

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 163 OF 2024

Yash Rajendra Shinde,
Age : 24 Years, Occu.: Labour,
R/at : Flat No. B-8, Shivdarshan Apartment,
Pathardi Road, Indiranagar, Nashik.
(Presently at Nashik Central Jail)

.. Petitioner

Versus

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

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Mr. Akshay Bankapur, for the Petitioner.

Mr. J. P. Yagnik, A.P.P. for the State/Respondent.

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CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 19th JUNE, 2024

JUDGMENT (PER - MANJUSHA DESHPANDE, J.) :-

1. The Petitioner herein is challenging the order of detention dated 06.12.2023, passed by the Commissioner of Police, Nashik, detaining the Petitioner under the provisions 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. ("the MPDA Act"), for a period of one year. The Petitioner has approached this Court with a prayer to quash and set aside the impugned order of detention.

2. It is the contention of the Petitioner that, the proposal for his detention was forwarded to the Detaining Authority and after receiving the said proposal, the Detaining Authority has issued the order of detention dated 06.12.2023, under Section 3(2) of the MPDA Act. Since then the Petitioner is under detention. The order of detention alongwith grounds of detention were communicated to the Petitioner on 06.12.2023. Since the Petitioner was already under detention for some other offences, he was served with the copy of the order of detention as well as grounds of the detention through the Jailor, Nashik Road Central Prison, Nashik. The said order of detention was sent to the Government for approval and the same was granted on 14.12.2023.

3. The Petitioner was supplied with the grounds of detention as well as the material on the basis of which the Detaining Authority has recorded his subjective satisfaction for detaining the Petitioner, was also made available to him. Being

aggrieved with the said detention order dated 06.12.2023, the Petitioner is approaching this Court.

4. The Petitioner has specifically raised certain grounds challenging the said order of detention issued by the Commissioner of Police, Nashik. He has raised grounds from Ground No. 'a' to 'h', under the caption of 'Grounds'. Though some of the grounds are repetitive and inter-linked, however the gist of the grounds is that :

(i) The copy of the proposal submitted by the Senior Police Inspector, Mumbai-Naka Police Station, though relied upon by the Detaining Authority, has not been supplied to the Petitioner. The said issue regarding non-supply of proposal has been raised in ground No. 'b', 'c' and 'e'.

(ii) The other ground agitated by the Petitioner is that, in para No.3 of the Grounds of Detention, the Detaining Authority has considered the past offences registered against the Petitioner and though it is observed by the Detaining Authority that, these offences are merely for reference and they are not relied while passing the order, the same are relied by the Detaining Authority and all those offences are old and stale and does not provide a live link.

(iii) The copies of the offences mentioned in para No.3(A), were not supplied to the Petitioner, therefore, he is not sure, whether the same were ever placed before the Respondent No.2 for recording of his subjective satisfaction. He has also referred to the externment proceedings during the pendency of which, the Petitioner came to be arrested in C.R. No. 27 of 2022.

5. The Petitioner has invited our attention to the contents in the ground No.'g', wherein the Petitioner pointed out the conflicting statements of the Detaining Authority in the Grounds of Detention. According to him, though the Detaining Authority claims that he has not placed reliance on the offences mentioned in the table at para No.3(A), however in para No.3(B), the Petitioner has made specific reference to the C.R. No. 27 of 2022, registered at Mumbai Naka Police Station, which forms part of table at para No.3(A) at Sr. No.5. It has been referred in para No.3(B) and finding has been recorded against the Petitioner, on the basis of the said offence, to hold that he is involved in criminal and dangerous activities. Hence, in one breath the concerned authority has observed in his order that, those orders are only for the purpose of reference and are not relied upon, however in para No.3(B), one of the offences has been referred and opinion has been expressed on the basis of the said crime, registered against the Petitioner.

6. The Petitioner is also challenging the order of detention on the ground that, the Detaining Authority in para No.4(A)(i) of the Grounds of Detention has stated that, the Petitioner was arrested on 08.11.2023 and his Bail Application came to be rejected on 09.11.2023. The Detaining Authority has further mentioned that, the Petitioner has applied for Bail on 28.11.2023 and the offence is on investigation. But the Detaining Authority has not recorded that, he is subjectively satisfied that, there is likelihood of the Petitioner being released on bail and thereafter indulging in unlawful activities and therefore it is necessary for issuance of Detention Order. Hence, in view of the

lack of subjective satisfaction, regarding possibility of the Petitioner being released and thereby endangering the public order, the order of detention is not capable of being sustained. On this background, the Petitioner has approached this Court. The said grounds were agitated by the counsel for the Petitioner while making his submission.

The counsel for the Petitioner has also placed reliance on the Judgment of the Hon'ble Apex Court in case of ***Khaja Bilal Ahmed V/s. State of Telangana And Ors., (2020) 12 SCC 632***. Wherein, the Hon'ble Apex Court had occasion to deal with the similar matter, wherein stale incidents were taken into account while passing the order of detention. In the said matter, the criminal cases which were instituted between the year 2007 and 2016, were taken into consideration while passing the order of detention.

7. The learned A.P.P. has opposed the prayer of the Petitioner and has made his submission on the basis of affidavits filed by the authorities of the State Government. The Respondent No.1 – the Commissioner of Police, Nashik, has filed his affidavit, defending his order of detention. According to him, when a proposal came to be moved on 17.11.2023 for detention of the Petitioner, he has carefully considered and scrutinized the material placed before him and only after being subjectively satisfied that the activities of the Petitioner were prejudicial to the maintenance of public order and that the Petitioner is a dangerous person within the meaning of MPDA Act, has passed the order of detention. It was necessary to detain him under the said act with a view to prevent him from acting in similar

manner in future. The material placed before him was genuine which included in-camera statements of witnesses.

8. After issuance of order of detention on 06.12.2023, the report as contemplated under Section 3(3) of the said Act was submitted to the Government on 06.12.2023. The order of detention was approved by the Government on 14.12.2023 and was confirmed on 11.01.2024.

9. So far as the ground raised by the Petitioner regarding failing to serve copy of the proposal to the Petitioner is concerned, according to the Respondent No.1 the rules and procedure do not contemplate service of copy of proposal to the Petitioner, only the grounds of detention and supporting documents are required to be served on the detenu. The Respondent No.1 has defended the said order stating that, after scrutinizing the material before him, he is subjectively satisfied that, the mental setup and behaviour of the Petitioner has a tendency to commit dangerous activities. His continuous unlawful activities and his behaviour is adversely affecting the society at large and disturbance to the public, therefore in order to maintain law and order, he had no other option but to issue the order of detention. He further states that, he has considered the offences of recent past mentioned in para No. 4(A), 4(A)(i) and confidential statements mentioned in para No.5(i) and 5(ii). The Petitioner has committed the offence mentioned under Chapter 5 of the Arms Act, 1959, which are referred in para No.4(A), 4(A)(i). As per the confidential statements of witnesses A and B, it is evident that, the activities of the Petitioner is

affecting not only witnesses but also spectators, passers, residents and etc. Therefore it is proved that, the Petitioner is a 'dangerous person' as per the meaning provided in Sub-Section 2(b-1) of the MPDA Act. Only after being subjectively satisfied about the fact that, the Petitioner is a dangerous person on the basis of the record produced before him, he has carefully considered the said documents and come to the conclusion that the Petitioner's criminal activities are adversely affecting the public order. Hence, considering the likelihood of the Petitioner being released on bail, the order of detention has been issued. The Respondent No.1 therefore has prayed to dismiss the Writ Petition, in view of his affidavit.

Affidavits have also been filed on behalf of the Superintendent of Police, Nashik as well as the Joint Secretary, Home Department, Government of Maharashtra. Both these authorities have supported the detention order.

10. We have heard the learned counsel for the Petitioner as well as learned A.P.P. for the State and we have gone through the documents placed alongwith the Petition and the reply affidavit.

11. On going through the documents in the light of the grounds raised by the Petitioner, we find that there is a substance in the ground raised by the Petitioner, in as much as reference to the offence mentioned in the chart in para No.3(A), while forming his opinion and making observation in para 3(B). Though it is mentioned that the Detaining Authority is relying on the offence mentioned in para No.4(A), 4(A)(i) and two

confidential statements in para No.5(i) and 5(ii), however while forming his opinion as recorded in para No.3(B), the Detaining Authority has in fact relied on C.R. No. 27 of 2022, under Section 307, 341, 143, 144, 148, 149, 504, 506 of the Indian Penal Code, registered at Mumbai-Naka Police Station, on 23.01.2022. Based on the said offence, the Detaining Authority has observed that, it shows the ruthless criminal tendency and no respect to law by the Petitioner, so also his involvement in criminal and dangerous activities. Therefore though Detaining Authority has observed that he is only relying on the offence mentioned in para No.4(A) and two confidential statements, mentioned in para No.5, however while forming his opinion he has taken into account the offence mentioned at Sr. No.5 in the table at para No.3(A).

12. The last crime was registered against the Petitioner was on 08.11.2023 and the Petitioner came to be arrested on 09.11.2023, whereas detention order came to be passed on 06.12.2023. There is a huge gap in the order of detention and registration of last crime. There is a gap of more than one month, thus there is no live link with the order of detention and the offence. Considering that the Petitioner was already in prison in other offence, the Detaining Authority should have passed a reasoned order, recording his subjective satisfaction that there is a likelihood of Petitioner being granted bail and after being released, he is likely to commit offence, breach of peace and create public disorder.

Though the Detaining Authority has stated that he has merely referred to the offences registered against him in the past and has not relied on the same. However from the tenor of

the order and the observations recorded by the Detaining Authority, it is clear that while forming his opinion, he has definitely relied on the offence from the past and observed that the Petitioner is creating obstructions to the public order in Upnagar, Mumbai-Naka, Sarkarwada, Gangapur and Panchvati Police Station areas, and he is continuously indulging in criminal activities, therefore it is proved that he is a dangerous person within the meaning of Section 2(b-1) of the MPDA Act, and has even gone ahead and observed that the Petitioner is a hardcore criminal, therefore to prevent him from committing further offences, the order of detention is required to be passed.

The said observations are clearly contrary to the Judgment of the Hon'ble Apex Court, relied upon by the Petitioner in case of **Khaja Bilal Ahmed V/s. State of Telangana And Ors. (Supra)**. According to the said Judgment, the Hon'ble Apex Court has observed that subjective satisfaction must not be arrived at by the Detaining Authority, based on irrelevant or invalid grounds, but it must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the Detaining Authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of the public order, then it may have bearing on the subjective satisfaction of the Detaining Authority. Mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the Detaining Authority to simply refer to stale incidents

and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.

The said Judgment restrains the Detention Authority from considering the past and stale incidents to form opinion as they do not provide live link with the order of detention. The satisfaction is required to be arrived by the Detaining Authority, the order must be reasoned and should provide a live link.

13. In the present case, though the Detaining Authority has recorded that he has not relied on the past record of the Petitioner, however he has formed his opinion on the basis of the same, which is not permissible. Hence, in view of the observations herein above, the said order of detention passed by the Detaining Authority is required to be quashed and set aside. Accordingly, the order of detention passed by the Commissioner of Police, Nashik, dated 06.12.2023 against the Petitioner, is hereby quashed and set aside.

The Petitioner is entitled for his release forthwith.

Rule is made absolute in terms of prayer clause 'b'.

No order as to costs.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)