

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

WRIT PETITION NO. 2340 OF 2024

Sonu Manoj Shiraswal Age : 37 years R/o. 135, Solapur Bazar Camp Pune & Hole Wasti, Near Shankar Mandir, Wanavdigaon, Pune (Presently detained at Nashik Central Prison Nashik	}	Petitioner
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Versus

1. Commissioner of Police Pune City 2. The State of Maharashtra (Through Addl. Chief Secretary to Government of Maharashtra Mantralaya, Home Department Mantralaya, Mumbai 3. The Superintendent Nashik Central Prison, Nashik	}	Respondents
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Ms Jayshree Tripathi a/w Ms Anjali Raut, for the Petitioner.

Mr. S. V. Gavand, APP, for the Respondent – State.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 8th AUGUST, 2024**

ORDER:(PER MANJUSHA DESHPANDE, J.):

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

2. The petitioner/the detenu is undergoing detention. Detention Order dated 26.03.2024 has been issued against him by respondent No. 1- the Commissioner of Police, Pune City, 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 Back Marketing of Essential Commodities Act, 1981 (for short "MPDA Act, 1981"). The petitioner was served with grounds of detention alongwith the Order of Detention itself. He has preferred a representation against the said Order of Detention to the State Government through jail on 02.05.2024.

The petitioner is challenging the said Order of Detention on the ground that, his fundamental right has been violated and being aggrieved by the said Order of Detention, he has filed the present Writ Petition.

3. The petitioner has raised various grounds, however, he has specifically relied on ground (e) in the Memo of Writ Petition. According to the Petitioner, he has been categorized as a "dangerous person" as defined under Section 2(b-1) of the MPDA Act, 1981. The grounds of detention would reveal that, in the criminal history of the petitioner only two crimes are referred, being registered in the year 2019 and 2023.

According to the petitioner, on the basis of these two CRs, he cannot be categorized as a "habitual offender".

Even between the two cases registered against him, there is a gap of four years, as the first offence is registered in the year 2019 while the other offence has been registered in

the year 2023 and considering the huge gap between the two offences, the petitioner cannot be termed as a “habitual offender” and, consequently, he cannot be categorized as a “dangerous person” as defined under Section 2(b-1) of the MPDA Act, 1981.

4. In view of the said ground raised by the petitioner, we have called upon the learned APP to respond the said ground. The learned APP has relied on the affidavit of respondent No. 1, the Commissioner of Police, Pune City.

On going through the said affidavit, more specifically the response of the Detaining Authority to ground 5(e) in the Writ Petition, it is stated that, the detenu has committed offences such as assault on public servant, molestation, voluntarily causing hurt while attempting robbery, possessing illegal arms etc. using deadly weapons like sickles, knives, which is punishable under Chapter XVI or XVII of the Indian Penal Code and under the Arms Act.

Further reliance is placed on the in-camera statements of witnesses ‘A’ and ‘B’, who have stated about the atrocities at the hands of detenu. According to respondent No. 1, the in-camera statements also indicate that the petitioner is habitually committing criminal activities in the locality. According to the Detaining Authority, enough material was placed before him to categorize the detenu as a “dangerous person” as defined under Section 2(b-1) of the MPDA Act, 1981. All other adverse allegations have been denied by him.

5. The sum and substance of the affidavit of the Detaining Authority is that, the detenu is habitual in committing offences

under Chapter XVI and XVII of the IPC and under Chapter V of the Arms Act. Therefore, the detenu is a “dangerous person” and his activities being prejudicial to the maintenance of public order, he has become a dangerous to the lives and properties of the people residing within the jurisdiction of Lashkar Police Station, Pune City.

During the confidential inquiry the Senior Inspector of Police recorded the in-camera statements of witnesses ‘A’ and ‘B’ on 18.02.2024 and 19.02.2024, respectively. These two in-camera statements show the criminal activities of the detenu affecting the public order. Hence, the Detaining Authority, being subjectively satisfied and after due application of his mind has passed an Order of Detention which is legal, just and proper.

6. Upon hearing the respective counsel, we have perused the annexures to the Petition and after going through the grounds of detention, we have come across the two offences mentioned in the ground No. 3.1. The first offence is registered on 05.03.2019 and the second offence is registered on 17.07.2023 and both the offences have been referred to show that, the petitioner is ‘habitually’ committing serious offences in order to show his criminal history.

7. While passing the Order of Detention, the Detaining Authority has relied on two offences, which are given in grounds 5, 5.1 and 5.2. The first C.R. No. 309/2023 for the offence punishable under Sections 394, 511, 506 of the IPC has been registered on 30.12.2023 and the petitioner has been arrested for the said offence on 23.01.2024, while the second

C.R. No. 310/2023 is registered on the same day i.e. 30.12.2023, for the offence punishable under Sections 353, 332, 504, 506 of the IPC and he has been arrested on 25.01.2024. On going through the details of the said offences given in grounds 5.1 and 5.2 it reveals that, both the offences have arisen out of the one and the same incident. That would leave only two in-camera statements which were recorded for the incident that had taken place on 29.12.2023.

In paragraph 8 of the grounds of detention the Detaining Authority has observed that, the offences and preventive actions taken in paragraph 3, 3.1 and 3.2 of the grounds of detention indicate that the detenu is habitual criminal involved in continuous criminal activities. The Detaining Authority has relied on the material mentioned in paragraph 5.1, 6.1 and 6.2 of the grounds of detention to record at his subjective satisfaction that, the detenu is a “dangerous person” as defined under Section 2(b-1) of the MPDA Act.

8. As observed herein above, the Detaining Authority has considered two offences which have been registered out of one and the same incident, that cannot be construed as a ‘Habit’. When there are more than one offences committed by the detenu at regular intervals he can be categorized as a “habitual offender”. Even otherwise, the reliance placed on the past history to show his habituality refers to offence which has been committed on 05.03.2019. After 05.03.2019, there is no offence registered against the petitioner up to 17.07.2023. There is a gap of four years between the two offences, therefore, these two offences cannot be relied upon to claim

that the petitioner is habitually indulging in commission of serious offences.

9. The petitioner has been declared as a “dangerous person” as per Section 2(b-1) of the MPDA Act, 1981.

The definition of “dangerous person” in the MPDA Act, 1981 reads as under:

“2. Definitions. In this Act, unless the context otherwise requires,-

(a).....

(b).....

(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(LIV of 1959).”

A perusal of the definition of the “dangerous person” shows that, when a person individually or as a member of a gang, “habitually” commits or attempts to commit or abets the commission of offences punishable under Chapters XVI and XVII of the IPC or under Chapter V of the Arms Act, 1959, he would stand covered under the above definition. It is significant to note that, a person who “habitually” commits such offences which disturbs public order is a “dangerous person.”

In the present case, the Detaining Authority has relied on two offences while recording his subjective satisfaction, but having gone through the details of the said two offences it transpires that, they arise out of the one and the same

incident. Therefore, only one offence cannot be relied upon for categorizing the petitioner as a “habitual offender”. As a result, even his declaration as a “dangerous person” under Section 2(b-1) of the MPDA Act, 1981 cannot be sustained. Consequently, the petitioner cannot be held as a “dangerous person” and detained on the basis of impugned Detention Order.

10. The Hon’ble Apex Court in case of ***State of Maharashtra and Ors. V/s Mehamud***¹ while considering the term “dangerous person” has relied on various judgments and interpretations for the term “dangerous” and “habitual”.

The Hon’ble Apex Court has also considered the dictionary meaning of the words “habit” and “habitually” as given in *Advanced Law Lexicon* (3rd Edn.), which reads as under:

“Habit.- Settled tendency or practice, mental constitution. The word “habit” implies a tendency or capacity resulting from the frequent repetition of the same acts. The words by “habit” and “habitually” imply frequent practice or use.

The expression “habitual” was also considered in this judgment relying on the judgment of ***Vijay Narain Singh V/s State of Bihar***². In the said judgment, the meaning of a “habitual criminal” and the expression “habitually” was considered, which is reproduced as follows:

“The expression “habitually” means “repeatedly” or “persistently”. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit.”

¹ (2007) 12 SCC 358

² (1984) 3 SCC 14 : 1984 SCC (Cri) 361

From the interpretations of the words “habit” and “habitual”, it necessary means a person is accustomed to commit crimes. It implies persistent and repeated crimes, wherein there is a continuity in commission of offences. Applying said interpretation the petitioner cannot be declared as a “dangerous person”. As a result, the order of detention has become unsustainable, and deserves to be quashed and set aside.

11. In view of the conspectus of the matter, the Writ Petition is made absolute in terms of prayer clause (b), which reads as under:

“(b) The order of Detention bearing No.CRIME PCB/DET/LASHKAR/SHIRASWAL/321/2024, dated 26.03.2024 issued under Section 3 of M.P.D.A. Act 1981 by the Respondent No. 1 be quashed and set aside and on quashing the same the Petitioner be ordered for release forthwith;”

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)