



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

CRIMINAL WRIT PETITION NO.135/2024

Shahed alias Shahid alias Shobhi Khan
Shammi Khan, aged about 23 Yrs.,
Occ. Labour, R /o Indira Nagar, Yavatmal,
Tq. & Distt. Yavatmal

... Petitioner

- Versus -

1) The State of Maharashtra
Through its Secretary, Home
Department, (special) Mantralaya,
Mumbai

2) The Collector and District
Magistrate, Yavatmal
Tq. and Distt. Yavatmal.

... Respondents

Mr. Fashihur Rahman Kashif, Advocate for the petitioner.
Mr. M.K. Pathan, A.P.P. for respondent Nos.1 and 2/State.

CORAM: SMT. VIBHA KANKANWADI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 15.7.2024.

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard Mr. Fashihur Rahman Kashif, learned Advocate
for the petitioner and Mr. M.K. Pathan, learned A.P.P. for respondent
Nos.1 and 2/ State. **Rule.**

2. This writ petition under Article 226 of the Constitution of India challenges a detention order dated 31.10.2023 passed by respondent No.2 and confirmed by respondent No.1 on 28.12.2023 under Section 12(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (for short “M.P.D.A. Act”).

3. The offences and other criminal acts considered for passing the detention order against the petitioner are as follows:-

i) Crime No.0650/2023 under Sections 4/25 of the Arms Act. In said crime, the detinue was found in possession with a sharp knife. On the receipt of strong and abundant evidence from eye-witnesses, Chargesheet No.367/2023 was filed on 21.07.2023. The said matter is pending before the concerned Court.

ii) Crime No.0824/2023 under Sections 143, 147, 148, 149 324, 504 and 506 of I.P.C. In this crime, the complainant's cousin

Dilip stopped the petitioner saying that he accidentally bumped into two strangers and abused the detinue. Thus, the petitioner got angry and when the complainant was sitting at the place of incident, the detinue came with seven to eight accomplices carrying sticks. He beat the complainant, slapped and abused him and threatened to kill. The medical certificate regarding injuries has been obtained and the crime is under investigation.

iii) Crime No.0976/2023 under Sections 326, 504 and 506 read with Section 34 of I.P.C. In the said offence a car of the complainant which runs daily on Yavatmal-Mohada road bearing registration No.MH 26 BC 5994 was forcibly stopped. The detinue along with the other accused forcibly stopped the complainant and asked him to let the petitioner drive the car. As the complainant denied, he was hit with iron pipe, iron floor tile on the back.

4. The learned Advocate for the petitioner submitted that the confidential statement of the witness "A" simply reveals that because the witness "A" told the name of detinue to the police

that he was a hooligan, he was beaten and abused by the petitioner. Similarly, the statement of witness “B” discloses that the petitioner slapped him for no specific reason.

5. Mr. Kashif, learned Advocate for the petitioner submits that the petitioner has not received the copies of translation along with detention order which has infringed his right to make proper representation and the allegations made by the said witnesses are vague and general in nature and lacking in material particulars. A person can be detained when his acts are prejudicial to the maintenance of “public order” and, therefore, it becomes necessary to determine whether besides the person being a “dangerous person” his activities fall within the ambit of the expression “public order”. He further submits that it is the settled position of law that if material or vital facts which have a bearing on the issue are ignored by the detaining authority before issuing the detention order then detention order gets vitiated. There is no

subjective satisfaction of the detaining authority about truthfulness of statements of witnesses “A” and “B”.

6. Mr. Pathan, learned A.P.P. in his reply strongly opposed the submissions made by learned Advocate for the petitioner. He submits that the copy of in-camera statements have been supplied to the petitioner and the dates of recording of the statements of the witnesses are mentioned properly i.e. 22.09.2023 and 26.09.2023 along with all the relevant documents. He further submits that the petitioner has been regularly committing serious criminal offences since 2015. The petitioner is a “dangerous person” as defined in Section 2(b)(1) of the M.P.D.A. Act. The criminal activities of the petitioner created danger and a sense of insecurity among the people which adversely affected the “maintenance of public order” and the acts of the detainee are prejudicial to the maintenance of the public order.

7. The learned Advocate for the petitioner has relied on the following citations to support his contentions.

- i) Criminal Writ Petition No.587/2023 (Jakir @ Jakira Hussain Ansari S/o Abdul Kadir Ansari V/s. State of Maharashtra and another), decided on 14.02.2024,
- ii) Criminal Writ Petition No.903/2023 (Abhishek @ Golu Pawan Kharbalkar V/s. State of Maharashtra and another), decided on 28.6.2024,
- iii) Criminal Writ Petition No.203/2024 (Parvez Khan @ Bunty Lala Shammi Khan V/s. State of Maharashtra and another), decided on 9.5.2024,
- iv) Criminal Writ Petition No.118/2024 (Tanvir Shaha Alim Shaha V/s. State of Maharashtra and another), decided on 9.5.2024 and
- v) Mrs. Hamida Salim Khan V/s. Commissioner of Police and others reported in 2013 ALL MR (Cri) 3912.

8. The main ground of challenging the detention order is that the detainee has not received the translation of the copies provided to him. The detainee has stated that he is an illiterate person and is not conversant with English or Marathi language. If the petitioner is not knowing any of those languages and he is an illiterate person then there is no question of raising the ground of providing the translated copies. Moreover, the detainee has given representation in English, therefore, this ground is not available to the petitioner.

9. Another ground is that the crimes which are registered against the detainee and the statements of confidential witnesses "A" and "B" on the basis of which detention order is passed have not disturbed the "public order" as those are under Sections 326, 324, 504 and 506 read with Section 34 of Indian Penal Code and the petitioner was arrested along with other co-accused. Considering the nature of incident, it does not show that the public order is affected. The confidential statements of

two witnesses “A” and “B” are also recorded which cannot form the basis for passing the detention order. The activities of the petitioner were not detrimental to the maintenance of public order and the facts alleged in the said offences at the most can be termed as facts which are disruptive of law and order. What constitutes breach of public order is discussed by the Hon’ble Apex Court in the case of Kanu Biswas V/s. State of West Bengal reported in (1972) 3 SCC 831 as follows:-

“6. The distinction between the concept of public order and that of law and order has been adverted to by this Court in a number of cases. In the case of Dr. Ram Manohar Lohia v. State of Bihar, [1966] 1 S.C.R. 709, Hidayatullah J. (as he then was) said that any contravention of law always affected order, but before it could be said to affect public order, it must affect the community at large. He considered three concepts, law and order, public order and the security of the State, and observed that to appreciate the scope and extent of each one of them, one should imagine the concentric circles. The largest of them represented law and order, next represented public order and the smallest represented the security order,

just as an act might affect public order but not the security of the State. In the subsequent case of Arun Ghosh v. State of West Bengal, [1970] 3 S.C.R. 288, the Court dealt with the matter in the following words: "Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance, of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite

them to make further breaches of the law and order and to subvert the public order. An Act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different.”

7. *The question where a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance, of the public order, according to the dictum laid down in the above case is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call "order publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above, case, is : Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order, or does it affect merely an individual leaving the tranquillity of the society undisturbed? ”*

10. The crimes which are considered for passing the detention order are against individuals and did not affect the public order.

11. We then examined the contents of two confidential in-camera statements “A” and “B” regarding creating terror and fear in the mind of people. Both the statements speak about the general character of the detainee. On perusal of the original statements it appears that the statements are not even seen by the detaining authority.

12. In the judgment passed by this Court in Criminal Writ Petition No.434/2023 (Harshal Rakesh Brahmne V/s. State of Maharashtra and another) this Court has relied on the judgment of Shaikh Husain @ Shahrukh Shaikh Fatru V/s. State of Maharashtra reported in 2023 DGLS (Bombay) 1318.

“18. First of all, it is observed that the grounds of detention nowhere discloses that the detaining authority interacted with the witnesses A and B so as to satisfy itself that the statements of these witnesses and genuine to be true and or instances which they

disclosed were correct. There is no interaction by the detaining authority with the Assistant Superintendent of Police, who verified such statements. The copies of statements of witnesses A and attached to the petition and provided to the detenu, nowhere show any endorsement of the detaining authority so as to confirm that such statements were perused by the detaining authority and said authority considered that the witnesses were depicting true events. There is absolutely no whisper in the grounds of detention as to on what count the detaining authority found itself satisfied about the truthfulness or genuineness of such statements made by the witnesses.

19. This Court in the case of Shahjahan w/o Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra & Anr. 2016 ALL MR (cri) 4233 (supra), observed in para 5 that, in the absence of any record of the statements being seen by the Commissioner of the Police thereby affecting his subjective satisfaction, the petitioner is entitled to succeed in the petition. These observations are clearly attracted to the matter in hand. There is no contemporaneous material placed before us to show that the detaining authority had in fact verified the statements and had any interaction with the Assistant Superintendent of Police, who recorded his report. Similarly, by reproducing the contents of statements of witness A and B in the grounds of detention without the material to show that the detaining authority had in fact interacted either with the witnesses or discussed it with the authority, who verified such statements, the order of detention stands vitiated.”

13. Applying the ratio laid down in Sheikh Hussain (supra) the subjective satisfaction of the detaining authority not having been arrived at after ascertaining either with a direct interaction with the Assistant Commissioner of Police or the authority who had recorded the in-camera statements, as to the genuineness of their contents, two confidential statements could not have been formed the basis for recording subjective satisfaction. We have also gone through the report of Advisory Board. We have considered it independently.

14. Having concluded that the offences which formed the basis for arriving at subjective satisfaction by the detaining authority do not disclose any act which could be termed as acts prejudicial or in breach of maintenance of public order, we are of the considered opinion that the impugned orders cannot be sustained. Consequently, we quash and set aside the impugned orders dated 30.10.2023 passed by respondent No.2 and the order dated 28.12.2023 passed by respondent No.1 confirming

the order dated 30.10.2023. The petitioner be released forthwith, if not required in any other crime. The writ petition stands disposed of in the above terms.

(MRS.VRUSHALI V.JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)