



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

CRIMINAL WRIT PETITION NO.203/2024

Parvez Khan @ Bunty Lala Shammi Khan,
aged about 32 Yrs., Occ. Labour,
R/o Indira Nagar, Bhosa Road, Yavatmal. ... Petitioner

- Versus -

1. State of Maharashtra,
through its Secretary,
Home Department (Special)
Mantralaya, Mumbai.
2. Collector/District Magistrate,
Yavatmal. ... Respondents

Mr. M.N. Ali, Counsel for the Petitioner.
Mr. S.A. Ashirgade, A.P.P. for Respondent Nos.1 and 2.

CORAM: VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 6.5.2024.
DATE OF PRONOUNCING THE JUDGMENT: 9.5.2024.

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

Heard Mr. M.N. Ali, learned Counsel for the
petitioner and Mr. S.A. Ashirgade, learned A.P.P. for respondent
Nos.1 and 2. **Rule.**

2. Being aggrieved by the order of detention dated 15.12.2023 passed by respondent No.2 and confirmed on 30.1.2023 by respondent No.1 thereby detaining the petitioner under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short "MPDA Act") the petitioner has filed this petition.

3. The learned Counsel for the petitioner has stated that the detention order is passed by respondent No.2 without verifying the documents and without recording the subjective satisfaction regarding truthfulness of the same. The in-camera statements of the confidential witnesses are verified by the Sub-Divisional Police Officer, Pandharkawada instead of detaining authority and, therefore, subjective satisfaction of detaining authority is vitiated. There is no statement that detaining authority had discussed the statements with Sub-Divisional Police Officer, Pandharkawada.

4. The in-camera statements do not show that same is creating a public order situation. At the most, in-camera statements show a law and order situation which can be dealt with by normal law of the land and detention of the petitioner under MPDA Act was not required.

5. The petitioner was released by issuing notice under Section 41(1)(a) of the Code of Criminal Procedure in Crime No.0824/2023. In one matter he was released on bail and in one matter anticipatory bail was granted to him which is not considered by the detaining authority. In earlier crimes the petitioner was released on bail but the bail orders were not placed before the detaining authority. On perusal of Crime Nos.0824/2024, 0976/2023 and 1359/2023, they do not show public order situation. In absence of independent material to actually say that there was public order situation the detention order could not have been passed. Hence it is prayed to release the petitioner by allowing the petition.

6. The learned A.P.P. opposed the petition stating that the subjective satisfaction was there. He has relied on the contents in the detention order and stated that the order of detention is rightly passed. He has prayed to dismiss the petition.

7. We have heard the learned Counsel for the parties and perused the record.

8. The contention of the petitioner is that crimes on which reliance has been placed for passing the detention order are not of such a nature so as to permit the detaining authority to exercise its powers under Section 3 of the MPDA Act. The allegations do not constitute the acts which would cause breach of public order and at the most it can be considered to be the acts which are of law and order and can be dealt with by the normal law of the land.

9. Three crimes which are considered for passing the detention order are Crime No.0824/2023 which is registered for the offence punishable under Sections 143, 147, 148, 149, 324,

504 and 506 of Indian Penal Code. In the said crime the informant asked one of the friends of the petitioner not to abuse, he scolded them, therefore, he came with 7 to 8 persons in City Bar. Crime is registered and notice under Section 41(1)(a) of the Code of Criminal Procedure was given. Crime No.0976/2023 was registered for the offence punishable under Sections 326, 504 and 506 read with Section 34 of Indian Penal Code. The petitioner restrained the complainant who is owner of tempo traveller and asked him for money to run his business and when the complainant refused, he beat him with iron rod and gave him threats. The petitioner was on anticipatory bail in this crime. Third crime is Crime No.1359/2023 for the offence punishable under Section 294 and 506 of Indian Penal Code. The complainant received phone call when he was taking passengers in his vehicles the petitioner gave threats and asked him why he has lodged complaint against him.

10. Two confidential statements were recorded. In statement of witness "A" he has stated that when he came to his

house petitioner he found that petitioner had parked his car in the middle of the road and when he asked to give him side, he abused him and gave threats to him. Confidential witness “B” has stated that petitioner asked him to give money and when he refused to give money at that time he told that he is *Bhai* of said area and he has to give him money. As he is a Labour he had not lodged complaint against the petitioner because of fear.

11. From the statements and the crimes registered against him authority has to consider whether breach of public order situation is made out. It does not disclose that it would constitute the act which would disturb the public order.

12. In *Mallada K. Sri Ram V/s State of Telangana* reported in Live Law (SC) 358 the Hon’ble Supreme Court has considered the distinction between disturbance to law and order and a disturbance to “public order”, after considering its Constitution Bench Judgment in *Ram Manohar Lohia V/s. State of Bihar* reported in AIR 1966 SC 740 and its Judgment in *Banka*

Sneha Sheela V/s. State of Telangana (2021) 9 SCC 415 and has

held as under:-

“..... A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the “maintenance of public order”. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law.”

13. Following the ratio in *Mallada K. Sri Ram (supra)*, clearly shows that neither of the incidents which were referred to in the above three FIRs, can be termed as incidents which have caused alarm to the citizens or that any citizen was living under the fear of the petitioner disturbing daily life in the vicinity or that he had indulged in an act which could be disruptive of public order. All three incidents are either between two individuals or merely on a search carried out by the Police and are, therefore, not incidents which can be considered as disruptive of public order.

14. Even going through the incidents described in the two in-camera statements would reveal that the acts of the petitioner could be perhaps in the nature of extortion form or threats to an individual, but cannot be termed to be acts disruptive of public order.

15. The authority has not considered the bail orders and the process of reaching of subjective satisfaction is not there as statements were not verified by the detaining authority. The originals are not produced even before the Court. In the

statements provided to the detenue there is some scoring in it. It is not verified by the detaining authority. Therefore, the subjective satisfaction is not there. The ratio laid down in the above judgments squarely applies to the facts of this case. Therefore, we hold that the contents of in-camera statements in any case do not justify holding that the incidents are disturbance to public order besides which in any case there was no subjective satisfaction of the detaining authority.

16. In the result, the petition is allowed.

We hereby quash and set aside the order dated 15.12.2023 passed by respondent No.2, so also order dated 30.1.2024 confirmed by respondent no.1 and direct the detenue to be set at liberty forthwith, unless his detention is required in some other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)