

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1479 OF 2024**

Shantanu Laxman Jadhav .. Petitioner

Versus

The State of Maharashtra .. Respondent

...

Mr. Shreyas Barsawade, for the Petitioner.

Mr. S. V. Gavand, A.P.P. for the State/Respondent.

...

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

DATED : 12th JULY, 2024

JUDGMENT (PER MANJUSHA DESHPANDE, J.) :-

1. Rule. Rule made returnable forthwith and with the consent of the parties, the Writ Petition is taken for final disposal.

2. The Petitioner herein is seeking directions to quash and set aside the Order of Detention dated 15.11.2023, passed by the Commissioner of Police, Pune City, in exercise of his power under Sections 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. (“the MPDA Act”), and release him from the detention forthwith.

The Petitioner has also challenged the subsequent order of confirmation upholding the Order of Detention passed by the Commissioner of Police, Pune City dated 11.01.2024.

3. It is the contention of the Petitioner that the Order of Detention was accompanied by the Order of Committal to Nagpur Central Prison, alongwith the requisite warrant of detention. He has been communicated the said Order of Detention on the very day i.e. 15.11.2023 and was committed to Nagpur Central Prison forthwith on the same day. The Detaining Authority has recorded in his Order that, the Petitioner is a weapon wielding, dangerous, recidivist of violent nature indulging in criminal activities that foster terror in the society. Since he had become perpetual threat to the lives as well as properties of citizens, more particularly girls residing in the vicinity of Vishrambaug and Kothrud in Pune City, the Order of Detention became necessary. It also appears from the Grounds of Detention that, it is alleged that the Petitioner was moving armed with deadly weapons and would not hesitate to use the said deadly weapons to threaten the people in the above mentioned locality.

It is further alleged that the Petitioner has habitually committed offences under Chapter XVI and XVII of the Indian Penal Code, 1860 (“the IPC”). Therefore, the Detaining Authority has apparently come to the conclusion that the Petitioner is a ‘**Dangerous Person**’ as defined under

Section 2(b-1) of the said Act of 1981. Hence, the Order of Detention has been passed.

4. The Petitioner is challenging the said Order of Detention on the grounds set out in the memo of the Petition.

The Petitioner has raised objection that in the English translation in para No.4, the Detaining Authority has stated that, he has relied on three in-camera statements referred in para Nos. 6.1 and 6.2 in the Grounds of Detention, while in Marathi translation, which is made available to him, in para No.4, the Detaining Authority has referred to only two in-camera statements, which have been mentioned in para Nos.6.1 and 6.2. According to the Petitioner this infirmity in the translation has deprived him of making appropriate representation to the authority against his illegal detention.

5. We have gone through the English as well as the Marathi version of the Grounds of Detention. Though the English version states that, there are three in-camera statements relied in para Nos.6.1 and 6.2, however in para Nos.6.1 and 6.2 the Detaining Authority has referred only two in-camera witnesses and the same witnesses have been referred in Marathi version of Order of Detention. Therefore, the said objection raised by the Petitioner in our opinion has no substance as it does not deprive him of making proper representation against the Order of Detention. Since details of only two in-camera statements have been referred in both, English and Marathi versions.

6. The Petitioner has also taken exception to the reliance placed by the Detaining Authority on only one C.R. while recording his subjective satisfaction. According to the Petitioner, the Detaining Authority was not justified in placing reliance in only one C.R. while recording his subjective satisfaction. The learned counsel for the Petitioner has placed reliance on the reported Judgment of this Court in **Jay @ Nunya Rajesh Bhosale V/s. Commissioner of Police, Pune and Others, reported in 2015 DGLS (Bom.) 638.** The learned counsel has also relied on para No.10 of the said Order, which is as under :

10. Thus, a perusal of the Section 2(b-1) would show that if the person singly or as a member or a leader of a gang “habitually commits” or attempts to commit or abets the commission of any offence punishable under Chapter XVI or Chapter XVII of the IPC or Chapter V of the Arms Act, he would be a dangerous person in terms of Section 2(b-1) of the MPDA Act. Just as a single swallow does not make a summer a solitary act, does not constitute a habit. In the instant case, after the three in camera statements are excluded from consideration as the verification of all the in camera statements by the ACP was not furnished to the detenu and CR No.3088 of 2015 cannot be taken into consideration, for the reasons stated in paragraph 7 above by us, that leaves us to only

with CR No. 91 of 2015. We shall now proceed to examine whether on the basis of this CR, the detenu can be held to be a dangerous person so as to sustain the order of detention.

11. On applying 5-A of MPDA Act, only CR No.91 of 2015 remains. In such cases it can be held the detention order is issued only on the basis of Cr No. 91 of 2015. This solitary act would not constitute a “habit”. In our view on the basis of the said solitary CR No.91 of 2015 it cannot be said that the petitioner – detenu “habitually commits” or attempts to commit or abets the commission of any of the offences mentioned in Section 2(b-1) of the MPDA Act and since the detenu has been detained as he is a “dangerous person”, the impugned detention order would not be sustainable in law.”

On going through the said Order, it is evident that in the said matter alongwith one offence, the Detaining Authority had relied on three in-camera statements, which were excluded from consideration as verification of the statement was not furnished to the detenu. Therefore, only one C.R. was left for the consideration of the Court, while passing the said Order. The Hon'ble Court has observed that, when there is only one C.R. which is left for consideration, the solitary act would not constitute a habit, therefore on the basis of one solitary C.R. it can not be held that the Petitioner was a person who habitually commits or attempts to commit offence

mentioned in Section 2(b-1) of the MPDA Act, to declare him as a dangerous person.

7. The Detention Order has been passed against the Petitioner under Section 3(2) of the MPDA Act, and in the Grounds of Detention para No.4, it is mentioned that he has been categorized as a '**Dangerous Person**', in order to curb his activities, which are prejudicial to the maintenance of the public order, as defined under Section 2(a)(iv) of the said Act. Therefore, the Order of Detention has been passed against him. The reference is made to Section 2(a)(iv) of the MPDA Act, which reads as under :

2. In this Act, unless the context otherwise requires,—

(a) “acting in any manner prejudicial to the maintenance of public order” means—

(i) ...

(ii) ...

(iii) ...

[(iv) in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order];

A '**Dangerous Person**' mentioned in Section 2(a)(iv) is defined under Section 2(b-1) which is read as under :

2. In this Act, unless the context otherwise requires,—

*[(b-1) “dangerous person” means a person, who either by himself or as a member or leader of a gang, **habitually** commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959];*

A ‘**Dangerous Person**’ defined as above is a person or a leader of a gang who habitually commits or attempts to commit the offences, therefore in order to comply with the requirements of Section 2(b-1), a dangerous person is necessarily a habitual offender. A ‘**Habitual Offender**’ is a person who consistently commits offence one after the other. Therefore, while categorizing a person to be a ‘**Dangerous Person**’ and a ‘**Habitual Offender**’, the Detaining Authority has to necessarily rely on his history of offences. Therefore, placing reliance on one single offence and two in-camera statements are not sufficient in order to brand a person as a ‘**Dangerous Person**’ who habitually commits offences.

In the present matter, the Detaining Authority has observed in para No.4 that the involvement of the Petitioner is noticed in offences which are of serious nature and suggestive of violent tendencies and inclination to perpetuate criminal activities, therefore, he is a ‘**Dangerous Person**’ as defined under Section 2(a)(iv) of the said Act.

At the same time the Detaining Authority has relied on one offence and two in-camera statements mentioned in para Nos.6.1 and 6.2, to issue the Detention Order. In para No.3.1, the Detaining Authority has observed that the offences

mentioned in the table below are referred to show that he is habitually being committing serious offences. Though the offences are mentioned however reliance has not been placed on the said offence mentioned in the table. While passing the Order of Detention, only one offence has been relied on, which does not brand the Petitioner to be a '**Dangerous Person**'.

8. The next contention of the Petitioner is that the Detaining Authority has relied on C.R. No. 131 of 2023, which has been registered on 27.06.2023, for the offence punishable under Sections 307, 324, 504 of the IPC read with Sections 4(25), 27 of the Arms Act, with the offence under Section 37(1)(3)/135 of the Maharashtra Police Act. Though while communicating the Grounds of Detention, the Detaining Authority in para No.4 has mentioned that he has relied on one offence mentioned in para Nos.5 and 5.1 alongwith two in-camera statements in para Nos.6.1 and 6.2, while passing the Order of Detention reference has been made to the offences which have been registered against the Petitioner to show that he is a habitually committing serious offences. In the table showing his criminal history two offences have been referred. The first C.R. is registered on 08.09.2023, at Kothrud Police Station, being C.R. No.212 of 2023, for the offence punishable under Sections 506(2) of the IPC and under Section 66(c) of the Information Technology Act; and the second C.R. is registered on 01.11.2023, also registered at Kothrud Police Station, being C.R. No. 246 of 2023, for the offence punishable under Section 354(d) of the IPC. According to the Petitioner, in order to satisfy himself that he is a habitual offender

committing serious offences, the Detaining Authority has referred to the offences which have taken place subsequent to the last offence registered against the Petitioner on 27.06.2023, being C.R. No. 131 of 2023. Though the reliance is placed on last offence registered on 27.06.2023, however while passing the Order of Detention to show that he is habitually committing serious offences, offences registered subsequent to the last C.R. relied on, have been taken into consideration. In our opinion, the Detaining Authority has committed an error in referring to subsequent offences to show that he is a habitual offender. Similarly, there is a huge gap of almost five months between the last offence registered on 27.06.2023 which has been relied and the Order of Detention issued on 15.11.2023. Due to the gap of five months the urgency has diminished, and the immediate threat to public order does not survive, thus the live link is snapped. On this count also the Order needs to be quashed and set aside.

9. The Commissioner of Police, Pune City has filed an affidavit opposing the Writ Petition. According to the Detaining Authority the Senior Police Inspector, Vishrambaug Police Station, has submitted the proposal on 07.11.2023 for detention of the Petitioner. The Detaining Authority after satisfying himself about the Petitioner being a dangerous person within the meaning of Section 2(b-1) of the MPDA Act, has passed the necessary Order of Detention with a view to prevent him from acting in a similar manner in future, and repeating the offence.

10. The Senior Police Inspector has conducted the confidential inquiry of the criminal activities of the detenu and his associates. The in-camera statements have been recorded on 14.10.2023 and 17.10.2023 about the atrocities at the hands of the Detenu. Hence, after having subjectively satisfying himself and after due application of mind the Detaining Authority has passed the Order of Detention of the detenu. As such the said order is legal and valid.

11. In response to the objection raised by the Petitioner in para No.10-D, it is submitted by the Detaining Authority that, C.R. No. 212 of 2023 under Section 506(2) of the IPC and under Section 66(c) of the IT Act, was registered on 08.09.2023, against an unknown person. The said offence was committed between 22.06.2023 and 25.06.2023. During the investigation, it transpired that the Petitioner was the accused in the said crime. The Petitioner had committed the said crime before registration of C.R. No. 131 of 2023, therefore it is the conduct of the Petitioner, which is prior to the C.R. No. 131 of 2023.

12. We are unable to accept the said explanation given by the Detaining Authority that, though it is claimed that the said offence has been registered subsequent to the registration of C.R. No. 131 of 2023 dated 27.06.2023. However the offence is committed before 27.06.2023 i.e. before the last offence relied on for recording subjective satisfaction. The date of registration of offence is material for taking into consideration

the past history of the offender. Apart from the C.R. No. 212 of 2023, registered on 08.09.2023 even C.R. No. 246 of 2023 has been referred to show that the Petitioner is a habitual offender. The said C.R. has been registered on 01.11.2023. Therefore, even the said offence being subsequent to the last offence which has been taken into consideration and relied on while passing the Order of Detention, cannot be relied on for terming the Petitioner to be a Habitual offender.

13. The Petitioner has also raised his objection to the verification of the in-camera statements of the witnesses. The two in-camera statements of Witness A and B, which were recorded on 14.10.2023 and 17.10.2023 respectively, have been verified on 08.11.2023. Hence, there is a delay in verification of the statements.

14. After taking into consideration the grounds raised by the Petitioner and also the affidavit of the Detaining Authority, it is evident that the Order of Detention which is passed against the Petitioner declaring him to be a '**Dangerous Person**' as defined under Section 2(b-1) of the said Act, has taken into consideration, the list of past offences and preventive actions taken against the Petitioner. However, the chart showing the past offences are not the past offences, but the offences registered subsequent to the offence which has been relied on, while passing the Order of Detention. Therefore, in view of the same, the Petitioner can not be termed as a '**Habitual Offender**', for the offence which have been registered

subsequently. Hence, in view of the above the Order of Detention passed against the Petitioner is required to be quashed and set aside. Accordingly, we pass the following Order :

ORDER

- (i) The Writ Petition is allowed.
- (ii) The Order of Detention dated 15.11.2023 passed by the learned Commissioner of Police, Pune City, alongwith the Order of confirmation of the Order of Detention dated 11.01.2024 issued by the State Government, are quashed and set aside.
- (iii) The Respondents are directed to release the detenu forthwith.

15. Rule is made absolute in the above terms.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

CHAITANYA
ASHOK
JADHAV

Digitally
signed by
CHAITANYA
ASHOK
JADHAV
Date:
2024.07.25
18:15:52
+05'30'