



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3288 OF 2023**

Mr. Vinay @ Vasant Patil

Age: 32 years Occ: business,
Residing at near Hanuman
Mandir, Village Daighar Gay,
Post Padale, Dist. Thane.
(Accused in Nashik Jail)

...Petitioner

Versus

1. State of Maharashtra

Through Secretary, Home
Department (Spl), Mantralaya,
Mumbai.

2. Commissioner of Police, Thane

Thane, District: Thane.

3. Sr. Inspector of Police,

Daighar Police Station

4. The Superintendent,

Nashik Central Prison, Nashik

...Respondents

Mr. Prabhakar Pandey for the petitioner

Mr. J. P. Yagnik, Additional PP for the State

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATED : 19th JANUARY 2024

JUDGMENT: (PER: GAURI GODSE, J.)

1. This petition was heard by us on 22nd December 2023 and judgment was reserved. However, whilst going through the order of detention, we were of the opinion that a ground which ought to have been taken was not taken in the petition, hence in the interest of justice the matter was listed for directions on 3rd January 2024. Accordingly, we granted leave to amend the petition and granted liberty to the learned APP to file an affidavit if necessary. Since there was a change in the assignment, pursuant to the administrative order dated 12th January 2024, the petition was listed before us on 19th January 2024. On that day we heard the respective parties and allowed the petition for reasons to be separately recorded.

2. By this petition, the petitioner challenges the order of detention bearing No. TC/PD/CO/MPDA/18/2023 dated 25th August 2023 issued by respondent no. 2-Commissioner of Police, Thane in exercise of the powers conferred by sub Section (2) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons, Video Pirates,

Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (**“the M.P.D.A. Act”**) for detaining the petitioner.

3. The aforesaid detention order is passed by relying upon two complaints registered against the petitioner vide CR No. 132 of 2023 dated 4th April 2023 registered with Shildaighar Police Station for offences punishable under Sections 509, 336, 427, 504, 506 of the Indian Penal Code and CR No. 243 of 2023 dated 16th June 2023 registered with Shildaighar Police Station for offences punishable under Sections 4, 25 of The Arms Act, 1959 and Section 135 of the Maharashtra Police Act. In CR No. 132 of 2023, it is stated that the petitioner is the complainant’s nephew and he is a drug addict and he often abuses and harasses the complainant and other relatives in connection with land disputes amongst the family members. Specific allegation against the petitioner in the said CR is that he destroyed flowerpots in front of complainant’s house and also put their lives in danger by throwing stones on the complainant’s house. It is also alleged that the petitioner abused the complainant and her daughter in

filthy language. In connection with the said CR, the petitioner was arrested on 5th April 2023 and was granted bail on the same day. CR No. 243 of 2023 is lodged at the behest of the police officer who is working at the crime investigation unit. It is stated that when the complainant and other staff were on duty, the complainant was informed that the petitioner was creating terror near a petrol pump by holding a deadly weapon in his hand. It is stated in the said CR that the petitioner was found shouting and abusing and threatening the people by holding an iron in his hand. The petitioner was arrested on 16th June 2023 in connection with the said CR and was granted bail on 17th June 2023.

4. The detaining authority has also relied upon 2 in-camera statements recorded on 18th June 2023 and 19th June 2023 with reference to the incident of the second week of May 2023 and the last week of May 2023 respectively. Witness 'A' of the in-camera statement stated that the petitioner and his associates came in front of his vehicle and by showing a sharp knife, threatened the witness and abused him, and forcibly took away money from the witness's pocket. It is also

stated that when the witness asked for help from the people passing by, the petitioner waived his knife and threatened them not to help the witness. Witness 'B' of the in-camera statement stated that when he was walking towards his home, the petitioner and his associates threatened him by showing a knife and extorted money from the witness. Thus, the detaining authority by relying upon the aforesaid two CRs and two in-camera statements has recorded subjective satisfaction that the petitioner is a dangerous person and is required to be detained to prevent him from indulging in any prejudicial activities in the future.

5. Learned counsel for the petitioner raised various grounds to challenge the detention order. Learned counsel for the petitioner submitted that the petitioner is not involved in any dangerous activities as defined in the MPDA Act. He submitted that the petitioner is falsely implicated in the CRs which are relied upon by the detaining authority. Learned counsel thus submitted that the detention order based on the incidents concerning private disputes shows non-application of mind on the part of the detaining authority and the

subjective satisfaction recorded is not based on any cogent material.

6. Learned counsel submitted that perusal of the detention order indicates that the detaining authority has relied upon only two CRs and two in-camera statements for recording the subjective satisfaction. In the initial paragraphs of the detention order, one CR registered against the petitioner and two externment proceedings initiated against the petitioner are referred to as an introduction to the criminal activities of the petitioner and it is also stated that the same is not relied upon by the detaining authority for forming subjective satisfaction for issuing the detention order. Learned counsel further states that in spite of the said reference, the detaining authority has relied upon the past stale incidents for arriving at a subjective satisfaction to hold the petitioner as a dangerous person. He submitted that paragraph 7 of the detention order shows that the detaining authority has relied upon the material which is stated to have been not relied upon for issuing the detention order. Learned counsel thus submitted that the contradictions in the ground of detention left the petitioner in a confused state of mind and was thus prevented from

filing an effective representation. He thus submitted that the rights of the petitioner under Article 22 (5) of the Constitution of India are violated. He therefore submitted that the detention order is vitiated and is required to be quashed and set aside.

7. Learned Additional PP supported the detention order by relying upon the affidavits of the detaining authority and the State Government. Learned Additional PP submitted that the allegations against the petitioner in both the CRs as well as the in-camera statements would indicate that the activities of the petitioner has caused disturbance in public order. He submitted that though in the CRs registered against the petitioner there appears to be private dispute between the petitioner and the complainant, the activities of the petitioner concern disturbance of public order. He submitted that the incidents of the in-camera statements are concerning the activities of the petitioner and his associates in threatening and assaulting the people for extortion of money. He thus submitted that there is no substance in the submissions made on behalf of the petitioner that the allegations against the petitioner are only private in nature which can

be dealt with under ordinary law and that preventive action against the petitioner is not necessary.

8. With the reference to the submissions made by the learned counsel for the petitioner regarding the petitioner's false implication in the complaints against the petitioner is concerned, he submitted that the same is irrelevant so far as deciding whether any preventive action is required against the petitioner in as much as the merits of the CRs registered against the petitioner cannot be the subject matter of the present petition.

9. With reference to the submissions made regarding subjective satisfaction recorded on the material, which is referred to as old incidents stated only as a reference in the detention order is concerned, learned Additional PP submitted that in paragraph 7 of the detention order, though the detaining authority has referred to three crimes committed by the petitioner, it is very specifically stated that only two crimes are relied upon for recording subjective satisfaction. Learned Additional PP submitted that the detaining authority has very specifically stated that since 2022, the petitioner continuously

committed three crimes one after the other, in which two crimes are relied upon in the present proposal. He submitted that two crimes relied upon by the detaining authority are again specifically mentioned in paragraph 7 of the detention order. He thus submitted that there is no substance in the submissions made on behalf of the petitioner that the old and stale incidents which are only referred to in the detention order are also relied upon for recording the subjective satisfaction. Learned Additional PP thus submitted that there is no substance in any of the grounds of challenge raised on behalf of the petitioner.

10. We have considered the submissions made by both the parties. We have perused the detention order as well as the affidavits relied upon by the learned Additional PP. Though various grounds are raised to challenge the detention order, it is not necessary to examine all the grounds, in as much as the petition ought to be allowed on the amended ground that the detaining authority has relied upon old and stale incidents which are referred to as not relied upon cases and thus the subjective satisfaction recorded by the detaining authority stands vitiated.

11. A perusal of the detention order indicates that in paragraph 3 of the detention order, the CR registered against the petitioner in the year 2022 is referred to, and there is also a reference to externment proceedings initiated against the petitioner. However, it is specifically stated that paragraphs 2 and 3 are introductions to the grounds of detention, and the facts mentioned in the said paragraphs are not relied upon by the detaining authority while forming the subjective satisfaction for issuing the detention order. Paragraph 4 of the detention order states that two CRs and two in-camera statements are relied-upon cases. The detaining authority in paragraph 7 has stated that from the incidents quoted in paragraphs 4(a), 4(b), 5(a) and 5(b), the detaining authority is subjectively satisfied that the petitioner is acting in a manner prejudicial to the maintenance of the public order, peace and tranquillity. In the same paragraphs, the detaining authority has further stated that he is aware that since 2022, the petitioner has continuously committed three crimes, one after the other, in which two crimes are relied upon.

12. The reasonings recorded by the detaining authority in

paragraphs 6 to 11 indicate that the detaining authority has relied upon old and stale cases, which are said to have been referred to in the detention order only as an introduction to the criminal activities of the petitioner. Though paragraph 4 of the detention order clearly states that only two crimes and two in-camera statements are relied upon cases, the detaining authority, while recording the subjective satisfaction, also relied upon the old and stale cases. Thus, there is no clarity in the subjective satisfaction recorded by the detaining authority, and there is non-application of mind on the part of the detaining authority which vitiates the detention order. The contents of the detention order indicate that subjective satisfaction is recorded based on extraneous material, which is said to have been referred, only to show past incidents where the petitioner was involved in prejudicial activities. Thus, the subjective satisfaction recorded by the detaining authority is also based on old and stale cases, which is extraneous material as reflected from the detention order. Thus, we are of the view that there is non-application of mind on the part of the detaining authority, and thus, the same vitiates the detention order.

The law relating to preventive detention being a drastic law affecting the personal liberty of a person is required to be applied with utmost care and caution. Thus, any kind of non-application of mind will vitiate the detention order. We are also of the view that the ambiguity in the grounds of detention recorded by the detaining authority has also deprived the petitioner of making an effective representation. Thus, the petitioner's right under Article 22 (5) of the Constitution of India is violated.

13. Hence, for the reasons recorded above, the petition is allowed by passing the following order:

ORDER

- i) The petition is allowed;
- ii) The impugned detention order dated 25.8.2023 passed by respondent no. 2-Commissioner of Police, Thane as against the petitioner under the 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 is quashed and set aside.

iii) The petitioner be released forthwith, if not required in any other case.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.