

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

CRIMINAL WRIT PETITION NO. 875 OF 2022

PETITIONER : Gajanan Pundlik Londhe
Aged about 33 years, Occ - Labour,
R/o Shashtri Nagar, Arni, Dist. Yavatmal,
At present District Prison, Yavatmal.

V E R S U S

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

2. The Collector and District Magistrate,
Yavatmal, Dist. Yavatmal.

Shri M. N. Ali, Advocate for petitioner.
Shri N. R. Rode, Additional Public Prosecutor for respondent Nos.1
and 2.

**CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.**

JUDGMENT RESERVED ON : 30/03/2023

JUDGMENT PRONOUNCED ON : 10/04/2023

JUDGMENT (PER BHARAT P. DESHPANDE, J.) :

1. **Rule.** Rule is made returnable forthwith. Heard the learned counsel for the parties with consent.

2. The petitioner is questioning the legality or otherwise of the detention order dated 08/08/2022 and confirmed by the State / respondent No.1 under Section 12 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 (MPID Act).

3. Heard Shri M. N. Ali, learned counsel for the petitioner and Shri N. R. Rode, learned Additional Public Prosecutor for respondent Nos.1 and 2.

4. We have considered the record and more specifically the original statements of Witnesses A and B as well as verification carried out by Sub-Divisional Police Officer (SDPO) on 30/05/2022.

5. Shri Ali, learned counsel appearing for the petitioner would submit that the orders of detention passed by the respondent No.2 and confirmed by respondent No.1 are bad in law as the said authority failed to consider the settled proposition of law while issuing detention order. He would submit that the material has been suppressed with regard to the dates of recording of statements of Witnesses A and B when the same were verified from the petitioner and therefore, he was unable to file effective representation. Secondly, he claimed that there is no live link with regard to the offences which are mentioned in the detention order, but not relied upon while passing such order. He then would

submit that two offences relied upon by the Detaining Authority are not in any way connected with disturbance of public peace. The statements of Witnesses A and B are the allegations in general and not about the specific instances. The bail order in which the petitioner was released, was not placed before the Detaining Authority. There is inordinate and unexplained delay from the date of last offence and the order of detention. There is no subjective satisfaction arrived at by the Detaining Authority which vitiates the impugned order.

6. Per contra, Shri Rode, learned Additional Public Prosecutor has opposed the petition on the ground that delay has been properly explained by the Detaining Authority and there is live link between the offences relied upon in the detention order. He would submit that the original record shows the details mentioned in the statements of the witnesses, which were masked while giving copies to the petitioner only to protect the life and liberty of such a witness which is within the powers of the Detaining Authority. He would submit that there is subjective satisfaction recorded by the Detaining Authority on the basis of material placed before it while passing the detention order.

7. Shri M.N.Ali, learned counsel for the petitioner placed reliance on the following decisions :-

- i] **2019 DGLS (SC 1677**
Khaja Bilal Ahmed Vrs. State of Telangana and others.
- ii] **2012 ALL SCR 1373**
Rushikesh Tanaji Bhoite Vrs. State of Maharashtra and others.
- iii] **Criminal Writ Petition No.820/2021 decided on 01/07/2022**
Ratnamala Mukund Balkhande Vrs. State of Maharashtra and others.
- iv] **2001 ALL MR (Cri) 1616**
Sanjay s/o Balaram Kirale Vrs. State of Maharashtra and another.
- v] **2013 ALL MR (Cri) 3870**
Niyazuddin @ Sonu Sirajuddin Ansari Vrs. State of Maharashtra and another.
- vi] **2014 ALL MR (Cri) 2409**
Mohsin Ahmed s/o Mustaque Ahmed Vrs. State of Maharashtra and another.
- vii] **2020 ALL MR (Cri) 1930**
Mohamad Ishaq Mohamad Ismail Shaikh Vrs. Shri Sanjay Barve and others.
- viii] **2021 DGLS (Bom.) 1243**
Bharat Kisan Mekale Vrs. Commissioner of Police and others.
- ix] **Criminal Writ Petition No.833/2021 decided on 01/07/2022.**
Ram Anil Bhaskar Vrs. Additional Chief Secretary, Government of Maharashtra, Home Department, Mantralaya, Mumbai and others.
- x] **Criminal Writ Petition No.768/2015 decided on 01/02/2016.**
Sanjay s/o Ramlal Shahu Vrs. State of Maharashtra and another.

- xi] **Criminal Writ Petition No.49/2023 decided on 14/03/2023.**

Amol alias Guddu s/o Sevakar Khorgade Vrs. The Commissioner of Police, Nagpur and others.

8. Shri N.R.Rode, learned Additional Public Prosecutor for respondent Nos.1 and 2 placed reliance on the following decisions :-

- i] **2021 ALL MR (Cri) 2159**

Chandrakala w/o Ramlal Jadhav Vrs. The State of Maharashtra and others.

- ii] **2001 (2) Mh. L. J. 437**

Vinod Vithal Rane Vrs. R. H. Mendonca and others.

- iii] **2021 ALL MR (Cri) 1475**

Pravin Ganpat Kakad Vrs. The Commissioner of Police and others.

- iv] **2021 ALL MR (Cri) 2585**

Ganesh @ Gajaraj Sainath Patil Vrs. The State of Maharashtra and others.

- v] **2016 ALL MR (Cri) 5144**

Harish Patil Vrs. The State of Maharashtra and others.

9. The rival contentions fall for consideration as under :-

Few facts and relevant dates which are as under :-

- i] Last offence referred to by the Detaining Authority is dated 30/04/2022.

- ii] The statements of the Witnesses A and B are recorded on 23/05/2022 and 20/05/2022 respectively.

iii] The proposal was forwarded on 18/06/2022 to the Superintendent of Police, Yavatmal, who then forwarded it to the District Magistrate, Yavatmal on 23/06/2022.

iv] The District Magistrate passed the order of detention on 08/08/2022 and on the same day, the grounds of detention were furnished to the petitioner.

v] The approval was granted by the State on 12/08/2022.

vi] The hearing before the Advisory Board took place on 24/08/2022.

vii] The order under Section 12 was passed by the Government on 14/09/2022, which is under challenge.

With these dates and the documents placed on record, the Authority complied with the requirements as provided under the said Act.

10. We have perused the grounds of detention dated 08/08/2022 in minute details. The Detaining Authority observed that the petitioner is considered as a dangerous person and that proposal for detention forwarded to the said Authority refers to the history of the petitioner, who claims to be involved in various offences continuously from the year 2015. Paragraph No.2 of the grounds of detention shows that the petitioner was involved in the offences like murder, dacoity, assault on Government Servant,

house breaking, theft, illicit liquor occupation and selling, crimes such as possession of deadly weapons, Body offences, etc. However, in Paragraph No.4, the history of the petitioner who is allegedly involved in various offences from the year 2018 is found recorded. In all, ten instances are disclosed wherein the petitioner is found involved and the matters are pending in Court. Perusal of these offences clearly goes to show that except offences under Sections 380 and 324 of the Indian Penal Code, he has not been found involved in the offences like murder, dacoity, which is found mentioned in Paragraph No.2. Though the Authority only refers to the history in Paragraph No.4, it is clear that such offences were not considered while passing the order of detention. Be that as it may, the fact remains that the contention of the Police Machinery while submitting the proposal refers to serious offences like murder or dacoity. However, no such offence is found registered against the petitioner. Therefore, it is clear from the reasons of detention that the material extraneous to the one which is forwarded to the Detaining Authority was considered.

11. Paragraph No.5 of the grounds of detention dated 08/08/2022 shows that only two offences registered at Arni Police Station against the petitioner were considered. The first offence vide Crime No.1/2018 was registered under Section 56(1)(B) of

the Maharashtra Police Act and it was filed on 27/03/2018. The Sub-Divisional Magistrate, Yavatmal passed the order against the detainee for deportation for one year in Case No.4/2018 dated 15/11/2018.

12. The second offence found in Paragraph No.5 refers to Crime No.3/2020, which is again for offence under Section 56((1) (B) of the Maharashtra Police Act wherein Sub-Divisional Magistrate issued deportation proposal, but it was rejected in Case No.2/2021. Paragraph No.6 of the grounds of detention shows that the above preventive detention action proved futile, as the petitioner continued his criminal activities after release on bail.

13. Paragraph No.8 of grounds of detention shows specific two offences registered against the petitioner, which were considered for passing of detention order. The first offence is vide Crime No.371/2022 for the offence punishable under Sections 4/25 of the Indian Arms Act wherein charge sheet was filed on 02/06/2022. The second offence is vide Crime No.385/2022 under Section 379 of the Indian Penal Code in which investigation was in progress. While elaborating these two offences in Paragraph Nos.8.1 and 8.2, it discloses that the petitioner was moving on motor cycle bearing Registration No.MH-29 AD 1754 and when he was intercepted on the Iron Bridge at Mahur Chouk, Arni and

while searching the trunk of the vehicle, police found two knives and accordingly, he was booked under Sections 4/25 of the Indian Arms Act. A charge sheet is filed which is registered as Criminal Case No.79/2022.

14. As far as the second offence is concerned, vide Crime No.385/2022, the fact shows that one Jalil Khan, Chhotu Khan Pathan of Mubarak Nagar, Arni lodged his report on 30/04/2022 claiming therein that he owns 5 acres of land and in his farm, he installed water motor of 5 HP worth Rs.5,000/-, which was stolen by the petitioner along with his partner. In this respect, offence was registered and the investigation is in progress.

15. Shri Ali, learned counsel appearing for the petitioner was right in his submission that both these offences nowhere project that the petitioner has created any terror in the mind of general public or he has disturbed the life and liberty of general public. Only the recovery of two knives from the trunk of his vehicle would not be sufficient to establish that the petitioner was a dangerous person. Similarly, offence of theft of water pump from the field of Jalil Khan is an act against an individual. Both these offences though considered by the Detaining Authority are not connected with disturbance of public peace. However, both these offences are considered to be individual acts. Similarly, these

offences were registered at the end of April, 2022. Whereas the detention order was passed on 08/08/2022. The entire grounds of detention nowhere disclose or explain the delay in passing of detention order from the date of last offence registered against the petitioner on 30/04/2022.

16. In the case of Sanjay s/o Balaram Kirale (supra), this Court observed in Paragraph No.7 and considered the decision in the case of Smt. Hemlata Kantilal Shah Vrs. State of Maharashtra, reported in AIR 1982 SC 8. The Hon'ble Apex Court in the said decision observed that the delay *ipso facto* in passing the order of detention after the incident is not fatal to the detention of a person as in certain cases, delay may be unavoidable. What is required by law is that the delay must be specifically explained by the Detaining Authority. Similarly, in the case of Nilkant Paturkar Vrs. C. S. Ramamurti, reported in JT 1992 (3) SC 261 the Hon'ble Apex Court further observed that when the plea of delay in showing detention order is taken and the delay is not explained whether right or wrong, the order should be quashed. Relying on the above observations of the Hon'ble Apex Court and perusal of the reply affidavit of respondent No.2, we found that there is no proper explanation of the delay in passing the detention order from the time of last offence, as referred in the detention order. It also

shows that there is no live link between the last offence and the order of detention. On this count alone, the order of detention needs to be interfered with. There is no live link between the prejudicial activity of the detainee and the rationale of clamping detention order.

17. In the case of Niyazuddin @ Sonu Sirajuddin Ansari (supra), this Court observed in Paragraph No.10 that since there is no explanation about the delay in passing the detention order from the last prejudicial activity of the detainee, the live link is clearly snapped. Similar observations are found in the case of Mohsin Ahmed s/o Mushtaque Ahmed Vrs. State of Maharashtra and another, reported in 2014 ALL MR (Cri) 2409.

18. Next ground which has been raised is that no offence of murder or dacoity is found registered against the petitioner though it is referred in Paragraph No.2 of the grounds of detention. In this respect, this Court in the case of Mohsin Ahmed s/o Mushtaque Ahmed (supra) observed that when such offences are not registered against the detainee, though relied upon by the Detaining Authority, it clearly shows non-application of mind and absence of subjective satisfaction. In this case, as mentioned earlier, though the Detaining Authority in Paragraph No.2 of the grounds of detention claimed that the petitioner is involved

continuously since 2015 in commission of offence like murder and dacoity, not a single reference is made in Paragraph No.4 about the history of the petitioner involved in such offence.

19. In the case of Chandrakala w/o Ramlal Jadhav (supra), a Division Bench at Aurangabad discussed all the relevant decisions of Hon'ble Apex Court and of this Court in connection with the detention order. There is no quarrel with regard to the proposition as laid down in the said decision. Similarly in the case of Vinod Vithal Rane (supra), this Court has observed that the subjective satisfaction must be recorded by the concerned Detaining Authority on the basis of material placed before it and it should be projected by stating that the Detaining Authority is satisfied that the normal law of land has become ineffective or inadequate to prove the detinue from continuing with his activities affecting public peace or public order. It is further recorded that the subjective satisfaction once recorded by the Detaining Authority cannot be lightly interfered with by the Court.

20. In the case of Arun Ghosh Vrs. State of West Bengal, reported in (1970)1 SCC 98, the Hon'ble Apex Court considered the provisions of Section 3(2) of the MPID Act and specifically the difference between public order and the law and order. It was held that the disturbance of public order is to be distinguished from

acts directed against individuals which do not disturb the society to the extent of causing general disturbance of public tranquility. The degree of disturbance and its effect upon the life of community in a locality determines whether disturbance amounts only to breach of law and order. The question whether the man has only committed breach of law and order or has acted in a manner likely to create disturbance of public order is a question of degree and the extent of the reach of the act upon the society.

21. Applying such principles to the matter in hand from the grounds of detention, it is clear that two offences referred to in the detention order and more specifically in Paragraph No.8, are clearly offences against individuals and not against the general public or to consider breach of public peace in general. Such offences nowhere create fear psychosis in the society. The first offence with regard to the recovery of two knives from the trunk of the motor cycle cannot be considered as an offence against the public as it is not the case of a concerned Police Officer that the detainee was found using such knives to commit offence. The second offence is purely a theft case which is against an individual.

22. The Detaining Authority nowhere discussed in the entire grounds of detention as to whether the detainee was released on bail in both such offences. Thus, it is clear that the

material regarding grant of bail or otherwise has been suppressed from the Detaining Authority.

23. As far as the statements of Witnesses A and B are concerned, on perusal of the original statements, it is clear that the Witness A stated before the Police on 20/05/2022 that he knows the detainee from the last 5 years and is involved in various offences. He claimed that during lockdown, the detainee used to visit his shop for repair of his mobile. However, since the shop was close, the witness was unable to repair it. The detainee started abusing him and then banging the glass which was on the counter and then assaulted the witness. The witness then specifically stated that he went to the Police Station at Arni and lodged his complaint. After such report was lodged, the detainee again came and abused him, but he ignored the detainee. The second incident which Witness A discloses, is somewhere at the end of December, 2021 wherein the detainee obstructed him and questioned as to why he reported the matter to the police. The detainee then assaulted one person with an iron rod. The Witness A disclosed that he again went to the Police Station and lodged the complaint. This shows that Witness A went to the Police Station on two occasions and lodged his complaints which clearly rules out any fear in the mind of the witness either to approach the police or to

appear in the Court for deposing against the detainee. There is no statement of witness A that he is unable to attend the Police Station or the Court due to fear of the detainee.

24. Statement of Witness B recorded on 25/05/2022 is again disclosing some instances against the detainee and claims that he is unable to attend the Police Station due to fear. Both the statements were verified by SDPO, Pusad on 30/05/2022 by interacting with the witnesses and also by visiting the place referred to by the witnesses and by enquiring with the general public. He found that both these witnesses are giving correct statements.

25. The contention of Shri Ali, learned counsel that the copies of these statements provided to him are masked at certain places and even the dates of recording of such statements and when they are verified, are not disclosed to him which prevented the petitioner from making effective representation. We have seen the statements provided to the petitioner which show that these statements were verified by SDPO and the date of verification is very much found recorded as 30/05/2022. Only relevant details of the witnesses were masked, which according to us is justified in order to protect the identity of the witnesses. Hence such contention is of no substance.

26. However, these statements of the witnesses are found to be general in nature. Witness A had in fact visited at Police Station on two occasions and lodged his report against the detainee. Thus, it clearly shows that such witness is even ready and willing to depose against the detainee. This rules out the possibility of witnesses coming forward and deposing against the detainee.

27. We need not require to consider other decisions referred to by both the sides as we are convinced that the Detaining Authority failed to record subjective satisfaction on the basis of material placed before it and consider extraneous material which vitiates the detention order. First of all, no offence of murder or dacoity is found registered against the detainee as per list provided in Paragraph No.4 of the grounds of detention. Secondly, there is delay in passing the detention order which has not been properly explained. Thirdly, witness A lodged two police reports which ruled out the possibility of witnesses appearing either before the Police or before the Court to depose against the detainee. On this count, we consider that the detention order suffers from settled proposition of law and therefore, needs to be quashed and set aside. Accordingly, we hold that the detention order dated 08/08/2022 and confirmed on 14/09/2022 needs to be quashed and set aside.

28. Having said so, we allow the petition as per prayer clauses (i) and (ii). The impugned orders dated 08/08/2022 and 14/09/2022 are hereby quashed and set aside. The petitioner - Gajanan Pundlik Londhe shall be released forthwith, if not required in any other offence.

29. Rule is made absolute in the above terms.

[BHARAT P. DESHPANDE, J.]

[VINAY JOSHI, J.]

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VITHAL MAROTRAO
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