

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1723 OF 2024

Gaurav Santosh Adsul,
Age : 20 Years, Occu.: Nil,
R/at : Shivchaitanya Colony, Lane No.5,
Shevalewadi, Haveli, Pune. .. Petitioner

Versus

1. The State of Maharashtra
Through Additional Chief Secretary
(Home), Government of Maharashtra,
Home Department (Special),
Mantralaya, Mumbai.
2. Dr. Retesh Kumaarr,
Commissioner of Police, Office of
Commissioner of Police, Pune,
Maharashtra.
3. The Superintendent of Amravati
Central Prison, Amravati.
4. The Inspector of Police, Hadapsar
Police Station, Pune. .. Respondents

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Mr. Shailesh Kharat, for the Petitioner.

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

...

CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 22nd JULY, 2024

JUDGMENT (PER MANJUSHA DESHPANDE, J.) :-

1. Heard learned counsel for the Petitioner and learned A.P.P. for the Respondent-State. The Writ Petition is taken up for final disposal.

2. The Petitioner herein is challenging the Order of Detention dated 06.12.2023, passed by the Commissioner of Police, Pune, in exercise of his power 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. ("the MPDA Act").

The Petitioner has been issued the Grounds of Detention on the basis of which the order has been passed by the Detaining Authority. The Petitioner has challenged the Order of Detention on various grounds as mentioned in the memo of the Writ Petition.

3. It is the contention of the Petitioner that while issuing the Order of Detention, the Detaining Authority has relied on C.R. No. 1641 of 2023, registered under Sections 324, 323, 506 of the Indian Penal Code ("the IPC"); under Section 4(25) of the Arms Act and Sections 3 and 7 of the Criminal Law Amendment Act. The said offence has been registered on 27.10.2023 at Hadapsar Police Station. While issuing the Order of Detention, the Petitioner has been categorized as a

“Dangerous Person”, as defined under Section 2(b-1) of the MPDA Act. It is mentioned that, the activities of the Petitioner are prejudicial to the maintenance of public order, as defined under Section 2(a)(iv) of the said Act. Therefore, the Order of Detention has been issued against the Petitioner.

4. Under Clause No.5 of the Grounds of Detention under the ‘Particulars of offence considered for passing detention order’ are given in a tabular form, in which the above mentioned offence i.e. C.R. No. 1641 of 2023 has been mentioned. The details of the said offence have been narrated in para No.5.1.

On going through the details of the said offence, it transpire that the complainant in the said offence is in fact the grand-father of the Petitioner/detenu. In the complaint it is stated that on 26.10.2023 when the detenu returned from his work he started beating his mother Kavita Adsul, due to some previous quibble. When the complainant intervened, the detenu is alleged to have assaulted his grand-father, with a steel tiffin on his head, which caused bleeding injury.

It is further stated that the complainant ran out of the house due to fear and the detenu chased him. The residents of the locality hide themselves due to fear and the complainant called the police authorities by dialing 112 and when the police reached there, the detenu escaped.

5. The other ground raised by the Petitioner is that

the Detaining Authority has relied on two in-camera statements and only one C.R., while satisfying himself that the Petitioner is a Dangerous Person. The Detaining Authority has recorded confidential statements of witnesses 'A' & 'B' on 15.11.2023 and 17.11.2023 respectively. Relying on one C.R. and two in-camera statements, Order of Detention is issued.

The Petitioner has raised specific ground in the memo of the Writ Petition in ground No.(j) that though the grounds of Detention referred two in-camera statements in para No.6 but in para no.5 reference is made to C.R. No.1641 of 2023, registered at Hadapsar Police Station. The Detaining Authority has relied only on one solitary C.R. as a predicate offence, which does not constitute a Habit. Therefore, he cannot be a Dangerous Person under the MPDA Act.

The other ground which the Petitioner has categorically raised is in ground No.(k), where he has taken objection to a nature of offence, which has been relied on by the Detaining Authority. According to the Petitioner, the said offence as well as the incident is of individualistic nature as it was a dispute between the family members of the detenu. Therefore, it does not have any adverse effect as such to the maintenance of public order or even to the tempo of life or the peace and tranquility of the locality.

In the catena of decisions, this Court as well as the Hon'ble Apex Court has taken a view that reliance on solitary offence is not sufficient to constitute a 'Habit', therefore a person can not be termed as a "Dangerous Person", if he is not a habitual offender.

6. The Commissioner of Police i.e. the Detaining Authority has filed his affidavit. The learned A.P.P. during the course of hearing has taken us through the contents of the said affidavit.

In response to the grounds raised in para No. 5 (c), (d), (e), (g), (i), (n) of the Petition, it is stated that for passing the Order of Detention, the Detaining Authority has considered an offence i.e. C.R. No. 1641 of 2023, registered under Sections 324, 323, 506 of the IPC; under Section 4(25) of the Arms Act and under Sections 3 and 7 of the Criminal Law Amendment Act, as well as the two in-camera statements of witnesses recorded on 15.11.2023 and 17.11.2023. He has stated that after considering the entire proposal and compilation of documents placed before the Detaining Authority, he has carefully examined all the materials placed before him and after arriving at subjective satisfaction that it is absolutely necessary to detain the Petitioner/detenu, the Order of Detention has been issued on 06.12.2023. Apart from the contents in the affidavit, the Detaining Authority has justified the action of the issuance of the Order of Detention.

On going through the said affidavit, we do not find that any justification or explanation is given by the Detaining Authority for the ground No.5(j) raised in the memo of the Writ Petition, wherein the Petitioner has raised specific ground that the Detaining Authority has relied only on solitary C.R. as a predicate offence, which does not constitute a habit and therefore the Petitioner cannot be declared to be a 'Dangerous Person', under the MPDA Act.

Apart from that the Petitioner has also raised ground No.5(k) wherein he has objected to reliance placed on C.R. No. 1641 of 2023, as the said offence is individualistic in nature and it is a dispute between the family members i.e. the Petitioner, his mother and his grandfather, therefore there is no element of jeopardizing the 'public order' or 'peace' or tranquility of the area. The said aspect has also not been explained by the Detaining Authority in his affidavit.

In the reported Judgment of *Ram Manohar Lohia V/s. State of Bihar And Anr., reported in 1965 SCC OnLine SC 9 : (1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608*, the Hon'ble Apex Court while considering the words 'Maintenance of Public Order' has observed that, the words 'public order' has a different connotation than the maintenance of law and order. Maintenance of law and order is generally used for maintenance of public safety and tranquility, which is covered by expression public order.

7. In the Order of Detention, the Detaining Authority has specifically observed that, with a view to prevent the detenu from acting in a manner prejudicial to the maintenance of public order, it is necessary to make an order directing him to be detained.

The activities of the Petitioner are claimed to be prejudicial to the maintenance of public order, as defined under Section 2(a)(iv) of the MPDA Act, which reads thus :

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];

In the grounds communicated to the Petitioner, it is specifically observed that he is a ‘Dangerous Person’, as defined under Section 2(b-1) of the MPDA Act, which reads thus :

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];

On going through the definition of ‘Dangerous Person’, as defined in Section 2(b-1), a person has to be habitually committing or attempting to commit offence punishable under Chapter XVI and XVII of the IPC or offence punishable under Chapter V of the Arms Act.

Therefore, while recording subjective satisfaction, if the Detaining Authority is taking into consideration a single offence alongwith two in-camera statements, the detenu cannot be termed as a 'Dangerous Person', as he is not a habitual offender, as required under Section 2(b-1) of the said Act. In order to be a 'Dangerous Person', he has to be a habitual offender. In the present matter, only one offence has been relied on therefore, by stretch of imagination, he can be termed as a Dangerous Person.

8. If we take into consideration the nature of offence, it does not disclose disturbance to the public order. In fact, from the details recorded in the grounds of detention, it transpires that, it was an incident involving family members. The said cannot be given colour of disturbance to the public order. It nowhere discloses that people at large were present and that they have tried to intervene or the Petitioner has caused some disturbance to the public tranquility and peace of that area, where the said incident had occurred.

9. Hence, in view of the fact that only one offence has been taken into consideration by the Detaining Authority, as well as that there is no element of disturbance to the public order, we are satisfied that the Order passed by the Detaining Authority is issued without subjective satisfaction about the necessity of passing the Order of Detention, against the Petitioner. Hence, the said order deserves 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 06.12.2023, passed by the Commissioner of Police, Pune, is quashed and set aside.
- (iii) The Respondents are directed to release the detenu forthwith.
- (iv) No order as to costs.

10. Rule is made absolute in terms of prayer clause 'b'

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

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signed by
CHAITANYA
ASHOK
JADHAV
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