



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

CRIMINAL WRIT PETITION NO.161/2024

Farman @ Lali Sheikh Akhtar,
aged about 22 Yrs., Occ. Labour,
R/o Dehankar Layout, Bharat Nagari,
Bhosa Road, Yavatmal.

... Petitioner

- Versus -

1. State of Maharashtra,
through its Secretary, Home
Department (Special) Mantralaya,
Mumbai.

2. Collector/District Magistrate,
Yavatmal.

... Respondents

Mr. Mir Nagman Ali, Adv. for the petitioner.

Mr. M.K. Pathan, A.P.P. for respondent Nos.1 and 2.

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

DATE OF RESERVING THE JUDGMENT: 8.7.2024.

DATE OF PRONOUNCING THE JUDGMENT: 29.7.2024.

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

Heard Mr. Mir Nagman Ali, learned Advocate for the
petitioner and Mr. M.K. Pathan, learned A.P.P. for respondent Nos.1
and 2. **Rule.**

2. Through this petition, the petitioner is challenging the order passed by the Collector/ District Magistrate dated 06.11.2023 and confirmed by respondent no.1 on 28.12.2023 under Section 3(2) of the MPDA, Act, 1981.

3. The detenue has been detained on the ground that since 2022 he has been continuously engaging himself in the commission of violent activities which has created terror in the minds of residents residing in the area of operation. The initiation of preventive action have not affected criminal activities of the detenue.

4. Learned Advocate for the petitioner has challenged the impugned order which appears to have been confirmed by order dated 28.12.2023 on the ground that the impugned order passed by the detaining authority on 6.11.2023 is based on the non-application of mind without adhering to the statutory procedure. The grounds of detention which have been given appears to have been based on four offences namely (i) Crime

No.799/2023 under Sections 307 read with Section 34 of I.P.C., (ii) Crime No.802/2023 under Sections 302, 201 and 120(B) read with Section 34 of I.P.C., Sections 3, 25 of Arms Act, Sections 3(2)(va) and 3(2)(v) of Atrocities Act and Section 39 of M.P. Act, (iii) Crime No.316/2023 under Sections 393 and 427 of I.P.C. and (iv) Crime No.954/2023 under Sections 294, 323 and 506 I.P.C. The detaining authority has also considered in-camera statements of two confidential witnesses. It appears that the detaining authority has considered the offences which are still under investigation. The petitioner has been released on bail and the bail orders appears to have not been produced before the detaining authority. The contents of the above crimes shows that there was situation of 'law and order' and the 'public order' was not disturbed warranting the detention of the petitioner. Further, there was no proper verification of in-camera statements by the detaining authority and only it was seen and verified but there is no remark showing that verification has been properly done.

Therefore, the detention order is illegal and deserves to be quashed and set aside.

5. Statements of the witnesses “A” and “B” reveal that the detainee is a murderous, angry and vicious person. He always commits crimes such as beating poor persons, carrying a knife in the pocket and sometimes a gun. Statement of witness “A” states that arresting and filing cases against the detainee has not improved his behaviour.

6. Mr. Pathan learned A.P.P. denies the grounds raised by the petitioner submitting that respondent No.2 after discussing the proposal with the Police Inspector, Police Station, Awdhutwadi consulted with the Sub-Divisional Police Officer, Umarkhed who verified the in-camera statements and reached to subjective satisfaction about the truthfulness and genuineness of the statements made by the confidential witnesses. The proposal for detention of the petitioner was submitted by the District Superintendent of Police on 9.10.2023 as per the provisions of the

M.P.D.A. Act. Respondent No.2 after conducting the necessary enquiry and verification of record and statements of witnesses confirmed the detention order on 6.11.2023. Hence there is no delay. It is a matter of record that the bail application in Crime No.316/2023 is placed on record. It is submitted by the learned A.P.P. that respondent no.2 has properly mentioned that as soon as the petitioner got released from the prison or custody he immediately resumed his criminal activities with new vigour without any fear of law enforcement agencies. It is submitted that the petitioner has committed total seven crimes in jurisdiction of Police Station, Awdhutwadi and Kalamb which shows petitioner's criminal tendency to commit crimes. This is nothing but an act to establish supremacy by creating terror in the mind of people at large so that petitioner can continue his illegal activities. He was given hearing before the Advisory Board. No illegality has been committed and, therefore, petition deserves to be dismissed.

7. We have to consider first the material on which the detaining authority has relied i.e. on four offences and statement

of two confidential witnesses. The first offence is Crime No.799/2023 under Section 307 read with Section 34 of I.P.C. It is under investigation. The accused and his friends have committed this offence by stabbing injured with knife and beating with a glass bottle on his head. The crime is registered against this petitioner along with other co-accused. The accused is released on bail in this crime.

8. The second offence is Crime No.802/2023 for the offence punishable under Sections 302, 201 and 120B read with Section 34 of I.P.C., Sections 3/25 of Arms Act, Section 3(2)(va) and 3(2)(v) of the Atrocities Act and Section 39 of M.M. Act. In this case also the allegations against this petitioner are that along with other co-accused he had committed murder. At the time of committing murder he was present there. The main accused is Aziz Dunge. The weapons were seized from the other co-accused. The matter is pending before the Court and the accused is released on bail in this case also.

9. Third is Crime No.316/2023 for the offence punishable under Sections 393 and 427 of I.P.C. When the complainant was filling petrol at petrol pump Kalamb the petitioner came there and caught the collar of the complainant and started knocking him. At that time, accused was trying to take out knife. Accused ran away after the complainant shouted to call the police. His intention was to commit a theft of car and, therefore, he stopped the car and robbed the witness. He damaged the car by breaking glass and the crime is registered on the oral complaint of the complainant. In this case he is released on bail on 4.9.2023.

10. Fourth crime is Crime No.954/2023 for the offence punishable under Sections 294, 323 and 506 of I.P.C. The mother of the complainant has filed this complaint. He has abused in filthy language to the injured in Crime No.797/2023 and asked to withdraw the complaint filed by her. Therefore, the offence under Sections 294, 323 and 506 of I.P.C. was registered.

11. On careful perusal of F.I.Rs. in all the crimes the serious offences are registered against this petitioner in first two cases like offence under Sections 307 and 302 I.P.C. It appears that the petitioner is in a bad company and along with co-accused his presence was there at the time of crime for which the cognizance is taken he was arrested and considering his role is released on bail. Same are pending before the competent Courts. In all the offences the accused is on bail. Active part of the petitioner is not revealed in the F.I.Rs. where the offence under Sections 302 and 307 are registered. Again the offences are against the individuals and no public piece is disturbed. There is no situation of public order. The law and order situation can be controlled by the local law. The offences under I.P.C. are pending and he will be prosecuted in the said offences. The Hon'ble Apex Court has distinguished between disturbances relatable to "law and order" and disturbances caused to "public order."

12. It is observed by the Hon'ble Apex Court in Ameena Begum V/s. The State of Telangana and others reported in AIR

2023 SC 4273 paragraphs 32, 33, 34 and 35 has observed as under:-

"32. We may refer to the decision of the Constitution Bench of this Court in Ram Manohar Lohia vs. State of Bihar, where the difference between "law and order" and "public order" was lucidly expressed by Hon'ble M. Hidayatullah, J. (as the Chief Justice then was) in the following words:

*"54. *** Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.*

55. It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three

concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

(underlining ours, for emphasis)

33. *For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, CJ. in Arun Ghosh vs. State of West Bengal, is this: "Does it [read: the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?" In that case, the petitioning detenu was detained by an order of a district magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read: the offending act) "does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order". In the process of quashing the impugned order, the Chief Justice while*

referring to the decision in Ram Manohar Lohia (supra) also ruled:

*"3. ***Public order was said to embrace more of the community than law and order. 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 tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. It is always a question of degree of the harm and its affect upon the community. This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."*

34. In Kuso Sah vs. The State of Bihar, Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that:

*"4. ***The two concepts have well defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder.*

*6. ***The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority*

does not transgress the limitations subject to which alone the power can be exercised."

(underlining ours, for emphasis)

35. Turning our attention to section 3(1) of the Act, the Government has to arrive at a subjective satisfaction that a goonda (as in the present case) has to be detained, in order to prevent him from acting in a manner prejudicial to the maintenance of public order. Therefore, we first direct ourselves to the examination of what constitutes 'public order'. Even within the provisions of the Act, the term "public order" has, *stricto sensu*, been defined in narrow and restricted terms. An order of detention under section 3(1) of the Act can only be issued against a detenu to prevent him "from acting in any manner prejudicial to the maintenance of public order". "Public order" is defined in the Explanation to section 2(a) 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".

13. In case in hand though the offences under Sections 307 and 302 are registered the local law is there and cognizance is taken. There is nothing to show that the offences registered against the detenue disturbed the public order.

14. If two confidential statements of witnesses “A” and “B” are considered, we find that both the witnesses have not stated anything. They have made general statement against the petitioner. The witnesses have stated about his character, his criminal activities and how he is a dangerous person, except these general statements they have not stated anything specific about the incident happened with them. On perusal of the statements it appears that the detaining authority has not even seen the statements of the confidential witnesses. It is signed by the Divisional Superintendent of Police and it is not even seen by the detaining authority. The subjective satisfaction of the detaining authority is not there.

15. In case of Sheikh Hussain @ Shahrukh Shaikh Fatru V/s. State of Maharashtra reported in **2023 DGLS (Bombay) 1318** this Court has held in similar fact and situation, wherein it has observed that a detaining authority must record its subjective satisfaction that the statements of witnesses were genuine and that

it had interacted with Assistant Commissioner of Police to verify such a statement.

16. For the aforesaid reasons, the petition is allowed in terms of prayer clauses (i) and (ii).

(MRS.VRUSHALI V. JOSHI, J.)

(SMT. VIBHA KANKANWADI,J.)