RUSHIKESH VISHNU PATIL
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2882 OF 2024

Ganesh @ Babu Shivpujan Soni
Age: 23 years, R/o: Kala Talao, Near Pirbaba Dargha, Hari Sonar Chawal, Beturkarpada, Kalyan (W), District: Thane
(At present Nashik Road Central Prison, Nashik) } Petitioner

Versus

1. Commissioner of Police, Thane and Ors.

2. The State of Maharashtra
(Through the Secretary Home Department (Spl) Mantralaya Mumbai

3. The Superintendent,
Nashik Road Central prison, Nashik } Respondents

...

Ms Jayshree Tripathi a/w Ms Anjali Raut, for the Petitioner.

Ms M. M. Deshmukh, APP, for the Respondent – State.

API, P. S. Sable, MFC Police Station, Thane, is present.

...

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 19th AUGUST, 2024

Oral Judgment : (Per Bharati Dangre, J.):-

1. The Writ Petition raise the challenge to the detention order dated 14.12.2023 issued by Respondent No. 1, the

Detaining Authority, under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (for short "the MPDA Act, 1981).

Pursuant to the order being passed on the satisfaction expressed by the Detaining Authority that, it is necessary to prevent the detenu from acting in any manner prejudicial to the maintenance of public order, he deserve to be detained, he was committed to Nashik Road Central Prison, Nashik by a committal order issued on the same day. In addition, the grounds of detention were communicated to the detenu justifying the passing of the detention order, in exercise of the powers available to the Detaining Authority.

We have heard Ms Tripathi, learned counsel appearing for the petitioner, who has pressed into service grounds (e), (f) and (h).

2. The ground (e) in the Petition is carved out in the following fashion:

> *"(e) The petitioner says and submits that there is a document at Page No. 1 – 3 in the grounds of detention which is titled as "Goonda Register" the, said document is placed before the detaining authority and a copy of the same is furnished to the petitioner to enable him to make an effective representation. It is pertinent to note that in the grounds of detention the detaining authority categorically submits that past criminal record of the petitioner at paras 2 and 3 are preamble and have not been considered to pass the detention order, however there is no such averment about the said document i.e.*

> *"Goonda Register" which is at Page No. 1 to 3 the very fact that the said document is placed before the detaining authority, in the grounds of detention clearly shows that the document is not only referred to but also relied on and considered by the detaining authority for passing detention order. Whereas in the grounds of detention, at para 3 after narration of past history, the detaining authority says and states that he has not relied on facts mentioned in para 2 and 3 while forming subjective satisfaction. Therefore, there is a discrepancyl/contradictory statement made by the detaining authority. This also shows non application of mind of the authority passing detention order. If the said document i.e. the "Goonda Register" was not a document considered, then there is no explanation as to why such a document is placed in the compilation of documents before the detaining authority. Hence it can be inferred that the said document is very much relied and considered by the detaining authority while forming his subjective satisfaction, thereby the detaining authority has considered extraneous material, which is illegal and bad in law. The order of detention is illegal and bad in law liable to be quashed and set aside."*

3. The crux of the above ground (e) is that, there is discrepancy/contradiction in the statements of the Detaining Authority reflecting non-application of his mind and what is sought to be canvassed before us is, if the document i.e. "Goonda Register" was not considered, then why was it placed in the compilation of documents before the Detaining Authority.

We have given our anxious consideration to the aforesaid ground, in the backdrop of the grounds of detention which are set out and communicated to the petitioner on 14.12.2023.

In the entire grounds of detention, we do not find any reference to "Goonda Register" and, in fact, the Detaining Authority for the purpose of establishing that the detenu is

habituated in committing offences as contemplated under the MPDA Act, 1981 has referred to the past history reflecting his antecedents from 2018 to 2023 and, similarly, the Detaining Authority has also invoked the preventive actions, to reach a conclusion that they were not sufficient to curtail his criminal activities and though the activities mentioned in paras 2 and 3 are not relied upon for forming the subjective satisfaction in issuing the present detention order, they only refer to his past, reflecting upon his tendencies and inclinations to continue the criminal activities. Since there is no reference to the "Goonda Register" in the entire grounds of detention, this ground, according to us, do not satisfy the test of arbitrariness or non-application of mind, so as to vitiate the action of Detaining Authority.

4. The next ground on which Ms Tripathi has placed reliance is ground (f), which reads to the following effect:

> *"(f) The petitioner says and submits that, on a perusal of the grounds of detention, it is not understood as to what is the exact material taken into consideration by the detaining authority to arrive at his subjective satisfaction and pass the detention order, as the averments made by the detaining authority are contradictory, and not clear. Firstly, the detaining authority in para 1 states that he communicates grounds as mentioned in para No. 4(a), 5(a) and 5(b) on which detention order is issued, Secondly, in Para 3 of the grounds of detention there is a table of past cases of the detenu/petitioner which shows his criminal antecedents, and after narrating the entire history of the petitioner, the authority proceeds to say that Paragraph No. 2 and 3 are the preamble introduction to the grounds are not relied upon me while forming my subjective satisfaction to issue the present order of detention against you. Thirdly, in para 7 of the grounds of detention the detaining authority again makes a*

reference to past history stating that "I am aware that you were detained before in the year 2021. You were released from detention of MPDA Act. Immediately you committed 03 serious crimes" and in Para 11, it is stated that "After considering your activities and its effects from all angles and gravity of questionable activities of yours .....From the above facts and record placed before me I am satisfied that you are a dangerous person and normal laws of land are just not sufficient to curb your dangerous activities. The petitioner further submits that if the detaining authority had only relied on recent one crime within the period of six months, then there was no need and necessity to consider other material on record. The detaining authority has thereby considered extraneous material which includes old and stale cases. It is, also the satisfaction of the detaining authority is not clear (ambiguous) on the material taken on record to pass detention order. The subjective satisfaction of the authority vitiates, this also shows non-application of mind of the detaining authority. The order of detention is illegal and bad in law liable to be quashed and set aside."

5. In continuation of the past activities of the detenu, the Detaining Authority has clearly spelt-out as below:

4. Your involvement in the recent past noticed in the following incidents, shows your tendencies and inclinations to continue your criminal activities prejudicial to the maintenance of Public Order, Peace and Tranquility in future also.

Relied upon cases

Sr.No.	*Police Station*	*C.R. No. & Sections*	*Date of Registration*	*Status*
4(a)	*Bazarpeth*	*271/23 u/s 326, 341, 120(B), 34 of IPC r/w sec.4,25 of Arms Act and r/w sec. 37(1) 135 of Maharashtra Police Act.*	*29/09/2023*	*Court Pending*
5(a)	*In-camera-A*			
5(b)	*In-camera-B*			

Para 4(a) has then set out the details of the C.R. 271 of 2023 registered with Bazarpeth Police Station, which has invoked the relevant sections of the IPC as well as the Arms Act and the Maharashtra Police Act.

6. In para 7, by referring to the instance mentioned in para 4(a) that is the C.R. and two in-camera statements to which an reference is made in paras 5(a) and 5(b), the Detaining Authority has expressed subjective satisfaction that the detenu is acting in a manner prejudicial to the maintenance of public order, peace and tranquility.

7. The attempt of Ms Tripathi to rely upon the following observation to vitiate the subjective satisfaction, according to our opinion, do not deserve any consideration, however for dispelling the said contention it is necessary to reproduce the relevant ground, which read as below:

> *"7. From the instances quoted in para No. 4(a), 5(a) and 5(b) above, I am subjectively satisfied, that you are acting in a manner prejudicial to the maintenance of Public Order, Peace and Tranquility. 1 am aware that, you were detained before in the year 2021. You were released from detention of MPDA ... Act. Immediately you committed 03 serious crimes. Out of which one case is relied upon in this proposal. In this case Bazarpeth Police Station C.R. No. 271/23 u/s 326, 341, 120(B), 34 of IPC r/w sec.4,25 of Arms Act and r/w sec. 37(1) 135 of Maharashtra Police Act is registered against you and your associates on dt. 29/09/2023. On 07/10/23 you were arrested said case. As you had made bail application in the offence, Hon'ble Court granted you bail in the said offence. Finally you being a free person.*
>
> *Considering your Modus Operandi Criminal tendencies and inclinations reflected in the offences*

> *committed by you as stated above, I am satisfied that as you have been granted bail and as you being a free person and in the event of you being at large, you being a criminal, are likely to indulge in activities prejudicial to the maintenance of Public Order, Peace and Tranquility in future and that with a view to prevent you from acting in such a prejudicial manner in future, it is extremely necessary to detain you under the said Act."*

8. In para 11, the Detaining Authority has strengthened his subjective satisfaction by the following words: "*After considering your activities and its effect from all angles and the gravity of the questionable activities of yours, I have to judge whether your activities are prejudicial to the maintenance of public order.*

From the above facts and record placed before me, I am satisfied that you are a "Dangerous Person" as defined in the said Act, and, you being free at large is prejudicial to the maintenance of public order in the city. The normal laws are just not sufficient to curb your criminal activities and dangerous activities as the witnesses are unwilling to come forward and depose against you."

9. It is in these clear words, without any confusion in the mind of the Detaining Authority, by referring to the past tendencies of the detenu, since he was all the while engaged in various activities, which were construed by the Detaining Authority to be prejudicial to the maintenance public order and by taking into consideration the C.R. mentioned in para 4(a) alongwith the in-camera statements mentioned in paras 5(a) and 5(b), the subjective satisfaction is reached that, the

detenu was indulging himself in activities which are prejudicial to the maintenance of public order and, therefore, he is a “Dangerous Person” as defined within the meaning of Section 2(b-1) of the MPDA Act, 1981.

10. The attempt of Ms Tripathi to place reliance upon another ground i.e. ground (h) to contend that the activities of the detenu as set out in C.R. No. 271 of 2023, by no stretch of imagination attracts a situation of “Public Order”, must also receive a rejection, since looking into the incident and narration of the complainant in the said C.R., when he was carrying money and was pillion riding his friend, he was chased by the accused and a person accompanying him and where the complainant received stab injuries, according to us, cannot be said to be merely a law and order situation and her emphasis on the timing of the incident at 1 O’clock in the night, definitely is a situation of public order, as it is not only presence of the public at a particular place but it is the effect of such an incident in the minds of the people residing in vicinity and, particularly, when in the night hours, two persons are being chased and one of them sustain serious grievous injury, is definitely a situation creating public anxiety and affecting the even tempo of life of the public and, therefore, cannot be said to be a situation only relating to law and order.

11. Ms Tripathi has placed reliance upon the decision in case of ***Sonu Omkar Pawar V/s. Commissioner of Police, Thane and Ors.***[1], whereupon the same terminology being used in the detention order, the Division Bench has arrived at the

1 Cr. WP(ST).20844.2023 (Decided on 19.12.2023)

conclusion that, the subjective satisfaction of the Detaining Authority is based not only upon the relied incidents but on extraneous material which is referred to in the introductory paragraphs of the detention order, and on this ground, the detention order is quashed and set aside.

However in our considered view, when the grounds of detention in this particular case, being communicated to the petitioner on 14.12.2023, which we have clearly perused, we find the clear demarcation made by the Detaining Authority into two categories, as the detenu was all the while known to be moving in the area, armed with weapons and having himself indulged in offences like attempt to murder, robbery, rioting, criminal conspiracy, grievous hurt, hurt, kidnapping, abusing, threat to life etc. as well as the offences under the Arms Act, which resulted into preventive action being invoked against him, but despite this act and reference to his criminal tendencies, the Detaining Authority has referred to the offences committed by him, mentioned in chart no.1 being 10 in number, which were pending before the Court, reflecting his criminal tendency to indulge into offences.

12. The Detaining Authority has clearly contemplated that paras 2 and 3 as mere introduction to the grounds of detention, and the facts mentioned therein are not relied upon by the Detaining Authority while forming a subjective satisfaction to issue the present detention order, for which purpose the Detaining Authority has relied upon only one C.R., registered on 29.09.2023 with Bazarpeth Police Station, invoking Sections 326, 341, 120(B) r/w 34 of IPC and Sections

4,25 of the Arms Act r/w Sections 37(1), 135 of the Maharashtra Police Act.

Para 4(a) has clearly set out the facts of the case, which resulted into a complaint being filed by the person who has received treatment in Meera Hospital, Kalyan, being supported with his medical certificate of having sustained stab injuries on his left leg, right thigh and buttock causing grievous hurt. In addition, reliance is also placed upon two in-camera statements, which have also brought about the violent nature of the detenu and these in-camera statements were verified by the ACP, Kalyan Division, upon they being recorded.

13. Thus what formed the basis of detention is the C.R. with the two in-camera statements, are the only offences and acts which are taken into consideration by the Detaining Authority to form a subjective opinion that the detenu was acting in a manner prejudicial to the maintenance of public order, peace and tranquility. The fact that, he was released under the MPDA Act, 1981 on being detained in the year 2021 had no effect upon him as immediately thereafter he indulged himself into three serious offences, one of it being C.R. No. 271 of 2023.

The Detaining Authority had clear division of his past activities and his current activities, while reaching the subjective satisfaction.

14. In our considered opinion there is no confusion in the mind of Detaining Authority as he has demarcated the past action of the detenu and distinguished it from the present

activities, which deemed it necessary for him to be detained, being a “Dangerous Person”.

His habituality is only attempted to be brought through his past activities and, therefore, in our considered opinion, since the Detaining Authority has passed the order with sufficient clarity in his mind, we are not convinced that the detention order suffers from the vice of non-application of mind, thereby rendering it to be arbitrary.

For the reasons recorded above, the impugned order of detention passed by the Detaining Authority dated 14.12.2023 is upheld. Accordingly, the Writ Petition is dismissed.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**