

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1266 OF 2024

Mahesh @ Dadya Baban Gajesingh .. Petitioner

Versus

The Commissioner of Police & Ors. .. Respondents

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Mr.Salman Pathan with Mr.Shadab M. Shaikh and Mr.Pratik U.Tendulkar for the Petitioner.

Mr.H.S.Venegavkar, Public Prosecutor with Mrs.M.M. Deshmukh, A.P.P. for the State/Respondent.

API Sachin Thorat, Kondhawa Police Station, Pune City, present.

...

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

DATED : 24th OCTOBER, 2024

P.C:-

1. Rule. By consent of the parties, Rule is made returnable forthwith.

2. In passing of the order of detention on 21/01/2024, the Detaining Authority has relied upon the criminal history of the detenu right from 2017 upto 2023, when he indulged himself in criminal activities and was arrested, but the arrest had no reformatory effect on him and he continued with his illegal and dangerous criminal activities.

The Detaining Authority has also made reference to the preventive action against him under the Code of Criminal Procedure.

3. For the purpose of passing of the Detention Order to preventively detain him as a 'Dangerous Person', the Detaining Authority has relied upon C.R. No.1252 of 2023 registered under Sections 448, 323, 504 of the Indian Penal Code on 10/12/2023 with Kondhwa Police Station.

In the said C.R., the detenu came to be arrested on the very same date.

Recording that his involvement in the said offence is suggestive of his violent tendency and inclination to perpetuate his criminal activities as, a dangerous person, as defined in Section 2(b-1) of the Act of 1981 and, since, these activities were prejudicial to the maintenance of the public order, as defined in Section 2(a)(iv) of the Act of 1981, the Detaining Authority deemed it appropriate to invoke the power under Section 3.

In addition, reliance is also placed on the two statements of witnesses 'A' and 'B', which referred to the activities of the detenu dated 22/12/2023 and 25/12/2023 and the Detaining Authority recorded his subjective satisfaction about he being a 'dangerous person', since he had unleashed a reign of terror and had become perpetual danger to the society, at large in the area of Kondhawa Police Station, Pune City.

The grounds of detention record the satisfaction of the Detaining Authority that the people in the locality are

experiencing a sense of insecurity and are living under a shadow of constant fear, whereby even day-to-day business and activities of citizens are under threat. Recording that he is impulsively violent man, who wants to spread terror in the society by his criminal activities in connivance with his criminal associates, he is directed to be detained by order dated 21/01/2024, which received an approval, as contemplated under the Act and was confirmed by the State Government.

4. The learned counsel for the Petitioner, while assailing the impugned order, has urged before us that the activities of the detenu, which are relied upon by the Detaining Authority, in the subject C.R.No.1252 of 2023, which has formed the basis of the subjective satisfaction of the Detaining Authority alongwith the statements of the in-camera witnesses 'A' and 'B', do not establish that he has indulged himself in activities, which are prejudicial to the maintenance of 'pubic order', which would have justified the exercise of the power under Section 3(2) of the Detaining Authority. It is his specific contention that the C.R. registered against him on 10/12/2023, is registered on the complaint of a girl, aged 19 years, with whom he maintained some relationship, but when she refused to marry him, he reached her house on 09/12/2023 and forced her to perform the marriage and it is alleged that he also slapped her. When the Complainant asked him to leave the house, he continued to wait there and, thereafter, she clandestinely made a phone call to the police for help, but he removed the SIM card from the mobile. She thereafter took out

his mobile and by closing the door, called the police, who arrived there and the Complainant narrated the entire incident, which resulted in registration of offence and he came to be arrested.

5. We find substance in the submission of the learned counsel for the Petitioner that this is a case of 'law and order', as it resulted in registration of an offence under Sections 448, 323, 504 of of IPC and not 'public order'.

In the case of *Dr.Ram Manohar Lohia Vs. State of Bihar*¹, the Apex Court has drawn a clear distinction between 'law and order' and 'public order' in the following words :-

"55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

Further, the Apex Court in the case of *Mrs.T.Devaki Vs.T.N.& Ors.*², has observed as under :-

"The question which falls for consideration is whether single incident of murderous assault by the detenu and his associates on the Minister at the Seminar held at Dry Chilly Merchants' Association Kalai Arangam Hall was prejudicial to the maintenance of public order. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent affect the peace prevailing in the locality and it may also affect law and order problem but the same need not affect maintenance of public order. There is basic difference between 'law and order' and 'public

¹ AIR 1966 SC 740

² AIR 1990 SC 1086

order', this aspect has been considered by this Court in a number of decisions, see: Dr. Ram Manohar Lohia v. State of Bihar, [1966] 1 SCR 709 : (AIR 1966 SC 740); Pushkar Mukherjee v. State of West Bengal, [1969] 2 SCR 635: (AIR 1970 SC 852) and Shymal Chakraborty v. Commr. of Police Calcutta (1970) 1 SCR 762: (AIR 1970 SC 269). In these cases it was emphasised that an act disturbing public order is directed against individuals which does not disturb the society to the extent of causing a general disturbance of public peace and tranquillity. It is the degree of disturbance and its effect upon the life of the community in the locality which determines the nature and character of breach of public order. In Arun Ghosh v. State of West Bengal, (1970) 3 SCR 288: (AIR 1970 SC 1228), the Court held that the question whether a man has only committed a breach of law and order, or has acted in a manner likely to cause disturbance of the public order, is a question of degree and the extent of the reach of the act upon the society."

6. The exercise of power under the Act of 1981 necessarily contemplates satisfaction to be reached, with a view to prevent a detenu from acting in any manner prejudicial to the maintenance of the 'public order', which is distinct from a situation of 'law and order', where the ordinary penal law may be sufficient to take care of such scenario.

7. We have also perused statement of witness 'A' and we do not find any element of public involvement, though as per the narration of witness 'A', the incident had occurred on 22/12/2023 at around 20.40 hrs., when he was enroute to his home on his vehicle, when the detenu intercepted him and is alleged to have taken out sickle and brandished its blunt side at the witness and extorted Rs.2100/- from his pocket, resulting into the people standing nearby running away in fear.

On a similar line is the statement of witness 'B', when it is alleged that on 25/12/2023, at around 22.30 p.m., the detenu had extorted Rs.3200/- from him and fled from the spot.

The verification of the statement of witness 'A', by ACP, Vanvadi Division, Pune city, on 04/01/2024 record that witness 'A' had given the statement, on his own volition without any pressure. It also makes a reference to the inquiry with the people residing in the nearby locality and the shopkeepers, and subject to the condition that their names shall not be disclosed, they have stated to the officer verifying the statement that the incident narrated is true. Exactly on the similar line is the verification statement of witness 'B'.

Surprisingly, if the incident had occurred at 22.30 hrs. in the night, the presence of the shopkeepers in the nearby locality is something, which is unbelievable and in a cyclostyle manner, the verification statements of witnesses 'A' and 'B' are recorded, and hence, we doubt its authenticity about, it affecting the tempo of even life.

8. It is imperative to note that the invocation of the power under the preventive detention law must be resorted to, only in situations, when the normal penal laws are insufficient to take care of the situation. It may be true that the Petitioner is an habitual offender, as from the criminal history to which the Detaining Authority has made reference, he has indulged himself into the serious offences and for the said offences, he is arrested and is facing trial in accordance with the procedure prescribed. Since the preventive action under the preventive detention law is to be resorted to, only when there is potential threat and the person is likely to indulge himself into the activities prejudicial to the maintenance of the 'public order' quite distinct from the 'law and order', in the present case,

clamping him as a 'dangerous person', on the basis of one C.R., which in no manner depict violation of 'public order' and the two in-camera statements, which do not inspire confidence, the action of detention under the impugned order cannot be sustained.

Resultantly, by setting aside the Detention Order dated 21/01/2024, the Writ Petition is allowed, by directing the release of the Petitioner forthwith.

Rule is discharged.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)