

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.170 OF 2024

Ashirwad s/o Sitaram Dagale .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

...

Mr.Suhas Shirsat for the Petitioner.

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

...

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

P.C:-

1. The Petition is filed by the detenu-Ashirwad s/o Sitaram Dagale, who has been detained by the order dated 09/11/2023 passed by the Commissioner of Police, Nashik, in exercise of power conferred under sub-section (2) of Section 3 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, with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order.

This order, on 17/11/2023, is approved by the State Government and on the very same date, his right to represent

against the detention to the detaining authority, came to be terminated.

By a subsequent order dated 28/12/2023, upon receipt of the information from the Advisory Board, to the effect that there is sufficient cause for continuation of detention, the Government of Maharashtra has confirmed the detention order under Section 12 of the Act and has directed that the detenu shall be detained for a period of 12 months from the date of detention.

2. We have heard learned counsel Mr.Suhas Shirsat for the Petitioner, who has raised several ground in calling in question the order of detention and the grounds, which he specifically relied upon are to the following effect :-

- (a) Mere registration of FIR by itself cannot have any nexus with breach of maintenance of "Public Order";
- (b) The Advisory Board appointed under the Act of 1981 has not considered the material placed before it and without following the procedure has mechanically approved the detention order;
- (c) There is delay of more than 54 days from the date of registration of the offence and the impugned order of detention;
- (d) The orders enlarging the Petitioner on bail have not been considered by the detaining authority;
- (e) The subjective satisfaction arrived at by the detaining authority suffers from the vice, as there is no

proper appreciation of the nature of criminal activities attributed to the detenu and subjective satisfaction is based on irrelevant and stale grounds.

3. We have also heard learned Additional Public Prosecutor Mr.J.P.Yagnik, who has placed reliance upon the affidavit filed by the Superintendent, Nashik Road Central Prison, the affidavit of the detaining authority and also the affidavit filed by the Joint Secretary, Government of Maharashtra, Home Department, Mumbai.

4. Coming to the ground of delay in passing the detention order, we have perused the grounds of detention, which formed the basis for impugned order of detention.

The detaining authority has arrived at a subjective satisfaction necessary for detaining the detenu, by referring to his tendency of committing crime consistently, which had resulted in disturbance of public life and though he has referred to the previous offences registered against the detenu, which were subjudiced before the competent authority, involving the activity like attempt to murder, mischief causing damage to the property, disobedience to order duly promulgated by public servant, intentional insult with intent to provoke breach of peace, criminal intimidation, possession of arm without holding license, molesting, voluntarily causing hurt by dangerous weapons, formation of unlawful assembly etc. Reference is also made to the preventive action initiated against him in form of chapter cases as well as the externment

proceedings under the Maharashtra Police Act, on being satisfied that the actions taken failed to deter him from his consistent violent behaviour affecting public order adversely, the detaining authority relied upon the following material to justify the order of detention :-

“(1) Cognisable Offences :-

Police Station	Crime No. & Sections	Date of Registration	Current Status
Ambad	584/2023, u/s.142 of MP Act r/w u/s.4/25 of Arms Act	16/09/2023	Subjudice

(2) Two in-camera statements of Witness ‘A’ and Witness ‘B’.”

The cognizable offence, which has been taken into consideration by the detaining authority is registered on 16/09/2023, when the complainant, Police Constable posted in DB squad at Ambad Police Station, received a secret information about the detenu being present alongwith sharp weapon, despite the fact that he was externed from Nashik City and Nashik Rural jurisdiction on 08/04/2022 for a period of two years. After taking an entry in the station diary, when they reached the spot, the detenu was present and he attempted to flee. However, he was taken into custody and was queried, whether he had obtained necessary permission to enter the jurisdiction, but the answer was in the negative.

5. In addition, the statements of two witnesses were recorded in-camera, since on account of the victimization at the instance of the detenu, nobody was willing to give complaint against him openly and, therefore, on giving

assurance that their names and identity shall be kept secret and they shall not be required to depose before any court or open forum, they got their statements recorded.

6. As far as witness No.'A' is concerned, he referred to an incident of first week of September 2023, when the detenu and his 2-3 associates accosted him and demanded a sum of Rs.2,000/-, but when he disclosed that he does not have any money, he was kicked by the detenu and knocked down and pointing out a sharp weapon, which was taken out from his waist pocket, he was threatened to death. When people gathered around, he threatened them by brandishing weapon in his possession and people started running helter skelter.

As far as witness No.'B' is concerned, he spoke of an incident, which took place in September 2023 and specifically set out that he was robbed of Rs.950/- from his pocket and he was also threatened with dire consequences. At that time, the detenu was in possession of a weapon like knife and he attempted to assault the witness.

The in-camera statements came to be recorded on 1st and 3rd October, 2023 in respect of the incidents, which occurred in September 2023. The FIR itself is registered on 16/09/2023 and the detaining authority has filed an affidavit, explaining what steps were taken from 16/09/2023, when the FIR was registered and after recording of the in-camera statements on 1st and 3rd October, 2023 till passing of the detention order on 09/11/2023.

7. In paragraph No.7 of the affidavit, the detaining authority has stated that the statement of witness A was recorded on 01/10/2023, whereas the statement of witness B was recorded on 03/10/2023. Thereafter the proposal was forwarded by the Senior Inspector of Police, Ambad Police Station through the Assistant Commissioner of Police, Ambad Division on 18/10/2023 and then was forwarded to DCP on 19/10/2023.

8. On perusal of the record, taking note of the activities of the detenu, adversely affecting the public order and noting that since the detenu was already released on bail and while on bail, he committed offence under the POCSO Act and after getting released on bail on 17/11/2021, once again he has indulged in C.R.No.68 of 2023 under Sections 307, 504, 506 and other offences under the Penal Code, we do not find that the live link from the last activity of the detenu was snapped. Rather, it is noted that the papers were received by the detaining authority on 19/10/2023 and they were immediately taken up for scrutiny. Since, the time was taken for scrutinising the papers and in arriving at the subjective satisfaction and the detention order was passed on 09/11/2023, we do not find that the live link, as contended by the counsel for the Petitioner, has been snapped.

Another ground that mere registration of FIR itself was not sufficient, which has been raised in assailing the order of detention, also in our opinion, do not deserve any consideration as it is not the only registered CR, which has been taken into account by the detaining authority, but the

activity of the detenue, which resulted in the registration of CR, formed the basis of the detention order.

The competent authority has referred to the past criminal activities of the detenu, through it was referred to only for the purpose of making reference to his past criminal activities. However, by taking note of the CR registered with Ambad Police Station and two in-camera statements, the detaining authority arrived at the conclusion the alleged activities of the detenu are in public place and surrounding the residential area, which has created a feeling of insecurity and fear amongst the general public and he was externed on account of these activities for period of two years, but he illegally trespassed in the city alongwith a weapon. He created terror in the public and market place and, therefore, the detaining authority, on going through the statements of Witnesses A and B, was satisfied that his activities have not only affected the witnesses, but also the spectators, passersby, residents, shopkeepers etc.

Due to the fear and terror created by the detenu, the people present on the spot fled away and the shopkeepers shut their shops immediately, crating a reign of terror in the locality and deterring the people from carrying out their activities of earning livelihood, thus disturbing the life of common man.

9. It is on the basis of these activities, which had surfaced through the crimes registered against him as well as the in-camera statements of the witnesses, the detaining authority

reached a conclusion that it is necessary to detain the detenu from further causing obstruction to public order.

It, therefore, cannot be said that only registration of CR form the basis of detention order.

10. The last ground of non-application of mind by the detaining authority is also completely misplaced as it is very clear from the activities of the detenu that it was prejudicial to the maintenance of the public order and it is not a question of law and order.

The activities of the detenu deterred the people in the locality in a public place and this is obvious from the in-camera statements, which were taken into consideration for passing the detention order. It is not a case where detenu only brandished the weapon, but since it created an impact on the public at large, definitely it amounts to disturbance of public order and it is not a case of mere breach of law and order.

For the aforesaid reasons, since we are not satisfied with any of the grounds raised by the Petitioner in assailing the order of detention, by upholding the order of detention, the Writ Petition is dismissed.

(MANJUSHA DESHPANDE, J.) (BHARATI DANGRE, J.)