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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.161 OF 2024

Vinod Tuljaram Bandichode	]	..	Petitioner
vs.			
State of Maharashtra & Ors.	]	..	Respondents

Mr.Shailsh Kharat for the Petitioner.

Mr.S.V. Gavand, APP for the State.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 15th JULY, 2024.

P.C.

1] The Petition raise challenge to the Detention Order dated 04.10.2023, passed by the Commissioner of Police, Pune City, detaining him, under the provisions of 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 Act of 1981'), so as to prevent him from acting in any manner prejudicial to the maintenance of public order.

Pursuant to the said order, by a committal order passed on the same date, he is directed to be detained in Nagpur Central Prison, subject to the conditions imposed therein.

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2] In compliance with the provisions of the Act of 1981, the grounds of detention were communicated to the detenu separately on the very same day and the learned counsel Mr. Kharat representing the Petitioner has invited our attention to the inconsistency in the grounds of detention and it is on this ground, since the Detaining Authority has not subjectively satisfied himself that he is a 'dangerous person' as defined in Section 2(b-1), the order of detention is vitiated.

Elaborating the said submission, Mr. Kharat has invited our attention to the grounds, which are communicated to the Petitioner, which record as under :-

"2. You are a weapon-wielding dangerous recidivist of violent nature indulging in criminal activities that foster terror in society. Thereby, you have become a perpetual danger to the lives and properties of people residing and carrying out their daily activities and vocations in the jurisdiction of Hadapsar police station, Pune city. You and your accomplices move, armed with deadly weapons such as sickle, knife etc and do not hesitate to use the same while committing offences such as attempt to murder, robbery, grievous hurt, hurt, riot, possessing illegal arms etc. You also do not hesitate to use these deadly weapons to threaten the peace-loving citizens of the above- mentioned areas. While you and your accomplices are engaged in your violent criminal activities, you also threaten people not to complain to Police about your criminal activities. Thus, you have made yourself a virtual terror on account of your below mentioned criminal activities. You have been habitually committing offences under Chapters XVI and XVII of the Indian Penal Code as well as under Chapter V of the Arms Act and you are thus a 'Dangerous Person' as defined under Section 2(b-1) of the said Act. Further, your criminal activities are prejudicial to the maintenance of public order."

3] In Para 3 the Detaining Authority has enlisted the past offences and preventive actions taken against him and in Para 3.1, it is categorically stated as below :-

"The past offences mentioned below in the chart of offence have not been relied upon while passing the order of detention but is only referred to show that you have habitually been committing serious offences. Your criminal history is shown in the following charge."

The chart contain list of 5 offences registered with Hadapsar Police Station from the year 2019 to 2022 and the cases are shown pending in the Court.

The Detaining Authority has made a further declaration, that in the above mentioned offences, the detenu has been arrested, but it had no reformatory effect and rather, his illegal and dangerous criminal activities continue to show an ascending trend.

4] In addition to the above, in Clause 3.2 the Detaining Authority has referred to the preventive actions, initiated against the detenu, so as to deter him from committing crime and this includes two chapter cases registered in the year 2020 and 2023 respectively.

Further recording that even preventive actions had no deterrent effect and he continued to commit serious offences adversely affecting the maintenance of public order in the jurisdiction of Hadapsar Police Station, Pune city, one offence registered on 26.08.2023 with Hadapsar Police Station i.e. CR No.1272/2023, which is under investigation, is specifically relied upon.

The Detaining Authority in Para 3.2 offer a clarification that the Detention Order is not based upon the preventive actions, which are only shown to highlight his desperate tendencies to commit violent crime, but his recent involvement in the offence registered with Hadapsar Police Station, which is of serious nature and since it was suggestive of his violent tendencies and inclinations to perpetuate his criminal activities, he deserve classification as 'Dangerous person'.

5] By relying upon the said CR, in addition to two in camera statements, the details of which are to be found in Para 6.1 and 6.2 of the Detention Order, the Detaining Authority has arrived at a conclusion that the activities of the detenu are prejudicial to the maintenance of public order and since it is apprehended that he may continue with the

activities, it is necessary to detain him from preventing in his further acts, which shall be prejudicial to the public order.

6] In Para 8, the Detaining Authority has specifically recorded as under :-

“8. I have mentioned the offences and preventive actions taken in Para 3, 3.1 and 3.2 of the grounds of detention to show that you are habitual criminal involved in continuous criminal activities. Accordingly I had relied upon the material mentioned in Para 5.1 and 6.1 & 6.2 of the grounds of detention to arrive at my subjective satisfaction that you are a Dangerous Person as defined in Para 2 (b-1) of the M. P. D. A. act and your criminal activities are prejudicial to maintenance of public order. Presently, you are released on bail by the concerned Hon'ble Court, Pune in the offence of (1) Hadapsar Police Station, Pune CR. No. 1272/2023, u/s 324, 504, 506 of IPC & u/s 4(25) of Arms act & u/s 37(1)(3)/135 of MPA & u/s 3, 7 of Criminal Law Amendment Act. In view of your tendencies and inclinations reflected in the offence committed by you as stated above as well as the incidents recorded in the 'In-Camera' statements, I am further satisfied that after availing bail facility and becoming a free person, you again are likely to revert to similar activities. These are prejudicial to the maintenance of public order in future and it is necessary to detain you under the said Act to prevent you from acting in such prejudicial manner in future.”

7] The learned counsel for the Petitioner, by taking us to the grounds of detention, the relevant extracts of which we have reproduced above, has urged before us that the Detaining Authority thus has specifically spelt out that the past crime registered against the detenu in Column No.3.1 and the preventive actions enumerated in Column No.3.2, do not form the basis of the order of detention, which is passed by relying only upon the latest crime which is registered against the detenu on 26.08.2023 with Hadapsar Police Station, invoking Sections 324, 504, 506 of the IPC and Section 4(25) of the Arms Act and Section 37(1)(3)/135 of the MPA and Section 3, 7 of the Criminal Law Amendment Act, in which he is arrested on 27.08.2023.

The learned counsel would place reliance upon the decision of the Division Bench of this Court (Criminal Writ Petition No.846/2021) in

the case of **Ganesh alias Gajaraj Sainath Patil vs. State of Maharashtra & Ors.** dated 29.06.2021, which in turn has referred to an earlier decision delivered by this Court in the case of **Jay @ Nunya Rajesh Bhosale vs. The Commissioner of Police, Pune & Ors.**, 2015 ALL MR (Cri) 4437.

8] We find substance in the submission advanced by Mr.Kharat, on behalf of the Petitioner, as we have taken note of the activities of a detenu which would amount to he being classified as 'Dangerous Person'.

Section 2(b-1) of the Act of 1981 define the term 'Dangerous Person' as below :-

“acting in any manner prejudicial to the maintenance of public order” as defined in Section 2(a) , in case of means, 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.”

9] In order to bring a person within the purport of 'Dangerous Person' , he should be a person, who either by himself or as a member or leader of a gang, is habitually involved or habitually commits or attempts to commit or abets the commission of the offences which are 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.

10] This definition was considered in great detail in the the decision of **Jay @ Nunya Rajesh Bhosale** (*supra*), where a conclusion was derived that a solitary act in form of a CR would not constitute a 'habit' and the relevant observations of the Division Bench deserve reproduction :-

"10. Thus, a perusal of the Section 2(b-1) would show that if the person singly or as a member or a leader of a gang "habitually commits" or attempts to commit or abets the commission of any offence punishable under Chapter XVI or Chapter XVII of the IPC or Chapter V of the Arms Act, he would be a dangerous person in terms of Section 2(b-1) of the MPDA Act. Just as a single swallow does not make a summer a solitary act, does not constitute a habit. In the instant case, after the three incamera statements are excluded from consideration as the verification of all the incamera statements by the ACP was not furnished to the detenu and CR. No. 3088 of 2015 cannot be taken into consideration, for the reasons stated in paragraph 7 above by us, that leaves us to only with CR No. 91 of 2015. We shall now proceed to examine whether on the basis of this CR, the detenu can be held to be a dangerous person so as to sustain the order of detention.

11. On applying 5-A of MPDA Act, only CR No. 91 of 2015 remains. In such case it can be held that the detention order is issued only on the basis of CR No. 91 of 2015. This solitary act would not constitute a "habit". In our view on the basis of the said solitary CR No. 91 of 2015 it cannot be said that the petitioner - detenu "habitually commits" or attempts to commit or abets the commission of any of the offences mentioned in Section 2(b-1) of the MPDA Act and since the detenu has been detained as he is a "dangerous person", the impugned detention order would not be sustainable in law."

11] This decision relied upon in **Ganesh alias Gajaraj Sainath Patil** (*supra*) in particular record that it is necessary that a person who is detained as a dangerous person must be habitually committing the offences, that are specified in the definition, which disturbs public order. A solitary act, therefore, would not constitute, 'habit' and despite enlisting the cases in the past, which are not relied upon for passing an order of detention, it would be foul of the ingredients of Section 2(b-1).

12] We are completely in agreement with the aforesaid view expressed by the earlier Division Bench as it is a trite position of law that a provision in the statute shall be read as it is framed and it is not permissible to construe it in a manner which would defeat the purpose of the legislation. In order to detain a person being declared as 'dangerous person' what is most relevant is his habit of committing or attempting to commit or abetting the commission of offences in the

Chapter that are specified in the Section from the Indian Penal Code or any of the offences under Chapter V of the Arms Act.

The legislature thus intended to cover a habitual offender or a person who is in the habit or in attempts or abets of commission of the offence and definitely never intended to cover a solitary incident in form of a CR.

13] The Detaining Authority undisputedly has referred to the past activities of the detenu, but while passing the order of detention, he has segregated it by saying that the past offences are only indicated to show his criminal tendency and the Detention Order is, however, based only upon the recent crime registered against him with Hadapsar Police Station and two incamera statements.

According to us, it is not permissible, for the Detaining Authority to adopt such a course, as for categorizing a person as a 'dangerous person' it is his habit, which must necessarily be the focal point and when the Detaining Authority in the back of his mind had relied upon his tendency, which form his habit, to indulge in offences, but while formulating the grounds on which the Detention Order is passed, it only refer to one CR, in the recent past, and according to us, his decision making is completely flawed and since he has erred in categorizing him as a 'dangerous person', without looking into his habit of repeatedly indulging in similar offences.

Since we are satisfied with ground (i), one of the ground in the Petition assailing the impugned order of detention, the Petition is made absolute in terms of prayer clause (b).

The Detention Order dated 04.10.2023 is quashed and set aside.

The Petitioner is entitled to be released forthwith.

[MANJUSHA DESHPANDE,J]

[BHARATI DANGRE, J]