

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 78 OF 2024

Harshad Sunil Patankar

Age : 25 years, Occ : Labour,

Residing at : Bethelnagar, Sharanpur,

Nashik.

.... Petitioner

v/s.

- 1) The Commissioner of Police, Nashik
Opposite K.T.H.M. College,
Gangapur Road, Nashik
 - 2) The State of Maharashtra
Through Addl. Chief Secretary (Home),
Home Department (Special),
Government of Maharashtra,
Mumbai – 400032
 - 3) Chairman, Advisory Board,
C/o. Desk Officer, Desk – 10,
Home Department (Special),
Mantralaya, Mumbai – 400032.
 - 4) The Jailor, Nashik Road Central Prison,
Jail Road, Nashik Road, Nashik
- Respondents

Mr. Himanshu Gavit a/w. Mr. Rohit Patil and Mr. Akshay Bankapur
for the Petitioner.

Mr. J.P. Yagnik, APP for the State.

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

**RESERVED ON : 10th APRIL, 2024.
PRONOUNCED ON : 19th APRIL, 2024.**

JUDGMENT : (PER : SHYAM C. CHANDAK, J.) :-

- 1) Petitioner has challenged his detention in furtherance of the

Order dated 24th July, 2023 passed by the Respondent No.1, the Commissioner of Police, Nashik City, under Section 3(2) 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 'the MPDA Act'), by invoking jurisdiction of this Court under Article 226 of the Constitution of India.

1.1) Along with the Order of Detention dated 24th July, 2023 the Committal Order of even date and Grounds of Detention dated 24th July, 2023 were served upon the Petitioner directing that, the Petitioner be detained in Nashik Road Central Prison, Nashik.

2) Heard Mr. Gavit, learned Advocate for the Petitioner and Mr. Yagnik, learned A.P.P. for the State. Perused entire record produced before us and the Affidavits-in-reply filed by the Respondent Nos.1, 2 and 4.

3) Learned Advocate for the Petitioner has assailed the impugned Order of Detention mainly on Grounds 'D' and 'E' in paragraph no.7 of the Petition. In view of the said grounds, the learned Advocate submitted that, the last of the 5 crimes which were considered as a ground for passing the Detention Order, was registered on 24th April, 2023. The Petitioner came to be arrested in the said 5th crime on 28th June, 2023. The Petitioner was produced before the Judicial Magistrate First Class on 29th June, 2023. The Petitioner applied for bail on 11th July, 2023. However, the proposal for

detention of the Petitioner was sent on 18th July, 2023 i.e., after a period of about 03 months from the date of registration of the offence and 07 days after filing of the bail application by the Petitioner. This delay indicates that, the Proposing Authority at no point of time apprehended that, there was possibility of the Petitioner being released on bail.

3.1) It is submitted that, the Detaining Authority has merely averred to the fact that, the Petitioner had filed an Application seeking bail in the said last offence in which he was arrested. However, nowhere in the Grounds of Detention, the Detaining Authority has expressed the possibility of the Petitioner securing bail in due course and after release on bail, creating further law and order problems notwithstanding, in the past, the Petitioner was involved in various non-bailable crimes.

3.2) In view of the aforesaid, according to the learned Advocate for the Petitioner, the Detention Order is not sustainable in law. To buttress the submissions, the learned Advocate has relied upon following decisions:

- i) *Gousiya Firoz Khan v/s. The Commissioner of Police, Pune City and ors. in Criminal Writ Petition No.3789/2022 ;*
- ii) *Nitin Baban Pawar v/s. The Commissioner of Police, Thane and ors. in Criminal Writ Petition No.2091/2022 ;*
- iii) *Ankush Vaman Pawar v/s. Commissioner of Police and others in Criminal Writ Petition No.2021 of 2018.*

4) *Per contra*, learned A.P.P. submitted that, there is no delay in forwarding the proposal for Detention Order. In the grounds for passing

the Order of Detention, the Detaining Authority has clearly stated that the Petitioner is likely to secure bail in the last of the 5 crimes which were considered to pass the Order of Detention. The two in-camera statements clearly shows that, the Petitioner's constant criminal activities has affected the public order to a great extent. It is settled principle of law that 'bail is rule and jail is an exception'. Therefore, looking at the nature of the last offence committed by the Petitioner and the criminal history, there was every possibility of Petitioner's release on bail and then his committing further crimes of serious nature. As such, there is no merit in the Petition.

5) The details of the last 05 offences which were considered to pass the Detention Order, are as under :-

Sr. No.	Police Station	Crime and Sections No.	Date of Registration	Current Status
1	Sarkarwada	26/2023 u/s. 326, 323, 504, 506, 34 of IPC r/w. u/s. 142, 135 of MP Act	11/02/2023	Pending on Investigation
2	Sarkarwada	54/2023 u/s. 427, 34 of IPC r/w. u/s. 4/25 of Arms Act, r/w. u/s. 142, 135 of MP Act	20/03/2023	Pending on Investigation
3	Panchavati	138/2023 u/s. 452, 427, 506, 34 of IPC r/w. u/s. 4/25 of Arms Act r/w. u/s. 135 of MP Act	20/03/2023	Pending on Investigation
4	Gangapur	67/2023 u/s. 436 of IPC	20/03/2023	Pending on Investigation
5	Sarkarwada	88/2023 u/s. 324, 323, 427, 504, 506, 34 of IPC r/w. 3/25 of Arms act.	24/04/2023	Pending on Investigation

6) The in-camera statement of Witnesses 'A' and 'B' shows that, said witnesses and the Petitioner are residing in the same area. The Petitioner has been doing hooliganism for the last 07-08 years and many

offences for assault and robbery have been registered against him. Police have arrested the Petitioner and his associates along with weapons. Therefore, terror is created in the minds of the businessman of Sharanpur and surrounding area. On the strength of this terror, the Petitioner threatens and assaults the shopkeepers, businessman and common public from that area and rob money from them. Every month, the Petitioner extort money at the point of weapon from small and big businessman in the Tibetan Market area. Because of the Petitioner's fear and terror, no one dares to complaint against him.

7) The statement of Witness 'A' shows that, in the first week of February, 2023, at about 09:00 p.m., when the witness headed towards Tibetan Market for taking food parcel, the Petitioner and his associates abused, threatened and kicked the witness and robbed him of Rs.1,500/- at a gun point. Consequently, the nearby shopkeepers feared and started shutting their shops and passersby too ran helter-skelter.

7.1) The statement of Witness 'B' shows that, in the last week of January, 2023, at about 09:00 p.m. when the witness heading towards Dwarka Circle for work, the Petitioner and his associate threatened said Witness at the point of gun and robbed him of Rs.1,500/- by assaulting and kicking. At that time, the roadside stallholders and people ran away helter-skelter due to fear of the Petitioner.

8) Considering the occurrences/prosecution story in the last 05

offences and the material in the in-camera statement of Witnesses 'A' and 'B', it is evident that, the said criminal activities of the Petitioner are not only creating problem of 'law and order' but also of 'public order'.

9) Record indicates that, immediately after the arrest of the Petitioner on 28th June 2023 in the last crime bearing FIR No.88/2023, the proposal for Detention Order was moved on 18th July, 2023 and the Detention Order came to be passed on 24th July, 2023. As such there is no substance in the submissions by learned Advocate for the Petitioner that there is more than 03 months delay in submitting the proposal for Detention Order.

10) In the case of *Kamarunissa v/s. Union of India* reported in *1991 (1) Bom.C.R. 410 S.C.*, in paragraph 13, the Hon'ble Supreme Court declared the proposition of law in the following words :-

"13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to

oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in the case of Ramesh Yadav (supra) was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore find it difficult to accept the contention of the counsel for the Petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the, detenus were in custody.”

10.1) In view of the aforesaid enunciation by the Hon’ble Supreme Court, this Court in the case of *Ankush Waman Pawar v/s. Commissioner of Police and others* reported in 2018 (3) Bom.C.R. (Cri.) 706, in paragraph 11, has held thus :-

“11.Though there is no embargo on the detaining authority taking recourse to the preventive detention enactment, there is a requirement that the detaining authority is satisfied on the basis of the material placed before him that such a detenu is likely to secure freedom at a future point of time and that he would indulge himself in prejudicial activities, which he has been indulging in the past. Thus, what is imperative is the subjective

satisfaction of the detaining authority to form an opinion about the possibility of the detenu indulging into prejudicial activities on he being released on bail and that there is a possibility of he being released on bail, even though on earlier occasions, the bail application has been rejected. A mere apprehension or a guess work without any supporting material will not justify the invocation of powers of detention by the detaining authority specifically when the detenu is in custody and his bail applications have already been rejected....”

10.2) In the case of *A. Shanthi (SMT) V/s. Govt. of T. N. and Others (2006) 9 SCC 711*, there was no cogent material before the Detaining Authority on the basis of which the Detaining Authority could be satisfied that the detenu was likely to be released on bail. It was held that, the inference has to be drawn from the available material on record. In the absence of such material on record the mere *ipse dixit* of the Detaining Authority is not sufficient to sustain the Order of Detention.

10.3) In *A. Geetha Vs. State of T.N. And Anr., (2006) 7 SCC 603*; and *Ibrahim Nazeer Vs. State of T.N. and Anr., (2006) 6 SCC 64*, it has been held that, even if no bail application of the petitioner is pending but if in similar cases bail has been granted, then this is a good ground for the subjective satisfaction of the detaining authority to pass the detention order.

11) Considering the settled law thus, what is imperative to pass a Detention Order in such matters is availability of certain material for the

subjective satisfaction of the detaining authority to form an opinion about the possibility of the detenu indulging into prejudicial activities on he being released on bail and that there is a possibility of he being released on bail. It has to be decided in the facts of the case as to whether there was material in support of the Detaining Authority for coming to the conclusion that there was any real possibility of the detenu being coming out on bail.

12) In the case in hand, in the Grounds of Detention, the Detaining Authority considered the date of arrest of the Petitioner in the first four crimes and the date of grant of regular/anticipatory bail therein. In view of this history of bail in the last four crimes, the Detaining Authority noted that, whenever the Petitioner is out on bail, he commits serious crimes. In the last crime of the criminal history of the Petitioner i.e., C.R.No.186/2022, registered at Indiranagar Police Station, which was not considered for passing the Detention Order, the Petitioner was arrested on 10th November, 2022 and released on bail. Thereafter, the Petitioner has committed the last 5th crime within short span of 05-06 months. The 2nd, 3rd and 4th of the said last five crimes have been committed on the same day i.e., on 20th March, 2023. In the 4th crime the Petitioner was admitted to anticipatory bail on 25th May, 2023. However, before that, he committed the 5th crime on 24th April 2023. Therefore, there was every possibility of the Petitioner indulging into prejudicial activities on he being released on bail in the 5th crime.

12.1) The 5th crime bearing FIR No.88/2023 was registered against the Petitioner on allegations that, on 24rd April 2023, at about 01:30 a.m., while the informant in that crime was going home, he halted at a beetle nut shop. At that time, the Petitioner with his two associates, threatened said informant at the point of Pistol (*Katta*-country made revolver), abused in filthy language, voluntarily caused him hurt with stone and damaged the motorcycle in his possession. In this crime the Petitioner was arrested on 29th June 2023 and remanded to judicial custody till 12th July 2023. Meanwhile, the Petitioner filed a bail application on 11th July, 2023. In this crime, except the offence under Section 3/25 of Arms Act, the rest offences under Sections 323, 324, 504, 506, 427 r/w.34 of I.P.C. were bailable. Considering the Petitioner was on bail in the first 4 crimes, there was reasonable possibility of the Petitioner's release on bail in this 5th crime. As such, the Police Inspector, Crime Branch, Nashik initiated the secret inquiry against the Petitioner, recorded the in-camera statement on 14th and 15th July 2023 and completing the rest procedure, the proposal for Detention Order was soon submitted on 18th July, 2023.

12.2) The 1st of the last 5 crimes was involving offence punishable under Section 326 pf the I.P.C., thus, said crime was more serious than the last of the said 5 crimes. However, the Petitioner was released on bail. The subsequent 3 crimes were less serious. Therefore, there was reasonable possibility of the Petitioner being released on bail in the said 5th crime also.

The said 5 crimes were committed in quick succession. Out of it, the first 2 were committed when the Petitioner was externed from Nashik or just after his externment period was over.

12.3) In view thereof, the opinion of the Detaining Authority that, it was assured that, in future the Petitioner will participate in the criminal activities again once granted bail and it shall prove to be a great obstruction in maintaining the public order, appears reasonable and well-founded and not mere *ipse dixit*. Thus, there is no substance in the contention of the Petitioner raised in the said two grounds to call the Detention Order as illegal or not justifiable. As a result, there are no merits in the Petition and is liable to be dismissed.

13) Petition is dismissed.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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