that registration of four bootlegging crimes against the petitioner provided any reasonable material for detaining authority to arrive at his requisite satisfaction.”

Applying the ratio laid down in the above judgments to the facts of the present case, we are fortified in taking a view that the detaining authority not having considered the reasons cited by the Sessions Court while granting bail, nor having considered the impact of a notice under Section 41 Cr.P.C. having been issued in the first case, has vitiated the entire process of arriving at its subjective satisfaction.

11. In *Mallada K. Sri Ram* (supra), the Hon’ble Supreme Court has considered the distinction between disturbance to law and order and a disturbance to “public order”, after considering its Constitution Bench Judgment in ***Ram Manohar Lohia vs. State of Bihar*** reported in AIR 1966 SC 740 and its Judgment in ***Banka Sneha Sheela vs. State of Telangana*** (2021) 9 SCC 415 and has held as under :

“12. The distinction between a disturbance to law and

order and a disturbance to public order has been clearly settled by a Constitution Bench in *Ram Manohar Lohia v. State of Bihar*, AIR 1966 SC 740. The Court has held that every disorder does not meet the threshold of a disturbance to public order, unless it affects the community at large. The Constitution Bench held:

“51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. **Does the expression “public order” take in every kind of disorders or only some of them? The answer to this serves to distinguish “public order” from “law and order” because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there**

is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the 7 public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52. It will thus appear that just as “public order” in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting “security of State”, “law and order” also comprehends disorders of less gravity than those affecting

“public order”. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression “maintenance of law and order” the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.”

(emphasis supplied)

13. In *Banka Sneha Sheela v. State of Telangana*, (2021) 9 SCC 415 a two-judge Bench of this Court examined a similar factual situation of an alleged offence of cheating gullible persons as a ground for preventive detention under the Telangana Act of 1986. The Court held that while such an apprehension may be a ground for considering the cancellation of bail to an accused, it cannot meet the standards prescribed for preventive detention unless there is a demonstrable threat to the maintenance of public order. The Court held:

“9. ...learned counsel appearing on behalf of the petitioner has raised three points before us. First

and foremost, he said there is no proximate or live connection between the acts complained of and the date of the detention order, as the last act that was complained of, which is discernible from the first 3 FIRs (FIRs dated 12-12-2019, 12-12-2019 and 14-12-2019), was in December 2019 whereas the detention order was passed 9 months later on 28-9-2020. He then argued, without conceding, that at best only a “law and order” problem if at all would arise on the facts of these cases and not a “public order” problem, and referred to certain judgments of this Court to buttress the same. He also argued that the detention order was totally perverse in that it was passed only because anticipatory bail/bail applications were granted. The correct course of action would have been for the State to move to cancel the bail that has been granted if any further untoward incident were to take place.

12. While it cannot seriously be disputed that the detenu may be a “white collar offender” as defined under Section 2(x) of the Telangana Prevention of Dangerous Activities Act, yet a preventive detention order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order.

“Public order” is defined in the Explanation to Section 2(a) of the Telangana Prevention of Dangerous Activities Act to be a harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health.

15. 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 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

insecurity among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is makebelieve and totally absent in the facts of the present case.

32. On the facts of this case, as has been pointed out by us, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention statute. We, therefore, quash the detention order on this ground....”

15. A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the “maintenance of public order”. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021.

The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law.”

12. Following the ratio in *Mallada K. Sri Ram* (supra), clearly neither of the incidents which were referred to in the above two FIRs, can be termed as incidents which have caused alarm to the citizens or that any citizen was living under the fear of the Petitioner disturbing daily life in the vicinity or that he had indulged in an act which could be

disruptive of public order. Both incidents are either between two individuals or merely on a search carried out by the Police and are, therefore, not incidents which can be considered as disruptive of public order.

13. Even going through the incidents described in the two in-camera statements would reveal that the acts of the Petitioner could be perhaps in the nature of extortion from or threats to an individual, but cannot be termed to be acts disruptive of public order.

On another note, both these incidents appear to be stale and with no causal connection with the detention order, in that there is an unjustified delay of almost five months from the date of the incident in July to the date of passing of the detention order. There is no reference in the impugned order that arriving at its subjective satisfaction by the Authority referring to any justification by the proposal, nor is any affidavit now filed before us stating reasons why the police station took five months to seek the Prisoner's detention on these incidents.

14. In *Mohammed Ishaq Shaikh* (supra) whilst considering a similarly fact situation, this Court has held that unexplained delay in seeking detention on the basis of an incident, vitiates the detention order. It has been held in this Judgment as under :

“14. Perusal of the record maintained by the Respondents, particularly affidavit in reply filed by the detaining authority shows that the detenu was involved in one crime i.e. CR No.137/2019 and there were two statements recorded in-camera. It is evident from the material on record that the detenu has obtained bail order and was bailed out on 06/07/2019. In camera statements of witnesses A and B were recorded on 16/07/2019 and 24/07/2019 respectively. The said statements were verified by the ACP, Girgaon Division on 17/07/2019 and 25/07/2019 i.e. after a period of 10 to 20 days after the detenu was released on bail. Therefore there is substance in the submission of the learned counsel for the Petitioner that the said statements were recorded just to fill up the lacuna and to make the ground to explain the delay. It means that the detaining authority has passed the order of detention on 17/10/2019 much belatedly after about 3 ½ months from the registration of crime i.e. C R No.137/2019 which has been registered on 03/07/2019 and after about 2 ½

months from recording the 2nd in-camera statement which has been recorded on 24/07/2019. As held by the Hon'ble Supreme Court in the case of [Pradeep Nilkanth Paturkar vs S Ramamurthi & ors. AIR 1994 SC 656](#), [1992 ALL MR ONLINE 729] unexplained delay, whether short or long, especially when the Petitioner has taken a specific plea of delay, vitiates the detention order.

15. In Paragraph 9 of the said exposition in Pradeep Paturkar's case [1992 ALL MR ONLINE 729] (supra) the Hon'ble Supreme Court has referred to its earlier judgment in [T A Abdul Rahman v/s. State of Kerala; \(1989\) 4 SCC 741](#): [1989 ALL MR ONLINE 488 (S.C.)] wherein it has been observed as under :-

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay

between the prejudicial activities and the passing of detention order, the Court has to scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

So far as the said delay is concerned, there is no satisfactory or plausible explanation offered by Respondent No.1-Detaining Authority. Therefore, keeping in view the exposition of law by the Hon'ble Supreme Court in the case of Pradeep Nilkanth Paturkar (Supra), and since no plausible explanation has been offered for delay in passing the order of detention, it will have to be held that there was delay in passing the order of detention."

The ratio of this Judgment, applies on all fours to the facts of this case. We must, thus, hold that the contents of the in-camera statements, in any case, do not justify holding that the incident is one which is disruptive of public order, besides which, in any case, there was no live link demonstrated by the authority or even examined by the detaining authority, much less, the record justifies

the delay, thus vitiating the process of arriving at its subjective satisfaction.

15. For the reasons stated above, in our view the detention order dated 09/01/2023 and confirmation order dated 17/01/2023 cannot be sustained and is, therefore, quashed and set aside. Rule is made absolute in terms of prayer clause (i) of the Petition. No order as to costs.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)