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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.209 OF 2024

Ishwar Datta Chavan	]	..	Petitioner
vs.			
State of Maharashtra & Ors.	]	..	Respondents

Mr.Narayan Rokade a/w Udaysinh Deshmukh, Pratibha Pawar and Abhang Suryawanshi for the Petitioner.
Mr.S.V. Gavand, APP for the State.

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

DATE : 15th JULY, 2024.

P.C.

1] In furtherance of the Rule issued on 02.02.2024, the Respondents have filed Affidavit in Reply.

We have heard the learned counsel for the Petitioner in support of the reliefs in the Petition praying for quashing and setting aside of the impugned order of detention dated 01.11.2023, passed by the Commissioner of Police, Pune City, directing his detention in exercise of power conferred under sub-section (2) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act (MPDA), 1981, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

In furtherance of the said order, he is directed to be detained in Nagpur Central Prison.

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2] In assailing the order of detention, Mr. Rokde, the learned counsel for the Petitioner has specifically invited our attention to the ground raised in Para 10, to the following effect :-

“10. It ought to be held that, the subject to satisfaction has been reached by the detaining authority in absence of any material. The detaining authority has taken into consideration material not germane to order of detention and hence, the order is vitiated on the ground of subjectively considering irrelevant and extraneous factors. Petitioner was already in custody on 21.09.2023 and order of detention was passed on 01.11.2023.”

In addition, he has also placed into service ground No.(13) alleging that there is enormous unexplained delay in passing of the detention order, which is, indicative of the vindictiveness of the Authority in ordering his detention.

3] Dealing with the said objection, Mr. Gavand has invited our attention to the grounds of detention and in particular Para 8, which reads to the following effect :-

“8. I have mentioned the offences and preventive action 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 and 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 in judicial custody in the offence of (1) Kondhwa Police Station, Pune CR No. 936/2023, u/s 307 of IPC. Moreover, in future you may be granted bail under the ordinary law of the land as the said offence is not compulsorily punishable with death sentence. In view of your tendencies and inclinations reflected in the offences 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.”

4] Considering the said ground as indicated by the Detaining Authority, we have noticed that CR No. 936/2023 is registered against

the detenu in Kondhwa Police Station invoking Section 307 of the IPC on 13.09.2023 and in connection with the said CR he is arrested on 21.09.2023.

The Detaining Authority in spelling out the grounds of detention has opined that in future, he may be granted bail under the ordinary law of the land, as the offence is not punishable with death sentence and therefore, he was satisfied that after availing the bail facility the detenu would become a free person and he is likely to revert to his criminal activities.

It is informed by the learned APP Mr. Gavand, that even till today the detenu continue to be incarcerated in CR No.936/2023 and has not been released on bail.

5] We would have set aside the Detention Order on this ground itself without recording any reason, but we deem it appropriate to record our reason so as to dispel the perception of the Detaining Authority, on arriving on such a conclusion, in the grounds of detention, despite having knowledge that the detenu is already incarcerated since 21.09.2023, when the detention order is actually passed on 01.11.2023. It should be noted that in Section 2(a) of the Act of 1981, which defines “acting in any manner prejudicial to the maintenance of public order”, as against the ‘dangerous person’ as defined in Section 2(b-1), clause (iv) contemplate that activities of a dangerous person shall be prejudicial to the maintenance of public order, when he is engaged or is making preparation for engaging in any of his activities as a ‘dangerous person’, which affect adversely, or likely to affect adversely, the maintenance of public order.

Thus, for the purpose of exercising the power to detain a dangerous person, it is necessary for the detaining authority to form an

opinion that the said person is engaged or is making preparation for engaging in any of the activities as a 'dangerous person'. However, merely saying that if he is released on bail, he may revert to similar activities, which prompted the Detaining Authority to classify him as a 'dangerous person', do not offer a sufficient justification for exercise of power.

6] The legislature while enacting the Act of 1981 has classified the persons to be detained in different categories, and he may be either a 'Bootlegger', or a 'Dangerous Person', or a 'Drug Offender', 'Slumlord', 'Sand Smuggler', 'Video Pirate', but made it sure that every term is assigned a definite connotation.

Though a dangerous person is one, who either by himself, or as a member or leader, has habitually committed or attempted to commit or abet the commission of any offence, punishable under Chapter XVI or Chapter XVII of the IPC or any of the offence punishable under Chapter V of the Arms Act, only when his activities are classified as prejudicial to the maintenance of public order and it is on this ground, the State Government being satisfied that the person is acting in any manner prejudicial to the maintenance of public order, he is permitted to be preventively detained.

In case of a dangerous person, which of his activity would be construed as 'acting in a manner prejudicial to the maintenance of public order, is specifically set out and this would require a satisfaction to be reached, that the dangerous person is engaged or is making preparation for engaging in any of the activities as 'Dangerous person'.

7] Here is a detenu, who is already inside the prison from 21.09.2023 on being arrested in the FIR registered against him and,

therefore, there is no evidence before the Detaining Authority that he was engaged in or making preparation for engaging in the dangerous activities and it was necessary to arrest him for preventing his prejudicial activities.

The detention order, therefore, suffer from complete non application of mind of the Detaining Authority and cannot be sustained.

For the said reasons recorded above, Rule is made absolute in terms of prayer clause (b).

Since the Detenu is already incarcerated, in connection with the CR No.936/2023, though he do not deserve his release, but we must clarify that if he is released on bail, he shall not be subjected to detention under the impugned order.

[MANJUSHA DESHPANDE,J]

[BHARATI DANGRE, J]