



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

938 CRIMINAL WRIT PETITION NO.696 OF 2024

Datta Ganpat Rokade,
Age 32 yrs., Occ. Nil,
R/o Shahanagar, Masnatpur,
Dist. Chhatrapati Sambhajinagar.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through Secretary,
Home Department,
Mantralaya, Mumbai.
- 2 Commissioner of Police,
Chhatrapati Sambhajinagar,
Tq. & Dist. Chhatrapati Sambhajinagar.

... Respondents

...

Mr. R.J. Nirmal, Advocate for petitioner
Mr. S.S. Dande, APP for respondent Nos.1 and 2

...

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 22nd AUGUST, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Heard learned Advocate Mr. R.J. Nirmal for the petitioner and

learned APP Mr. S.S. Dande for respondent Nos.1 and 2.

2 Rule. Rule made returnable forthwith. The writ petition is heard finally with consent of both sides.

3 The petitioner challenges the detention order passed by respondent No.2 bearing No.D.O.2024/CB/MPDA/DET-2/CR-05. It appears to have been later on approved by respondent No.1 on 22.02.2024.

4 Learned Advocate for the petitioner has taken us through the impugned order and the matter, which was before the authority at the time of passing the impugned order, which has been made part of the detention order and supplied to the petitioner. It is stated that though the petitioner has been arrayed as accused in seven offences; yet, for passing the impugned order, only three offences have been considered, which are pending investigation. Two in-camera statements have also been considered of witnesses 'A' and 'B'.

5 It is further pointed out by the learned Advocate for the petitioner that the first offence which was considered has been registered with M.I.D.C., CIDCO Police Station bearing Crime No.542 of 2023 under Section 452, 354, 354-A, 504, 506 read with Section 34 of the Indian Penal

Code, second offence was registered with Jawahar Nagar Police Station, Chhatrapati Sambhajanagar vide Crime No.280/2023, for the offence punishable under Section 326, 324, 504, 506 read with Section 34 of the Indian Penal Code and the last offence was registered with Chandanzira Police Station, Dist. Jalna vide Crime No.495 of 2023 under Section 354, 452 of the Indian Penal Code. The dates of the offences are stated to be 04.11.2023, 22.11.2023 and 24.12.2023. In fact, the petitioner was detained earlier also by the same authority under order dated 19.08.2022, of which the period ended on 19.08.2023. Therefore, intentionally the action has been taken against the petitioner. Statements of witnesses 'A' and 'B' are totally unreliable. Dates of the offences are not given. In all three offences, which were considered for detaining the petitioner, the petitioner has been released on bail. Therefore, when the ordinary laws were sufficient enough to curb the activity of the petitioner, the action like detention ought not to have been resorted to. The confirmation of the same by respondent No.1 is also without application of mind. In fact, there was no subjective satisfaction of the detaining authority to pass the impugned order and, therefore, both the orders are illegal. Those deserve to be set aside.

6 The learned APP relies on the affidavit-in-reply of respondent No.2 i.e. Mr. Manoj Lohiya, the Commissioner of Police, Chhatrapati

Sambhajinagar, reiterating the same details and supporting grounds of detention given in the order by him. Learned APP submits that there was absolutely no delay in passing the order. Confidential statements of witnesses 'A' and 'B' were recorded on 27.01.2024 and 28.01.2024 respectively. The proposal was sent on 02.02.2024. The verification of the confidential statements was done on 05.02.2024 by DCP, Zone-2 and thereafter they were verified by the detaining authority. The detention order under Section 3(1) of M.P.D.A. Act was passed on 14.02.2024 and it was served on the same day on the petitioner. Report was submitted to respondent No.1 for its approval and the approval order under Section 3(3) of M.P.D.A. Act was passed within 12 days i.e. on 22.02.2024. Thereafter, the matter was referred to the Advisory Board. The Advisory Board heard the detainee on 21.03.2024 and then gave opinion to the State and, therefore, the confirmation of the order of detention was passed on 08.04.2024. Thus, there is absolutely no delay in the matter. The petitioner has been categorized in 'dangerous person' taking into consideration the fact that in spite of his earlier detaining order, which had come to an end on 19.08.2023, he has not curbed his activities and indulged in three more offences. Therefore, it cannot be said that the ordinary law would have deterred the petitioner from committing any offence. The detaining authority had no choice but to pass the detaining order in view of the public order.

7 The first and the foremost fact to be noted is that earlier the detention order was passed on 19.08.2022 and its period expired on 19.08.2023. No doubt, thereafter it appears that three offences have been registered against the petitioner, which were as aforesaid, and when the detaining order was passed on 14.02.2024, the charge sheet was not filed. The detaining authority has taken note of the fact that in Crime No.542 of 2023 the petitioner was given notice under Section 41(A) of the Code of Criminal Procedure, then in Crime No.280 of 2023 he was released on bail on 29.11.2023. It appears that in Crime No.495/2023 he was arrested on 26.12.2023 and then was remanded to magisterial custody and bail was granted on 26.12.2023. Here, it is to be noted that Crime No.542/2023 as well as Crime No.495/2023 mainly deal with Sections 354 and 452 of the Indian Penal Code. M.I.D.C., CIDCO Police Station, Chhatrapati Sambhajinagar issued notice under Section 41-A of the Code of Criminal Procedure, whereas Chandanzira Police Station, Dist. Jalna instead of issuing such notice under Section 41-A of the Code of Criminal Procedure arrested the petitioner. What is more concerning is that taking into consideration the prosecution story it ought to have been revealed or take a note of by the detaining authority that the incident had taken place inside the house and, therefore, there was no question of that public order involved in the matter. Further, as regards Crime No.280/2023, the prosecution story appears to be

that there was previous dispute between the informant and the petitioner. Another fact to be noted is that the possibility ought to have been considered by the detaining authority that the investigation is still pending and the Investigating Officer had not come to the conclusion that case is made out for charge sheet to be filed.

8 We may reiterate the legal position that has been summarized in **Nevanath Bujji etc. vs. State of Telangana and others** [2024 SCC OnLine SC 367] as under :

“43. We summarize our conclusions as under :

(i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,

(ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,

(iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such

subjective satisfaction would be vitiated,

(iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,

(v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,

(vi) The satisfaction cannot be inferred by mere statement in the order that “it was necessary to prevent the detainee from acting in a manner prejudicial to the maintenance of public order”. Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,

(vii) Inability on the part of the state’s police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,

(viii) Justification for such an order should exist in the ground(s) furnished to the detainee to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detainee. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and

(ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detainee to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention . For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detainee. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.”

Further, in the same decision in paragraph No.32 it is observed that -

“32. The crucial issue is whether the activities of the detainee were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order, 'Public order' has a narrower ambit, and could be affected by only such contravention, which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of degree and extent of the reach, of the act in question on society.”

9 Therefore, the detaining authority ought to have considered as to how that those offences had any impact on the public order. Taking into consideration the prosecution story as narrated, at the most it can be said that in respect of Crime No.542/2023 and 495/2023 the situation of law and order has arisen and not of the public order. Even as regards Crime No.280/2023 is considered the incident appears to have taken place on road, however, there is nothing that was placed to show that the public was affected.

10 As regards the in-camera statements of witnesses 'A' and 'B' are concerned, both of them have stated that the petitioner had intercepted them and by catching the collar of the shirt, threatened them at the point of knife and extorted amount. Both of them have stated that due to the fear of petitioner nobody dare to lodge report against him. However, then the detaining order could not have been passed only on the basis of in-camera statements.

11 Thus, taking into consideration the legal position on the point, the observations that at the most the petitioner had created law and order situation and not public order, we hold that respondent No.2 had failed in arriving at subjective satisfaction and, therefore, the said order ought not to

have been approved and confirmed by the State – respondent No.1. Though the Advisory Board has opined for the approval of the detention order; yet we do not find that in view of lack of subjective satisfaction the detaining authority erred in branding the petitioner as ‘dangerous person’. Therefore, the petition deserves to be allowed. Hence, following order.

ORDER

1 Writ Petition stands allowed.

2 Detention order dated 14.02.2024 passed by respondent No.2 bearing No. D.O.2024/CB/MPDA/DET-2/CR-05 and the approval order dated 22.02.2024 as well as confirmation order dated 08.04.2024 passed by respondent No.1 are hereby quashed and set aside.

3 Petitioner viz. Datta Ganpat Rokade shall be released forthwith, if not required in any other offence.

4 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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