

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3794 OF 2023

Pullusingh @ Jaysingh Kalusingh Junni	]	
Age 28 years, Occ.: Labour	]	
Residing at Survey No. 86, Galli No. 5,	]	
Birajdar Nagar, Vaidwadi,	]	
Hadapsar, Pune.	]	
(At present Yerwada Jail)	]	... Petitioner

V/s.

1. The Commissioner of Police,	]	
Pune City, Pune.	]	
2. The State of Maharashtra	]	
(Through The Ld. Principal Secretary,	]	
Home Department, Mumbai).	]	
3. The Superintendent of Jail,	]	
Nagpur Central Prison, Nagpur.	]	... Respondents

Mr. Vikas Shivarkar a/w Mr. Vivek Joshi for Petitioner.
Mr. J.P. Yagnik, A.P.P. for Respondents-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 22nd FEBRUARY, 2024.
PRONOUNCED ON : 13th MARCH, 2024.**

JUDGMENT (PER- A. S. GADKARI, J.) :-

1) The Detention Order dated 29th March 2023, under Section 3(2) 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 (for short, “ the said Act”) issued by the Respondent No.1, thereby directing the Petitioner to be detained under the said Act, is challenged by the present Petition under Article 226 of the Constitution of India.

2) Heard Mr. Shivarkar, learned Advocate for the Petitioner and Mr. Yagnik, learned A.P.P. for the Respondents-State. Perused entire record produced before us.

3) The Petitioner has challenged the aforestated Detention Order on various grounds, as more specifically raised in para No.5 of the Petition, however Mr. Shivarkar, learned Advocate for the Petitioner restricted his arguments to the following grounds :-

(i) That, the disturbances allegedly caused by the Petitioner referred to in the grounds of detention served upon the Petitioner, at the most can be said to have affected few individuals and not the society at large and therefore the public Order cannot be said to have affected.

(ii) That, in Crime No. 71 of 2023 dated 25th February 2023 registered with Bundgarden Police Station, District Pune, the informant and his relatives have settled the said case with the group of Petitioner, as they are *inter se* relatives. Hence, the said relatives gave their ‘no objection’ to grant bail to the Petitioner. As the said relatives have settled the matter with the Petitioner, it is clear that, the Petitioner was not likely to disturb public Order after he was released on bail.

(iii) That, the confidential statements of witnesses recorded by the police and subsequently verified by the concerned Authority are not trustworthy. That, though the witness 'A' has stated that, the Petitioner beat him with an iron rod on his hand, the said witness went home. That, the said witness has not clarified, as to, whether he went to any hospital for treatment at least on the subsequent day and therefore it is clear that, the said witness is illusory and fictitious.

(iv) The witness 'B' is also a fictitious entity put up by the police to clamp preventive detention on the Petitioner.

(v) Learned Advocate for the Petitioner submitted that, 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. It is the potentiality of the Act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. Even the contravention in its effect is confined only to a few individuals directly involved as distinguished from a wide spectrum of public, it would raise a problem of law and Order only, however certainly not public order as such.

In support of his contention he relied on a decision of the Division Bench of this Court in the case of *Kamlakar Shankar Patil & Ors. Vs. B. Akashi, Commissioner of Police, Thane & Ors.*, reported in 1994 Cri. L. J. 1870.

He therefore prayed that, the impugned Detention Order may be

quashed and set-aside.

4) Per contra Mr. Yagnik, learned A.P.P. vehemently opposed the Petition and submitted that, the content of F.I.R. No. 71 of 2023 would reveal that, the Petitioner caused disturbance to the public order and the even tempo of the life of the community at the Sassoon Hospital, Pune was breached. That, the in camera statements recorded of two witnesses have been duly verified by the concerned Authority and it apparently discloses proper verification regarding the truthfulness of such statements and the identity of the person to the satisfaction of the Officer verifying the statement. That, the said two statements of witnesses 'A' and 'B' recorded 'in camera' also reveal that, the Petitioner created problem with public order in the locality, to disturb the even tempo of the life of the community making it prejudicial to the maintenance of public Order.

4.1) He submitted that, the detaining Authority after considering all the materials placed before it has reached to the conclusion that, the Petitioner is a 'dangerous person', as defined under Section 2 (b-1) of the said Act. That, taking into consideration the prejudicial activities of the Petitioner, the detaining Authority has rightly issued the impugned Detention Order. He submitted that, there are no merits in the Petition and therefore it may be dismissed.

5) In the present case, though the Detaining Authority in the grounds of Detention has referred to various earlier crimes registered against

the Petitioner and preventive actions taken against him in the past, present Detention Order is based on two crimes registered against the Petitioner in near past and two 'in camera' statements of witnesses, who due to reign of terror spread by the Petitioner, did not lodge complaint against him with a fear of retaliation.

6) The two crimes relied upon by the Sponsoring Authority and accepted by the Detaining Authority while reaching to its subjective satisfaction that the Petitioner is a "Dangerous Person" are namely (i) C.R. No.345 of 2023 dated 25th February, 2023 registered with Hadapsar Police Station under Sections 294, 308, 324, 323, 504, 506, 34, 427, 452 of IPC and under Sections 37(1)(3)/135 of MPA and (ii) C.R. No.71 of 2023 dated 25th February, 2023 registered with Bandgarden Police Station under Sections 308, 143, 147, 148, 149, 323, 504, 506(2) of IPC, under Sections 37(1)(3)/135 of MPA, under Section 4(25) of Arms Act and under Sections 3, 7 of Cri. Law amd. Act.

6.1) In the first crime i.e. in CR No.345 of 2023, Smt. Sapna Jitendra Tak is the Complainant.

6.2) It is the prosecution case that, on 24th February, 2023 at about 12.30 p.m. the Complainant's son Jitinsingh Tak and her nephew Krushnasingh Junni aged about 14 years had verbal exchanges in filthy language. Therefore Sagarsingh Junni called the Complainant on mobile and threatened that, her son is abusing in filthy language, explain him otherwise,

he will broke his hands and legs. The complainant replied that, she will admonish her son, he may admonish his son. Thereafter when the Complainant and her son Jitinsingh were at home, at that time keeping grudge in the mind, the Petitioner, Sagarsingh Junni, Deepmala Sagarsingh Junni, Sawansingh Junni forcefully entered her house, abused her in filthy language and assaulted her with fist blows. Petitioner assaulted Jitinsingh with an iron rod which he dodged with his left hand. Jitinsingh sustained injuries. Petitioner along with his accomplices damaged Complainant's household things and left the spot. Complainant went to Police Station with her son, whereupon the police gave her medical yadi and thereafter she went for treatment of her son at Sassoon Hospital. Petitioner was arrested on 25th February, 2023 and remanded to police custody upto 27th February, 2023.

6.3) The second crime is also registered on 25th February, 2023. It is a sequel to the crime No.345 of 2023. In the present crime i.e. C.R. No.71 of 2023 Shri. Lakhansingh Jurmansingh Junni is the Complainant.

6.4) As noted earlier, after commission of the earlier crime i.e. C.R. No.345 of 2023, when the complainant therein was given police yadi for taking treatment from Government Hospital, by the concerned police station, she took her son Jitinsingh to Sassoon Hospital.

6.5) At around 4.00 p.m. sister of Sagarsingh namely Laxmi Bhond had an altercation with Pankaur Tak, Ajjokaur Tak, Sapnakaur Tak the relatives of the complainant. At that time, Sagarsingh's brother Savansingh

Junni and his relatives Jitendrasingh and Sukhbirsingh Junni started beating the complainant and Rajsingh Yuvrasing Junni. While the said persons tried to run from the said spot, at that time Savansingh tried to give a blow of sharp weapon on the chest of Rajsingh, however he avoided it. Savansingh again gave blow to Rajsingh which he warded off by hand and sustained injury. At the same time, Sagarsingh's son Sukhbirsingh took out sharp weapon and handed it to the Petitioner. Petitioner raised it towards the people who were present at ward No.40 of the said hospital and threatened them that, "कोई बचाने के लिए सामने आए तो जानसे मार दुंगा." Due to the said threat given by the Petitioner, people present there ran away in fear. Petitioner and Sagarsingh Junni abused and threatened the other persons to kill them and left the spot. Complainant and his relatives also fled away from Sassoon Hospital. The police arrested the Petitioner on 27th February, 2023 and he was released on bail by the Court of competent jurisdiction on 6th March, 2023.

7) It is to be noted here that, as far as the first crime i.e. C.R. No.345 of 2023 is concerned, it was committed by the Petitioner under Sections 308, 324 and other Sections of the IPC as noted hereinabove. It occurred in the house of the complainant therein and therefore public peace or public order as such was not breached.

7.1) As far as the second crime i.e. C.R. No.71 of 2023 is concerned, it is apparent that, the Petitioner committed the said crime at a public place

i.e. at the said hospital and threatened all the persons thereof by brandishing sharp edged weapon at them with general threat of dire consequences to all. Therefore it was not confined to a few individuals directly involved, but it affected a wide spectrum of people giving rise a problem of public peace, tranquility and public Order and not only law and Order as such.

8) Taking into consideration the seriousness of the offence and more particularly C.R. No.71 of 2023 mentioned hereinabove, the Senior Inspector of Police of Hadapsar Police Station, Pune conducted a confidential inquiry about the criminal activities of the Petitioner. It revealed that, the Petitioner has terrorized all the residents of the area where he lives. The witnesses were/are not ready and willing to come forward to give complaint against the Petitioner of his criminal activities. After police gave assurances to witnesses, two witnesses came forward and their 'in camera' statements have been recorded. The said statements of witnesses have been duly verified by the Assistant Commissioner of Police, Hadapsar Division, Pune City as per the procedure. The said witnesses after assurance given by the said Authority have stated that, whatever stated in their statements dated 4th March, 2023 and 6th March, 2023, respectively is true and correct.

8.1) Perusal of statement of witness "A" would clearly indicate that, he was beaten by the Petitioner and the Petitioner robbed Rs.1,200/- from his pocket. When the said witness screamed for help from the people present there, they ran away due to the reign of terror spread by the Petitioner in the

said locality.

8.2) It thus clearly appears to this Court that, the Petitioner is indulging and/or acting in a manner prejudicial to the maintenance of public order and is a 'dangerous person' as defined in Section 2(b-1) of the said Act.

9) It is the settled position of law that, preventive detention Order can be passed even without a successful prosecution. Even withdrawal of prosecution would not deter the Detaining Authority from clamping the detention Order in case it is subjectively satisfied for the need thereof. That, once the in-camera statement apparently discloses proper verification regarding the truthfulness of such statement and the identity of the person to the satisfaction of the Officer verifying the statement, certainly no fault can be found with the verification and/or the in-camera statement of the protected witness. Reliance is placed in the case of *Anil Dattu Pawar Vs. Shri Himansu Roy, Commissioner of Police, Nashik & Ors., reported in 2005 ALL MR (Cri) 2144.*

10) After taking into consideration aforesaid facts and the settled legal position, we are of the view that, the Detaining Authority has not committed any error while issuing the impugned Detention Order.

11) There are no merits in the Petition and is accordingly dismissed.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)