

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

CRIMINAL WRIT PETITION NO. 873 OF 2022

Shaikh Husain @ Shahrukh Shaikh Fatru
Aged about 26 years, Occ. Labour,
R/o Rajendra Prasad Ward Umarkhed
Tq. Umarkhed Dist. Yavatmal
At Present District Prison, Yavatmal. } ... Petitioner

Versus

1. State of Maharashtra,
Through its Secretary, Home Department,
(Special), Mantralaya, Mumbai. }
 2. The Collector/District Magistrate,
Yavatmal, Dist. Yavatmal. }
- ...Respondents

Mr. Mir Nagman Ali, Advocate for petitioner.

Mr. V.A.Thakre, APP for respondent Nos.1 and 2.

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

RESERVED ON : 20.04.2023.

PRONOUNCED ON : 21.04.2023.

JUDGMENT : (PER: Bharat P. Deshpande, J.)

Rule. Rule made returnable forthwith. Heard finally
by consent of the learned counsel for the respective parties.

(2) The petitioner is raising the challenge to the
impugned order dated 17.6.2022 passed by respondent No.2 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 (for short 'MPD Act'), thereby ordering his detention as a dangerous person, which was approved by the Government vide order dated 23.6.2022 and thereafter confirmed vide order dated 21.7.2022.

(3) Heard Mr. Mir Nagman Ali, learned counsel for petitioner and Mr. V.A.Thakre, learned APP for respondent Nos.1 and 2/State.

(4) Mr. Ali appearing for the petitioner raised three main grounds, thereby raising challenge to the impugned order of detention. His first ground is that there is no application of mind of the detaining authority to the material placed before it thereby vitiating the order. Secondly, the statements of witnesses recorded in-camera are disclosing about stale and old instances, which have no live-link or nexus with the order of detention. Thirdly, he claimed that there are no proper translation of some of the documents specifically the medical reports. Fourthly, he claimed that the offences alleged against the detainee and relied upon in the grounds of detention has no

nexus with public order and those offences are against individual.

(5) The learned APP appearing for the State claimed that there is subjective satisfaction recorded by the detaining authority, which is clear from the grounds and other material placed on record. He invited our attention to the proposal forwarded by the concerned Police Officer disclosing all the details and the offences in which the detainee is involved. He submitted that there is no necessity to place bail orders before the detaining authority when most of the offences referred therein are bailable.

(6) We have considered the entire material on record and accordingly, we propose to discuss the submissions qua the grounds of detention so as to ascertain whether the detention order could be considered as legally issued by following all the settled proposition of law.

(7) Before considering rival contentions, recently, the Hon'ble Apex Court in the case of *Pramod Singla Vs. Union of India and Ors. Special Leave Petition (Cri.) No.10798/2022 decided on 10.04.2023*, it has been observed in para 21 as under:-

“21. Before we deal with the issues framed, we find it important to note that preventive detention laws in India are a colonial legacy, and have a great potential to be abused and misused. Laws that have the ability to confer arbitrary powers to the State, must in all circumstances, be very critically examined, and must be used only in the rarest of rare cases. In cases of preventive detention, where the detenu is held in arrest not for a crime he has committed, but for a potential crime he may commit, the Court must always give every benefit of doubt in favour of the detenu, and even the slightest of errors in procedural compliances must result in favour of the detenu”.

(8) Learned counsel Mr.Ali has placed reliance on the following decisions:-

In cases of *Khaja Bilal Ahmed Vs. State of Telangana and others* reported in 2020 ALL SCR (Cri) 1561; *Ajay Dixtt Vs. State of Uttar Pradesh* reported in 1985 AIR (SC) 18; *Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Ors* reported in 2012 ALL SCR 1373;

Niyazuddin @ Sonu Sirajuddin Ansari Vs. State of Maharashtra and Anr. reported in 2013 ALL MR (Cri) 3870; Niyazuddin @ Sonu Sirajuddin Ansari Vs. State of Maharashtra and anr reported in 2014 (2) Bom.C.R. (Cri) 826; Shahjahan w/o Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra and Anr. reported in 2016 ALL MR (Cri.)4233; Gokul Sahabrao Sabale Vs. The Commissioner of Police Pune and Ors. Reported in 2017 ALL MR (Cri)2051 and Pramod Singla Vs. Union of India and Ors. Special Leave Petition (Cri.) No.10798/2022 decided on 10.04.2023,

(9) First of all, we would like to take into consideration the grounds of detention and specifically two statements of the witnesses recorded in-camera.

(10) The grounds of detention dated 17.6.2022 show that on receipt of proposal from the concerned Police Station, which refers to earlier criminal activities of the petitioner from the year 2019 wherein he is shown as involved in nine criminal activities. Para 4 discloses total nine offences in which the petitioner is found to be

involved. These offences are basically IPC offences and the same are not relied upon by the detaining authority for issuing order of detention.

(11) Para 5 of the grounds of detention show that in all four Chapter cases were initiated against the petitioner wherein preventive detention action was initiated from the year 2019 till 2021. It further shows in para 6 that inspite of such preventive action, the petitioner continued his illegal activities and was found involved in various offences.

(12) Para 8 of the grounds show that two offences registered against the petitioner in the year 2021-2022 were taken into consideration. It is claimed that these offences were committed within the period of last six months. The first offence in which FIR was lodged on 18.12.2021 vide Crime No.648/2021 at Police Station, Umarkhed show that a mob of around 150-200 gathered in front of Police Station, Umarkhed shouting slogans against a disputed video uploaded on social media. Thereafter, the said mob pelted stones on the shops, damaged vehicles of public and thereby committed offences under Sections 141, 147, 148, 149, 336, 427, 116, 117, 153(A), 505 (2) of IPC Section 135 of Bombay Police Act and Section 7 of Criminal

Fine Improvement Act, 1987. In the brief facts, it is claimed that the petitioner's name was stated by one of the eye witnesses as part of the said mob.

(13) The second offence registered at Umarkhed Police Station is vide Crime No.341/2022 dated 24.2.2022 for the offences punishable under Sections 341, 323, 504, 506 read with Section 34 of the IPC and Section 4/25 of the Arms Act. The brief history, as stated in para 8.2 of the grounds of detention, show that the accused along with his associates stopped the motor-cycle of the complainant on flimsy grounds, abused them, assaulted by kicks and blows and threatened by showing a knife.

(14) The statements of witness A and witness B are found mention in para nos. 9.1 and 9.2 of the grounds of detention. The gist of statement of witness A shows that he know the petitioner since last 4-5 years being anti-social person, without any job and use to possess weapons. Witness A claimed that the petitioner is spreading gundanisms, use to beat people and use to commit murder. The petitioner also used to collect boys of the age group of 20-25 thereby forming unlawful assembly and people are not coming forward to lodge complaint against him. He then referred to some incidence dated

17.12.2021 when some boys of one community uploaded controversial video, due to which the petitioner and others formed unlawful assembly, charged on the police station and damaged the property.

(15) At this stage, it is necessary to note that the incident referred by witness A dated 17.12.2021 is the same for which offence has been registered against the detainee and which is one of the matters considered by the Detaining Authority vide Crime No.648/2021 as found mention in para 8.1.

(16) Witness B in his statement referred to the criminal activities of the petitioner and again referred to the same incidence of 17.12.2021 for which offence is already registered vide Crime No. 648/2021 against the detainee. This witness further refers to some incidence about two years' back wherein he alleges that the detainee forceably asked him to give money for carrying out business in his area.

(17) Both these statements show endorsement of the Assistant Superintendent of Police stating that he verified such statements on 15.2.2022 by interacting with the witnesses and by visiting the places stated by them and accordingly he satisfied that the witnesses are giving true and correct disclosure.

(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 are 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 B 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.

(20) The second ground is with regard to the stale instances which the witnesses deposed. It was rightly argued by Mr. Ali that so called instances stated by witnesses A and B are stale instances which had no nexus or live-link. On these grounds also the detention order needs to be set aside.

(21) Two offences, which have been referred to in the order of detention and, more specifically, in para no.8 are concerned, first offence vide Crime No.648/2021 is in connection with a mob of around 200 persons. Though, the petitioner is shown as one of the accused, it is necessary to consider the mob mentality specifically when religious sentiments are tarnished. Such offence though considered as an offence against public order, could not have been considered for

the purpose of taking such drastic step of detention.

(22) The second offence found in para 8 vide Crime no.341/2022 is purely against an individual and the brief facts show that the dispute arose on the spur of moment due to traffic violation. Such offence, by no stretch of imagination, could be considered as against the public order.

(23) The third ground, the learned counsel tried to raise is non-supply of translation of the medical certificates. However, he candidly accepted that the medical terminology mentioned in such certificate specifically the nature of injuries, which are not possible to be translated literally and, therefore, he did not press the said ground.

(24) Since, we are satisfied that the detention order on the above discussion needs to be quashed and set aside, we are not inclined to refer to the other decisions cited by Mr. Ali which would only burden the judgment.

(25) On careful consideration, we found that the impugned detention order needs to be quashed and set aside for the reasons stated above. The petition is, therefore, stands allowed as per prayer clause (i), which reads as under:

“pass any appropriate writ order or direction and thereby quash and set aside the impugned order dated

*17.06.2022 (Annexure No.I) passed by Respondent
No.2, Collector, Yavatmal.”*

(26) The petitioner shall be set at liberty at once, if not
required in any other offence.

[BHARAT P. DESHPANDE, J.]

[VINAY JOSHI, J.]

Ambulkar