

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3015 OF 2024

Aditya @ Raj Kumar Manvatkar Age: 20 years, Occ: Student R/o: Behind Fire Brigade Centre, Near Sanjay Lagade's House, Sanjay Gandhi Vasahat Laman Tanda, Pashan, Pune (Presently languishing in the custody of the Nagpur Central Prison, Nagpur)	}	Petitioner
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Versus

1. The Commissioner of Police, Pune, Agarkar Nagar, Pune City 2. The State of Maharashtra Chaturshrungi Police Station, Pune. 3. Superintendent of the Nagpur Central Prison, Nagpur	}	Respondents
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Mr. Satyam H. Nimbalkar i/b Mr. Harshwardhan M. Pawar, Mr. Yash Saxena, Mr. Abhishek U. Arote and Mr. Padmasinh Patil, for the Petitioner.

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

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CORAM: NITIN W. SAMBRE &
MANJUSHA DESHPANDE, JJ.
DATED : 26TH SEPTEMBER, 2024

Order : (Per Manjusha Deshpande, J.):

1. Rule. Rule made returnable forthwith, with the consent of the parties.

2. The petitioner/detenu is invoking the writ jurisdiction of this Court under Articles 226, 21 and 22(5) of the Constitution of India, seeking directions to quash and set aside the order of Detention dated 23.11.2023 passed by respondent No. 1, the Commissioner of Police, Pune, and consequently seeking direction to release the petitioner from Nagpur Central Prison, Nagpur.

3. The petitioner has challenged the order of Detention issued by respondent No. 1 on the ground that, the Detaining Authority has passed the order contrary to the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing Essential Commodities Act, 1981 (Maha. Act No LV of 1981) (Amendment-1996) (Amendment-2009) Amendment - 2015) (for short "the MPDA Act, 1981"). The petitioner not being habitual offender is not a "Dangerous Person" as defined under the MPDA Act, 1981.

While passing the order of Detention, the Detaining Authority has referred to only one offence against the

petitioner and the past offences against the petitioner have not been relied by him, therefore, a single offence which is relied upon would not constitute habit, which is necessary for categorization as a “Dangerous Person” as per the definition of “Dangerous Person” defined under Section 2(b-1) of the MPDA Act, 1981.

4. It is the contention of the petitioner that, the order of Detention is inconsistent with the legislative intent of the Act, hence it is liable to be quashed and set aside. Apart from the other grounds, the petitioner has also raised ground regarding snapping of live link between the offence which is relied on while passing the order of Detention and the date of in-camera statements of the witnesses, there being unexplained delay between the date of registration of offence relied and the order of Detention. It is contended that, since there is an unexplained delay between the offence which is relied upon and the order of Detention, the live link has snapped.

5. The learned counsel for the petitioner has taken us through the grounds of Detention, wherein the Detaining Authority in para 3 and 3.1 has observed that, the list of past offences and preventive action taken against the detenu are shown in the chart, however the past offences in the chart have not been relied upon while passing the order of Detention, but only referred to show that the detenu is habitually committing serious offences. The chart is produced below para 3 and 3.1, wherein the details of two offences registered at

Chaturshrungi Police Station and Hinjewadi Police Station have been referred to.

C.R. No. 398 of 2022 for the offence punishable under Sections 307, 323, 143, 144, 147, 149, 352, 336, 427, 504, 506 of the IPC and Section 7 of Criminal Law Amendment Act and Section 4(25) of the Arms Act as well as Section 37(1)/135 of the Maharashtra Police Act is registered on 15.09.2022, while C.R. No. 95 of 2023 for the offence punishable under Section 3(25) of the Arms Act and Section 37(1)(3)/135 of the Maharashtra Police Act registered on 03.02.2023.

The Detaining Authority thereafter has referred to the preventive actions taken against the detenu, and thereafter has stated in para 4 of the grounds of detention that, he has relied on one offence mentioned in para 5.1 and two in-camera statements mentioned in para 6.1 and 6.2 to issue the order of Detention. The offence being C.R. No. 593 of 2023 registered with Chaturshrungi Police Station for offence punishable under Sections 307, 504, 506, 34 of the IPC and Section 37(1)/135 of the Maharashtra Police Act and Sections 3 and 7 of the Criminal Law Amendment Act, registered on 24.08.2023, has been relied upon alongwith the two in-camera statements of witness 'A' and 'B', which have been recorded on 25.10.2023 and 28.10.2023 respectively, for the incidents that had occurred on 21.10.2023 and 27.10.2023.

6. In para 8 of the grounds of detention, the Detaining Authority has observed that, he has relied upon the material mentioned in para 5.1 alongwith para 6.1 and 6.2 of the

grounds of detention to arrive at his subjective satisfaction that, the petitioner is a “Dangerous Person” as defined in Section 2(b-1) of the MPDA Act, 1981. Hence after recording his subjective satisfaction by relying on one offence and two in-camera statements, the order of Detention has been passed against the petitioner/detenu by the Detaining Authority.

7. It is the contention of the petitioner that, in order to classify him as a “Dangerous Person” as provided under Section 2(b-1) of the MPDA Act, 1981, term “Dangerous Person” is defined as below:

“2(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;”

In order to bring a person within the definition of a “Dangerous Person” the person should be habitually involved or habitually commit or attempt to commit or abet the commission of offence, which is punishable under Chapter XVI or Chapter XVII of the IPC or any of the offences punishable under Chapter V of the Arms Act, 1959. In order to constitute a ‘habit’ there has to be a series of offences. Considering that only a single offence has been relied upon by the Detaining Authority to categorize the petitioner as a “Dangerous Person”, the subjective satisfaction recorded on that basis, is unsustainable.

In this regard the petitioner has placed reliance on the judgment of this Court in case of ***Jay @ Nunya Rajesh Bhosale V/s. The Commissioner of Police, Pune and Ors.***¹ and also the recent decision of this Court in case of ***Vinod Tuljaram Bandichode V/s State of Maharashtra and Ors.***², wherein the order of detention has been set aside on the ground that, the Detaining Authority has relied only on a single offence and categorized the petitioner therein as a “Dangerous Person”.

The petitioner has also relied on the judgment of the Hon’ble Apex Court in case of ***Khaja Bilal Ahmed V/s State of Telangana and Ors.***³

8. After hearing the learned counsel for the petitioner for some time, we have called upon the learned APP, Ms Deshmukh, who has relied on the affidavit filed by respondent No. 1, the Commissioner of Police, Pune. As far as the ground which is raised by the petitioner is concerned, the Detaining Authority has stated that, the earlier offence and the past history is referred only to show that the detenu is a “Dangerous Person” and his subjective satisfaction is based only on one C.R. and two in-camera statements, relying on which he has passed the order of Detention. The said statement made by the Detaining Authority is contrary to the observations and the judicial pronouncements of this Court as referred above, which is relied by the petitioner.

In our opinion, since the order of Detention has been passed by the Detaining Authority placing reliance on a single

1 Cri. Writ Petition No. 2331 of 2015 (Decided on: 15/16 September 2015)

2 Cri. Writ Petition No. 161 of 2024 (Decided on : 15 July 2024)

3 (2020) 13 SCC 632

offence and two in-camera statements, being contrary to the authoritative pronouncements by this Court is required to be quashed and set aside.

Accordingly, the order of Detention issued by respondent No. 1 against the petitioner is quashed and set aside and the petitioner is directed to be released forthwith. Rule is made absolute in terms of prayer clause (1), which reads thus:

“1. This Hon’ble Court be pleased to issue writ in the nature of Certiorari or any other appropriate order of direction in the nature of writ, kindly quash and set aside the illegal order of detention dated 23/11/2023 passed by the Respondent No. 1 against the Petitioner and consequently the Respondent No. 3 may kindly be directed to release the Petitioner from the Nagpur Central Prison, Nagpur.”

(MANJUSHA DESHPANDE, J.)

(NITIN W. SAMBRE, J.)