

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.1465 OF 2024

Omkar Mangesh Ubhe

.... Petitioner

Versus

The State of Maharashtra and Ors.

.... Respondents

.....

Mr.Shailesh Kharat, Advocate for the Petitioner.

Mr.Ajay S. Patil, APP for Respondent – State.

.....

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

DATED : 8th AUGUST 2024.

ORDER (PER : Manjusha Deshpande, J.)

1 The Writ Petition is taken up for final disposal with consent of the parties.

2 The petitioner being aggrieved by the order of Detention issued against him by the respondent no.2- Commissioner of Police, Pune, who in exercise of his powers under Section 3(2) 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 (“MPDA”,

for short), has issued the impugned order against which the petitioner has approached this Court challenging it on various grounds.

3 The order of Detention has been issued on 15th January, 2024. The petitioner has been served with the order of committal and grounds of Detention alongwith the documents, which have been placed before the Detaining Authority. The petitioner has been detained in Central Prison, Nagpur.

4 Though the petitioner has raised various grounds in paragraph no.5 from ground (a) to (m), however, ground (k) is worth consideration, wherein the petitioner has taken exception to the satisfaction recorded by the Detaining Authority. According to the petitioner, the Detaining Authority has referred to the previous criminal antecedents, which have no direct link or nexus with the immediate need to detain the petitioner.

The Detaining Authority has referred to 9 previous cases. While perusing the ground 3.1, as referred to by the petitioner, it reveals that 9 CR's from the year 2019 to 2022 have been referred by the Detaining Authority. Though it is

stated that the offences shown in the chart have not been relied upon while passing the order of Detention, but, is only referred to show, the petitioner has been habitually committing serious offences. In order to declare him as a Dangerous person, as defined under Section 2(b)(1) of the MPDA Act, reliance has been placed on two CRs being C.R.No.1844 of 2023 registered on 5th December, 2023 and C.R.No.1861 of 2023, registered on 8th December, 2023, alongwith the two in-camera statements.

5 The contention of the petitioner is that though the Detaining Authority is claiming that the reliance is placed on only two offences as aforesaid. The Detaining Authority has declared him as, “Habitual Offender”, in paragraph 3.1, by relying on the Criminal history given in the chart, referring to 9 offences registered against him. All the documents in connection to the offences registered against him have been supplied to the petitioner alongwith the grounds of Detention.

6 The Detaining Authority has referred to paragraph 3, 3.1 and 3.2 of the ground of Detention in order to classify him, as a “Habitual Criminal”, involved in continuous criminal activities. This itself indicates that the Detaining Authority has

relied also on the previous criminal history and the material, which was placed before him.

7 The learned APP has opposed the relief prayed by the petitioner. While making his submission, he has relied on the contents in the affidavit filed by the Detaining Authority i.e. Respondent No.1. According to him, the Detaining Authority while passing the Order of Detention has considered offences i.e. C.R.No.1844/2023 for the offences punishable u/s. 324, 323, 504, 34 of IPC and under Section 4(25) of the Arms Act and under Sections 37(1)135, 142 of MPA & under Sections 3 and 7 of the Criminal Law Amendment Act registered at Hadapsar Police Station, Pune, alongwith C.R.No.1861 of 2023 under Sections 452, 504 and 506 of IPC and under Sections 37(1)/135 of MPA and under Sections 3 and 7 of Criminal Law Amendment Act, and the two in-camera statements of witnesses “A” and “B”, recorded on 18th December, 2023, and 23rd December, 2023, respectively. Therefore, only after being subjectively satisfied on the basis of the above said material, the order of Detention has been issued.

8 So far as ground (k) in the petition is concerned, there is no reply given by the Detaining Authority to the said ground raised by the petitioner.

9 Upon hearing the petitioner as well as the learned APP, the undisputed facts, which emerge are that, the Detaining Authority has relied on the material which has been placed before him indicating the detenu's criminal history. Though, he claims that it is not relied upon by him, contrary to his own claim, in paragraph no.8, the Detaining Authority has observed that the petitioner is habitually committing serious offences by relying on the past antecedents of the petitioner.

 The Detaining Authority in order to declare the petitioner as a "Dangerous Person", as per Section 2(b-1) of the MPDA Act, has relied on the habituality of the petitioner, and on commission of serious offences, given in the chart, which have been committed between 2019 to 2022. There is no live link between the said offences, which are stale, and there is no connection with the present activity of the petitioner, which makes it necessary to issue Detention Order, to curb the immediate criminal activities of the petitioner, and to restrain him from committing similar offences of violent nature, which are prejudicial to the maintenance of public order. There is a contradiction in the contents of Ground No.8 of the grounds of Detention.

10 This Hon'ble Court in Writ Petition No.2663 of 2018 reported in 2018 SCC OnLine Bombay 2787 in ***Premchand @ Babu Panjabi @ Tatu Manohar Dhakani V/s. Commissioner of Police, Thane and Ors.***, wherein one of us was a member of the Bench (Bharati Dangre, J.), and who authored the judgment had an occasion to decide the Writ Petition on the ground similar to the ground in the present Writ Petition. It has been observed that when entire material has been placed before the Detaining Authority, and has been looked into and has gone up in formulating the subjective satisfaction, it is not possible that the Detaining Authority has not issued the Order of Detention, passed only on the material pertaining to the two crimes mentioned in his subjective satisfaction, and the other materials has not gone into the decision making process. Such segregation is not possible, since the material has a cumulative effect of entire material placed before the Detaining Authority.

The petitioner has also raised similar ground in the present Writ Petition. The above decision therefore squarely applies to the present case.

11 In the definition of “Dangerous Person” itself there is a reference to a person who habitually commits or attempts to commit or abets commission of offence. Therefore, the necessary ingredient to declare a person to be dangerous is his habituality in committing offences. The Detaining Authority has relied on two recent CRs and in-camera statements of witnesses to declare the petitioner as a Dangerous person and to show his habituality. The Detaining Authority though claimed that he has not relied, has relied on all other material placed before him, his observations in Ground No.8 of the communication of the ground of detention clearly reflects that he has relied on the other material, which has impacted his decision. There is no live link between the last offence registered against him and his present activities, which makes it necessary to issue Order of Detention for maintenance of public order. In view of the above observations, the Order of Detention becomes unsustainable and is required to be quashed and set aside.

Rule made absolute in terms of prayer Clause (b), which reads as under:

“b. This Hon’ble Court be pleased Quash and set aside the impugned Order dated 15th January, 2020 O.W.No. PCB / DET / HADAPSAR / UBHE / 71/ 2024

*passed by the Respondent No.2 thereby detaining the
Petitioner under MPDA Act and direct to the
Respondents to release the detenu forthwith.”*

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)