



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL WRIT PETITION NO.64 OF 2024

- 1) Osama Mohd Rafique Patka,
Aged about 31 years, Occ. Labour,
R/o Plot No.201, Rajat Apartment,
Ekta Nagpur, Borgaon, Nagpur.

.... Petitioner(s)

// VERSUS //

- 1) State of Maharashtra
Through its Secretary,
Home Department (Special)
Mantralaya, Mumbai.
- 2) Commissioner of Police, Nagpur.

.... Respondent(s)

Mr. M.N. Ali, Advocate for the Petitioner/s

Mr. M.K. Pathan, AGP for the Respondent Nos.1 and 2/State

**CORAM: SMT. VIBHA KANKANWADI &
MRS.VRUSHALI V. JOSHI, JJ.**

CLOSED ON : 21ST JUNE, 2024

PRONOUNCED ON : 10TH JULY, 2024

J U D G M E N T (Per : Smt. Vibha Kankanwadi, J.)

1. Heard Mr. M.N. Ali, learned Advocate for the petitioner and
the learned APP for the State.

2. **Rule.** Rule is made returnable forthwith. Heard finally by the consent of the learned Advocates for the parties.

3. The petitioner challenges the detention orders passed by the respondent No.2 bearing Nos.DET/MPDA/Zone-II/PCB/63/2023 and DET/MPDA/Zone-II/PCB/63-A/2023 dated 30.11.2023 and its approval by the respondent No.1 dated 02.01.2024, by invoking the powers of this Court under Article 226 of the Constitution of India.

4. The learned Advocate for the petitioner has taken us through the impugned orders and the material which were before the authorities at the time of passing the impugned orders. He submits that though certain cases were registered against the petitioner, the cases, which were considered for passing the detention order, were registered with Gittikhadan Police Station namely C.R. No.393 of 2023 was under Section 394, Section 34 of the IPC read with Section 135 of the Maharashtra Police Act and another C.R. No.397 of 2023 was under Section 377, 398, 504 read with Section 34 of the IPC. Both the cases are pending before the

concerned Court. Both the offences came to be registered on 12.06.2023 and 13.06.2023 respectively.

5. The impugned detention order came to be passed on 30.11.2023 and therefore, there was no live link between them. If we consider the FIR, in the first offence, the FIR would show that the incident had taken place in a flat that means the incident was not in a public so as to deter the public at large. As regards the second FIR is concerned, that was also in a flat that means the alleged victims were individual and thereby, no public were affected in both the matters.

6. The petitioner was released on bail under the orders of the Court and therefore, it will have to be held that there was no subjective satisfaction of the authority to pass the detention order. As regards the in-camera statements, it appears that the verifying authority is different and the detaining authority has only put remark as 'seen'. The record does not show that the detention authority had personally verified the contents of the in-camera Statements by calling those witnesses. He further relies on the

decision in *Khaja Bilal Ahmed Vs. State of Telangana and others* reported in 2020 (13) SCC 632. In this case, in paragraph 15, it has been held that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the petitioner could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of the provisions of the law. It

is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention.

7. Further reliance has been placed on the decision in *Ameena Begum Vs. State of Telangana & Ors.* reported in 2023 (9) SCC 587, wherein after taking the scope of the Constitution Bench decision in *Dr. Ram Manohar Lohia Vs. State of Bihar and others*, reported in 1966 SCR (1) 709, the difference between “law and order” and “public order” was lucidly expressed and other decisions, it was observed that while assessing the detention order, the Court should consider what constitutes “public order”. It is then stated that the "Public order" is defined in the Explanation to Section 2(a) of the Telangana Prevention of Dangerous Activities Act (the short form of the Act) as encompassing situations that cause harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave wide-spread danger to life or public health. In fact similar situation is with the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers [Drug-offenders, Dangerous persons and video pirates] Act, 1981

(in short “MPID Act”). The learned Advocate for the petitioner further submits that though two offences might have created the law and order situation but by no stretch of imagination, it can be said that the incident contained in the same, created any public order when the offences therein were committed within the four corners of wall.

8. Further reliance has been placed on the decision of the Division Bench of this Court in the case of *Deepak Dattu Suryawanshi Vs. Commissioner of Police and others*, reported in 2017(1) Mh.L.J. (Cri) 201, wherein it has been held that non placing of acquittal order before the authority would vitiate the subjective satisfaction of the detention authority. He further relies on the decision of the Division Bench of this Court in *Harshal Rakesh Brahmne Vs. State of Maharashtra and another* (Criminal Writ Petition No.434 of 2023) decided on 11.09.2023, it is on the similar lines.

9. Further reliance has been placed on the decisions of the Division Bench of this Court in *Kailesh Pancham Salame Vs. State*

of Maharashtra and another (Criminal Writ Petition No.834 of 2023), decided on 27.02.2024, *Jakir @ Jakira Hussain Vs. State of Maharashtra and another* (Criminal Writ Petition No.587 of 2023), decided on 14.02.2024 and *Hanif @ Illu Hafiz Ansari Arak Vs. the State of Maharashtra and Others* (Criminal Writ Petition No.546 of 2023, decided on 22.01.2024 to which one of us (Mrs. Vrushal V. Joshi, J.) was a party. After considering the catena of judgments, this Court set aside the impugned orders on the ground that there was no subjective satisfaction, delay and detaining authority had not considered that there was any danger in public at large.

10. He further relies on the decision in *Pramod Singla Vs. Union of India and Ors.* arising out of the Special Leave Petition (Cri) No.10798 of 2022 decided on 10.04.2023, wherein it has been observed that preventive detention laws in India are a colonial legacy and as such, are extremely powerful laws that have the ability to confer arbitrary power to the state. The Courts, in circumstances of preventive detention, are conferred with the duty that has been

given the utmost importance by the Constitution, which is the protection of individual and civil liberties, is not just the saving of rights of individuals in person and the society at large, but is also an act of preserving our Constitutional ethos, which is a product of a series of struggles against the arbitrary power of the British State.

11. On the point of delay, he further relies on the decision in *Aalam Yosuf Shaikh Vs. Commissioner of Police, Pune and others*, reported in 2018 ALL. M.R. (Cri.) 1908. He further submits that confirmation of such order ought not to have been done by the State. In view of the order suffering from illegality, it deserves to be set aside.

12. Per contra, the learned APP has strongly supported the action taken against the petitioner. He submits that the petitioner is habitual to commit the offence against the body. In fact, preventive action under Section 110(e) and (g) of the CrPC was also undertaken against the petitioner and the petitioner had executed the final bond on 28.12.2022 for keeping peace and good behavior for the period of two years, however, the petitioner has breached

the terms and conditions of the said bond by committing two offences. This act would show that the petitioner does not want to improve himself, rather, he is continuing with the acts, which can be seen from the in-camera statements. The incidents stated by those in-camera statements are of 2nd week of October 2023 and 3rd week of October 2023. Both the incidents had occurred in public. In the first incident, after the crowd was seen by the petitioner, he took out a knife from his waist and by showing it to the people he threatened them. Same reaction on the second occasion. That means the petitioner moves around with sharp weapon and he has no fear for law. All these factors were taken into consideration by the detaining authority and the subjective satisfaction was arrived at.

13. He further submits that there is absolutely no delay in passing the impugned orders. The statements of in-camera witnesses were recorded on 18.10.2023 and 19.10.2023 by Senior Police Inspector, Gittikhadan Police Station, Nagpur City. They were verified by the Assistant Police Commissioner, Nagpur City on 04.11.2023 and

also by Deputy Commissioner of Police, Nagpur City on 07.11.2023 and thereafter, seen and verified by the detaining authority on 30.11.2023 and on the same day, the impugned order has been passed by the detaining authority and therefore, there is absolutely no delay.

14. The learned APP also relies on the affidavit of Dr. Ravinder Kumar Singal, Commissioner of Police, Nagpur City filed on 03.03.2024, supporting the detention order. He also submits that the said order and the reference was before the Advisory Board and the Advisory Board in its report found no fault with the order of detention. The detenu was produced before the Advisory Board through Video Conferencing.

15. The learned APP relied on **State of Tamil Nadu, through Secretary to Government, Public (Law and Order-F) and another v. Nabila and another; (2015) 12 SCC 127**, wherein it was held that –

“Indisputably, the object of law of preventive detention is not punitive, but only preventive. In case of preventive detention no offence is required to be proved nor is any charge formulated. The justification of such detention is suspicion and reasonability and there is no criminal conviction which can only be warranted

by legal evidence. However, the detaining authority must keep in mind while passing the order of detention the civil and constitutional right granted to every citizen by Article 21 of the Constitution of India inasmuch as no person shall be deprived of life and liberty except in accordance with the procedure established by law. The laws of preventive detention are to be strictly construed and the procedure provided must be meticulously complied with.”

Further reliance has been placed on **Bhushan s/o Vijay Rane v. State of Maharashtra; 2017 (4) Mh.L.J. (Cri.) 751**, wherein it has been held that –

“Delay by itself it not ipso facto fatal, however, if there is some delay in issuing the order of detention, two issues have to be kept in mind; the first is whether the delay has been satisfactorily explained and the second issue is whether the live-link between the prejudicial activities of the detenu and issuance of the order of detention has snapped. The time when the order is made or the live link between the prejudicial activity and the purpose of detention is snapped depends on the facts and circumstances of each case. Even in a case of undue or long delay between the prejudicial activity and the passing of detention order, if the same is satisfactorily explained and a tenable and reasonable explanation is offered, the order of detention is not vitiated.”

In this case, the statements of in-camera witnesses were recorded by the Police Authorities and then the truthfulness and genuineness of the same was verified by the Sub-Divisional Officer, who was the Senior Police Officer in rank and post. On the said

verification, the Detaining Authority was satisfied that the in-camera statements are true and genuine and has been considered as sufficient compliance.

16. The learned APP further relies on **Sadashiv s/o Shriram Jadhav v. The State of Maharashtra and Anr.; 2021 ALL MR (Cri) 4192**, wherein the Division Bench of this Court has insisted that –

“The first Detaining Authority ofcourse has not stated in so many words that it verified the genuineness of the statements of confidential witnesses but it has also said that it carefully considered those statements and was satisfied that they clearly indicated that the petitioner was a habitual bootlegger and a person who had created terror in the mind of public in the area. These observations indicate that the first Detaining Authority had considered these statements only after their due verification or otherwise it would not have said that they indeed show that the petitioner had become a habitual bootlegger and had developed propensity of spreading terror and alarm in the mind of public in the area of his activity. Thus, the satisfaction so reached by the Detaining Authority cannot be said to be one without due verification of facts revealed by statements of confidential witnesses. Such satisfaction has been expressed in terms not on the lines expected by the petitioner, but that does not mean that, in every case, the words that may be used by the Authority must be in a particular form or be rhetorical or must use some stereo types. Ultimately, all that matters is reaching of subjective satisfaction based upon existence of material which is capable of verification and if it is found from the impugned order that such process of verification was indeed carried out, the words of the order impugned do not matter and thus, we do not think that any doubt

could be expressed about the process conducted by the Detaining Authority in reaching his subjective satisfaction in the matter. A useful reference in this regard may be had to the decision of the Full Bench of this Court in the case of **Sumit s/o. Ramkrishna Maraskolhe vs. Deputy Commissioner of Police Zone-1, Nagpur and another** reported in 2019 SCC Online Bom 230 : [2019 ALL MR (Cri) 1961 (F.B.).”

On the same lines, he also relies on an order in *Rahul Jugaldas Tambe v. State of Maharashtra and others*, (Criminal Writ Petition No.765 of 2022), decided by Division Bench of this Court on 22/12/2022 and **Harish Patil v. The State of Maharashtra and Ors.**; reported in 2016 ALL MR (Cri) 5144.

17. The Learned APP has placed reliance on a judgment of this Court in *Pravin Ganpat Kakad vs. The Commissioner of Police, Nashik City, Nashik W.P. No. 336 of 2021* in which a reference has been made of the case of this Court in *Santosh Kashinath Kamble vs. State of Maharashtra and Ors; W.P. No.4510 of 2015*, it is emphasized that, no particular format is expected, no particular words and expressions are supposed to be employed while recording verification of such in-camera statements.

18. From the detention order passed by the respondent No.2, it is to be noted that for the purpose of passing the detention order two offences were considered as aforesaid. It is not in dispute that in both the cases the petitioner has been released on bail. The detaining authority had considered the bail order passed by the Additional Sessions Judge-12, Nagpur in respect of the offence vide C.R. No.397 of 2023 but it appears that the bail order in respect of the another offence was not considered. When those offences were considered, the detaining authority ought to have considered the facts of those cases. In both the cases, the offences are stated to have been committed within four corners of the wall. The question therefore, then arises as to how those offences can be considered to assess the behavior of the petitioner as detrimental to 'public'. The in-camera statements of witnesses 'A' and 'B' though taken as it is, would certainly show that people had gathered at the spot but the detention order cannot be passed only on the basis of statements of in-camera witnesses. We therefore, agree to the submissions on behalf of the petitioner based on the decision in *Khaja Bilal Ahmed* (*supra*) and *Ameena Begum* (*supra*), wherein *Dr. Ram Manohar*

Lohia (supra) was considered; that those offences which are now pending before the Court would have at the most raised 'law and order' situation but not the 'public order'.

19. The breach of terms of the bond is also one of the point that has been raised. No doubt it appears that the petitioner had executed the bond for keeping peace and good behavior for a period of two years on 28.12.2022, but it further shows that show cause notice was issued under Section 446 of Cr.P.C. against the petitioner. The bond was forfeited and Rs.5,000/- of final bond amount was deposited by the petitioner on 16.09.2023. It is stated that he executed final bond amount for remaining period. If already the further action in pursuant to the said preventive action has been taken, thereby, penalizing the petitioner by asking him to deposit the bond amount for whatever period, when it was alleged that he committed the offence vide C.R. No.397 of 2023 which was the last offence, we are of the opinion that the petitioner cannot be in any way punished twice by imposing detention order against him. We therefore, arrive at a conclusion that there was no

subjective satisfaction arrived at by the detaining authority before passing the impugned order.

20. We may rely further on the decision in ***Nevanath Bujji etc. v. State of Telangana and others***, reported in 2024 SCC OnLine SC 367, decided by Three Judge Bench of the Hon'ble Supreme Court of India. After considering various judgments, the legal position has been summarized as follows -

“43. We summarize our conclusions as under:-

- (i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,*
- (ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,*
- (iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,*

- (iv) *In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,*
- (v) *While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,*
- (vi) *The satisfaction cannot be inferred by mere statement in the order that "it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order". Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,*
- (vii) *Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,*
- (viii) *Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s)/ grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and*
- (ix) *To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or an-*

tededent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention. For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.”

21. Another angle in the matter is that it is not in dispute that subjective satisfaction is one of the basic requirements for passing an order of detention. The subjective satisfaction can be arrived at on the basis of various facts involved in the matter. Each fact will have to be considered independently as well as its effect together with other evidence that has been brought on record. The other two criminal cases pending against the petitioner though can be taken as back ground or past conduct, they, per se, will not give live link. But taking into consideration dates on record, in camera statements, it is verified by different authorities and the detaining authority. There is absolute no much gap which can be termed as

delay. The time will not start to run from the date of the last offence that was registered. For considering the delay, we will have to consider the time till last offence, then the in-camera statements, verification by the Superior Police Officers and also by the detaining authority.

22. Though the Advisory Board has approved the detention of the petitioner, yet for the aforesaid reasons, we do not find that there was any material before the detaining authority to detain the petitioner. Therefore, the confirmation of the said detention order by the State cannot be upheld.

23. For the aforesaid reasons, the petition deserves to be allowed and it is accordingly **allowed**.

24. The detention orders bearing Nos.DET/MPDA/Zone-II/PCB/63/2023 and DET/MPDA/Zone-II/PCB/63-A/2023 dated 30.11.2023 passed by respondent No.2 and the approval order dated 02.01.2024 passed by respondent No.1 is hereby quashed and set aside. The petitioner namely Osama Mohd

Rafique Patka, shall be released forthwith, if not required in any other offence.

25. Rule is made absolute in the above terms.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]