



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.829 OF 2024

Mohasin Habib Shaikh @ Baba Pathan
Age 25 years, Occ. Education,
R/o Hashmi Nagar, AUSA,
Tq. AUSA, District Latur

... APPELLANT

VERSUS

1. The State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai - 32
2. The District Magistrate,
Latur, Dist. Latur
3. The Superintendent of Jail,
Central Prison, Aurangabad
(Copies to be served to the Public
Prosecutor, High Court of Bombay,
Bench at Aurangabad)

... RESPONDENTS

.....
Mr. R.A. Jaiswal, Advocate with
Mr. S.G. Ghongade, Advocate for petitioner
Mr. G.A. Kulkarni, A.P.P. for respondent
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment: 12th July, 2024
Date of pronouncing judgment 16th July, 2024.

JUDGMENT (PER R.G. AVACHAT J.) :

This Writ Petition takes exception to the order

dated 1/4/2024, passed by respondent No.2 District Magistrate, Latur, detaining the petitioner for a period of 12 months with a view to prevent him from indulging in the activities causing disturbance to public order. The order of detention passed by respondent No.2 was confirmed by the State of Maharashtra in Home Department (respondent No.1.).

2. The challenge is mainly on the ground of non-subjective satisfaction by the detaining authority. According to learned Advocate for the petitioner, the two in-camera statements relied on for passing the detention order have not been verified as has been expected by law. So far as regards the other crimes relied on for detaining the petitioner is concerned, he would submit that, it would at the most be a case of maintenance of law and order. The petitioner was allegedly found in possession of a knife. There was no statement of a witness claiming the appellant to have been brandished the knife so as to create terror in the vicinity at which he was found. According to him, one of the hands of the appellant was fractured. A plaster had been applied thereto. He placed on record medical papers in that regard. According to learned Advocate, it was just difficult for the petitioner to brandish a knife. Mere possession of a knife would at the most

be an offence of maintenance of law and order. So far as regards past 10 crimes registered against the petitioner are concerned, he would submit that the petitioner was on bail in each and every case. The law would take its course in taking those matters to logical end. The authorities concerned did not apply for cancellation of bail granted to the petitioner in any of those cases. He would further submit that, the order of detention has not been based on any of those crimes. The same is axiomatic from the order of detention itself. The learned Advocate relied on certain authoritative pronouncements of this Court and Apex Court as well. He ultimately urged for allowing the Writ Petition.

3. The learned A.P.P. would, on the other hand, submit that, paragraph No.3 of the detention order indicates the petitioner was involved in not less than 10 crimes. Some of them were very serious, registered under Sections 302, 394, 392 of the Indian Penal Code etc. He would further submit that, preventive action taken under Section 107 of the Criminal Procedure and externment order taken under Section 56(1)(B) of the Maharashtra Police Act did not yield result. The petitioner's criminal activities continued unabated. According to him, the in-camera statements have been duly verified. He

would further submit that, the order of detention was based on a crime registered under the Arms Act and two in-camera statements. The grounds of detention are serverable. Even the in-camera statements are held to have not been duly verified, the petitioner's detention must sustain on the ground of him to have indulged in an offence under the Arms Act. The learned A.P.P. took us through the detention order and the affidavit-in-reply to submit the detention order disclosed detaining authority's subjective satisfaction. According to learned A.P.P, the subjective satisfaction of the detaining authority can hardly be subject of judicial review. He. therefore, urged for dismissal of the petition.

4. Considered the submissions advanced. Perused the order of detention and the affidavit-in-reply. Before adverting to address the grounds of challenge to the order of detention, we need to have a look at certain definitions given in Section 2 of the MPDA Act. Section 2(a) and 2(b-1) of the MPDA Act read :-

“2. In this Act, unless the context otherwise requires, -

(a) “acting in any manner prejudicial to the maintenance of public order” means -

.....

(iv) in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.

Explanation:- For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health or disturbance in public safety and tranquility or disturbs the day to day life of the community by black-marketing in the essential commodities which is resulting in the artificial scarcity in the supply of such commodities and rises in the prices of essential commodities which ultimately causes inflation or disturbs the life of the community by producing and distributing pirated copies of music or film produces, thereby resulting in a loss of confidence in administration.

(b-1) “dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.”

5. Let us advert to the order of detention dated

1/4/2024.

True, in paragraph No.3 of the detention order there is reference of 10 crimes registered against the petitioner during a period from June 2019 to October 2023. The last crime in the chart was C.R. No.622/2023, registered for the offence punishable under Sections 323, 504, 506 read with Section 34 of the Indian Penal Code. It was a non-cognizable offence. The crime preceding to the registration of the said crime was C.R. No.113/2023 registered in March 2023. As such, there is a wide gap between the said crime and the impugned order of detention, meaning thereby, there was no proximity. (Live link).

6. It is true that, in view of the definition of 'dangerous person', his habituality in indulging in criminal activities has to be evident from registration of various crimes. True, the same is made out from number of crimes registered against the petitioner and mentioned in paragraph No.3 of the detention order.

7. It is also true that, two preventive measures were taken against the petitioner. One was in the nature of

externment proceedings that took place way back in September 2021 and Chapter proceedings under Section 107 in October 2023. The externment proceeding being old one, has no nexus with the crimes relied on for passing the order of detention. So far as regards Chapter Case under Section 107 of the Criminal Procedure Code is concerned, it appears that, same was initiated because of registration of non-cognizable crime being C.R. No.622/2023.

8. The detaining authority herself has observed in the detention order as under:

“However, said prosecution is not based on the offences mentioned in paragraph 3 of the above. These offences are shown to highlight your previous criminal background and the fact that your activities are causing alarm and insecurity among the general public.”

9. The same indicates that the past criminal history has been relied upon to find the petitioner likely to revert back to such criminal activities. The impugned order was however, based on the subsequent crime being C.R. No.64/2024, registered against the petitioner and two in-camera statements.

10. We have, therefore, to advert to the material, on the basis of which the detention order has been passed. First we take the two in-camera statements. Witness 'A' stated about the incident dated 14/1/2024, while Witness 'B' speaks about the incident dated 22/1/2024. According to both the witnesses, the petitioner had threatened them at knife point. Witness 'A' was robbed of Rs.200/- while Witness 'B' was made to give him two bottles of liquor for free.

11. Admittedly, the in-camera statements were required to be verified by a police officer of the rank of Deputy Superintendent of Police. Both the statements find place at Page Nos.220 and 221 of the petition. The concerned Dy.S.P. is said to have verified both the statements and put his note in following terms below both the statements.

"सदर साक्षीदार यांना समक्ष विचारपूस केली असता प्रस्तावित स्थानबद्ध इसमास ओळखत असून तो जबरी चोरी, महिलांची छेड काढणे, चोऱ्या करणे, धमकावून पैसे, वस्तू, दारूची मागणी करतो. साक्षीदार व परिसरातील लोक दहशतीखाली असल्याचे सांगतात."

"सदर साक्षीदार यांना समक्ष विचारपूस केली असता प्रस्तावित स्थानबद्ध इसमास ओळखत असून तो चाकूचा धाक दाखवून जबरीने पैसे उकळतो. वस्तू हिसकावणे, चोऱ्या करणे, महिलांची छेड काढणे अशा प्रकारचा गुन्हेगार असून साक्षीदार व परिसरातील लोक दहशतीखाली असल्याचे सांगतात."

12. Learned Advocate for the petitioner, relying on the judgment of this Court in case of **Mrs. Zabin Salim Hamja Shaikh Vs. Shri A.N. Roy & ors. [2006 ALL MR (Cri) 3324]**, submitted that, the in-camera statements have not been verified as has been expected by law. For better appreciation, it would be apposite to reproduce below paragraph Nos.7 and 8 of the said judgment, which read as under :

7. In support of the challenge to the detention order on the ground that the verification of the in-camera statement was not in keeping with the legal requirements and, therefore, it could not have been considered and relied upon to pass the detention order, Mr, Tripathi relied upon the following decisions of this Court:

- (i) Smt. Vijaya Raju Gupta v. Shri R.H. Mendonca and Ors. 2001 ALL MR (Cri) 48 and
- (ii) Abdul Kayyum Shafi Mohamed Shaikh v. M.N. Singh and Ors. 2002 ALL MR (Cri) 1729.

8. We have verified from the original record as produced before us by Mrs. Pai, the learned APP that (a) the verification made by the Asst. Commissioner of Police and as reproduced hereinabove is the same as in the original statement, (b) the proposal submitted to the Detaining Authority was prepared and forwarded by the Deputy Commissioner of Police, (c) the said proposal was based on the two in-camera statements as well as the verification made by the Asst. Commissioner of Police and (d) the verification so made by the Asst. Commissioner of Police remained silent about the truthfulness of the incidents which are covered by the said in-camera statements. The verification has dealt with the identification of the complainants, the contents

therein having been written as disclosed by the complainants, the complainants' signatures, the complainants having understood the contents of the statement as recorded by the Police Inspector and the satisfaction of the Asst. Commissioner of Police that the complainants were not willing to disclose their identity and if they had disclosed it, there would be danger to their life. The verification required to be done by the Senior Police Officer of such in-camera statements requires an additional condition to be met viz. the satisfaction of the verifying officer regarding the truthfulness of the incident that was claimed to have occurred and as disclosed by the respective complainants i.e. Witness "A" and Witness "B" in the instant case. Such a verification ensures the Senior Police Officer's subjective satisfaction that the statement as recorded by the Police Inspector or Senior Police Inspector was genuine, the identity of the witness was established and the incidents disclosed were found to be truthful by the said Senior Police Officer in the course of verification. These are the built in measures provided by the law laid down in the case of Phulwari Pathak (Supra) so that the Detaining Authority has before it the material to come to the conclusion that the detenu is a dangerous person within the meaning of Section 2 (b-1) of the MPDA Act. In Vijay Gupta's case (Supra) a Division Bench of this Court by referring to the judgment in the case of Phulwari Pathak (Supra) observed in para 6 as follows:

6. There remains no doubt in the light of the law laid down by the Apex Court that in camera statement of a person/ witness can be utilised by the detaining authority for the purpose of arriving at subjective satisfaction for passing the order of detention. However, the Apex Court made it clear that the facts stated in the materials relied upon should be true and have a reasonable nexus with the purpose for which the order is passed. Necessary corollary, therefore is that the detaining authority must be satisfied about the truthfulness of the statements made in the in camera statements. Testing it from this touchstone, we find that neither in the detention order nor in the grounds of

detention, the detaining authority has stated anything that he was satisfied about the truthfulness of the statements made in the in camera statements....”

(Underlining is ours)

The Division Bench of this Court had relied on the judgment of the Apex court in case of **Phulwari Pathak [2000 ALL MR (Cri) 1503 (S.C.)]**. Perusal of the said observations would indicate the authority is expected to verify the truthfulness/ probative value of the in-camera statements. The terms of verification produced in verbatim above would indicate non-compliance of this mandate. The learned A.P.P., therefore, came around to concede that even these two in-camera statements go, still the detention order can be sustained based on a crime to have been registered against the petitioner under Section 4 read with 25 of the Arms Act. The learned A.P.P. read over paragraphs No.8 and 11 of the affidavit-in-reply. According to the learned A.P.P., the recitals in the affidavit-in-reply and the order of detention passed after considering the criminal history of the petitioner would indicate subjective satisfaction of the detaining authority.

13. It is, therefore necessary for us to refer to the facts of C.R. No.64/2024. The F.I.R. was lodged by a Police

Constable attached to Vivekanand Chowk Police Chowki. As per the prosecution case, a secret information was received that the petitioner and his two associates were present near Manoj Bar at Kanheri Chowk. One of them (petitioner) was holding a sharp weapon in his hand. He was screaming there and causing danger to people, passers-by. The Police Constable who lodged the F.I.R. and his companions, Police Constables who were on patrolling duty, therefore, went to the place in front of Manoj Bar. They found the petitioner and two others present there with a motorbike. The petitioner had a knife in his hand. The length of the knife was 33 Cms. (21 Cms. blade and 12 Cms. grip). According to learned A.P.P., the secret information was to the effect that the petitioner was threatening the passers-by. During hearing of this Writ Petition, the petitioner placed on record certain medical papers with X-ray film, to submit that, one of his hands was fractured and plaster was applied while the alleged incident took place. The respondent – State has verified those medical papers. Those have not been disputed. True, on the given day, the petitioner was not indoor patient. The fact remains that, he had suffered a fracture to one of his hands. True, as per the prosecution case, the petitioner was found in possession of a knife in his another hand. On close reading of the papers

submitted by the sponsoring authority before the detaining authority, we do not come across any statement (even in-camera of the passers-by) to indicate that the tip of that was received by the informant that the petitioner was causing disturbance to the passers-by could be fortified. Needless to mention, mere possession of an arm (knife in this case) though is offence under Section 4 read with 25 of the Arms Act, the same at the most be an issue of maintenance of law and order. Although the detaining authority had a reason to believe, considering the petitioner's past criminal history that he may revert back to such criminal activities, causing disturbance of maintenance of public order, the crime that the petitioner was found in possession of a knife without the same to have been wielded or even brandished, it would not be prudential to observe the said facts to have potential to cause disturbance to maintenance of public order. The petitioner was even not arrested in the said crime. Although the crime was bailable, he could have been arrested and released on bail or even given notice under Section 41-A of the Cr.P.C. Be that as it may. The sole crime being C.R. No.64/2024 being found to have at the most created an issue of maintenance of law and order, we found the impugned order to have not been justified on the ground of subjective satisfaction. In our view, therefore, the

order impugned herein is liable to be set aside. The petition, therefore, succeeds. Hence the order:

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause (B).
- (ii) The petitioner be set at liberty forthwith if not required in any other case.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-