

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1821 OF 2024

Sagar @ Shubham Maruti Hivare .. Petitioner

Versus

The Commissioner Of Police, Pimpri
Chinchwad, Pune And Anr. .. Respondents

...

Mr. Niranjan Bhavake i/b Mr. Sushant Tayade, for the
Petitioner.

Mr. Ajay S. Patil, A.P.P. for the State/Respondent.

...

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

DATED : 25th JULY, 2024

P.C:-

1. By Order dated 31.12.2023 passed by the Commissioner of Police, Pimpri Chinchwad, Pune and a Committal Order of the same date, the Petitioner has been detained in Yerawada Central Prison, the order being based on a subjective satisfaction reached by the Detaining Authority that the detention is necessary to prevent him from acting in any manner prejudicial to the maintenance of public order, he being described as a 'Dangerous Person'.

On the very same date, the Grounds of Detention are communicated to him, justifying the detention and

disclosing the material based on which the subjective satisfaction is reached by the Detaining Authority.

2. We have heard learned counsel for the Petitioner and the learned A.P.P. for the State. The learned counsel has invited our attention to the Grounds of Detention and while assailing the impugned order, he would submit that though the Detaining Authority has referred to the offences registered against him from 2019 to 2022, with MIDC/Bhosari Police Station, and there is also a reference of a preventive action initiated by Proposal No.44/2022, under Section 110 (a) (e) (g) of the Code of Criminal Procedure ("Cr.P.C."), according to him, the offence which has been considered for passing an order of detention is C.R. No. 986 of 2023, registered with Bhosari Police Station, which has invoked Section 4(25) of the Arms Act, Section 37(1)135 of the Maharashtra Police Act and under Section 3 and 7 of the Criminal Law Amendment Act. In this C.R. the Petitioner was arrested on 08.12.2023.

Though the learned counsel for the Petitioner would question the invocation of the relevant provisions in the said C.R. and he would claim the same as a deliberate act and a fraudulent F.I.R., since we can not go into the veracity of the truthfulness of the same, we have not focused our attention on that aspect. However, we find substance in the submission of the learned counsel when he submit that in taking the F.I.R. as it is, when it is carefully read, it failed to satisfy the test of a 'Dangerous Person', acting in a manner prejudicial to the maintenance of public order.

3. For appreciating the argument when we dealt with the provision of MPDA Act 1981, we have take a note of definition of dangers person as 2(b-1), 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];

A Dangerous Person is said to have acted in a manner prejudicial to the maintenance of public order as contemplated in Section 2(i)(iv), when he is engaged or is making preparations or engaging, in any of his activities as a Dangerous Person, which affect adversely or are likely to affect adversely the maintenance of public order.

4. By this time it is the settled position of law that as to what amounts to ‘public order’ and as been settled by the decision of the Apex Court, in case 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,** by holding that in case of ‘public order’ the community or the public at large is affected, in contrast to a law and order.

5. In this background when we peruse the subject FIR

which formed on the basis of the order of detention, we have noticed that it is filed by one police constable who alongwith his squad was engaged in patrolling duty and received secret information that one person, armed with a weapon is moving on the street and therefore when they reached the spot they found a person armed with scythe and he was seen shouting and creating terror. When they approached him, he attempted to flee.

On being apprehended he was searched and inside his shirt, he was found to have concealed one iron scythe.

One thing is clear that the complainant do not refer to the presence of any members of the public on the street and the complaint itself is contradictory as the complainant has narrated that they saw a man holding a scythe and creating a reign of terror by raising cries on the road, whereas when he was apprehended he was found to have concealed the scythe inside his shirt.

In any case, this act of the Petitioner, unless and until it was narrated that he was making preparation for engaging in any of his activities as a dangerous person, i.e. for committing or abetting the commission of an offence punishable Chapter XVI and XVII of the IPC or an offence punishable under Chapter V of the Arms Act, 1959, and in absence of any evidence to show that his activity had affected adversely or was likely to affect adversely the maintenance of public order, definitely the subject C.R. could not have been taken into consideration, as a basis of passing the detention order on the ground that the Petitioner is a Dangerous Person.

6. The Detaining Authority in the Grounds of Detention, by relying upon the subject C.R. mentioned in point No.5.1 and by relying upon two in-camera statements, has arrived at a conclusion that the detenu is a habitual offender and based on this material, the Detaining Authority was subjectively satisfied that he is a 'Dangers Person' and his criminal activities are nuisance to the public order.

Though, we have not gone through the in-camera statements, in absence of the allegations in the subject C.R. registered with Bhosari Police station, demonstrating that the Petitioner is a dangerous person, who was engaged or was making preparation for engaging in his activities as a dangerous person, the material relied by the Detaining Authority is definitely is not sufficient to classify him in this category.

When we have specifically gone through the affidavit of the Detaining Authority, we do not find any justification or explanation being offered to the particular ground raised in the Petition, assailing the Order of Detention.

For this reason, the Detention Order since it suffers from inadequacy of material, is liable to be quashed and set aside and the Petitioner/detenu is entitled to set at liberty forthwith.

The Writ Petition is made absolute in above terms.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)