



Judgment

903 wp 215.24

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

CRIMINAL WRIT PETITION NO. 215/2024

Sahil Shakir Sheikh
Aged about 21 yrs., Occ. Student,
R/o. Baba Mastanshah Ward, Bhandara,

... **PETITIONER**

VERSUS

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

... **RESPONDENTS**

Mr. M.N. Ali, Advocate for petitioner.
Mr. S.S. Doifode, APP with Mr. M.K. Pathan, APP for respondent
Nos. 1 & 2.

CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 13.08.2024.

ORAL JUDGMENT (PER: VINAY JOSHI, J.) :

Rule. Rule made returnable forthwith. Heard finally with

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consent of learned counsel appearing for the parties.

2. The order of detention dated 13.02.2024 passed by respondent No.2 Collector/District Magistrate, Bhandara in terms of Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 ("Act of 1981") has been challenged under writ jurisdiction of this Court.

3. The proposal was forwarded on 19.01.2024 by the Police Inspector, Bhandara to the District Magistrate. Having regard to the material adduced before the District Magistrate, the impugned order detaining the petitioner for the period of one year is passed on 13.02.2024. The said order was confirmed on 08.04.2024. The grounds for detention have also been communicated to the petitioner on the date of detention.

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4. The learned counsel appearing for petitioner has challenged the order on the ground that two in-camera statements have not been verified, thereby there was no subjective satisfaction. There is no breach of public order. The detention order though based on one crime, however background crimes have been considered which has affected or influenced mind of the Detaining Authority. The counter case filed by the petitioner has not been considered and the petitioner was acquitted in one of the crime i.e. Crime No. 525/2023 which was not placed before the Detaining Authority.

5. With the assistance of both sides, we have gone through the entire material. In particular, we have perused both in-camera statements recorded on 03.01.2024. It is evident that below both statements merely Sub-Divisional Police Officer and the Detaining Authority have signed, however there is no verification at all. It is apparent that in casual manner, the Authority has relied on non-verified statements which goes to the root of the case. The grounds of detention disclose that the Detaining Authority has relied only on one crime bearing Crime No. 920/2023 which has allegedly occurred

within the Police Station. We have gone through the relevant FIR as well as both statements of secrete witnesses, however they do not speak about breach of public order.

6. The Hon'ble Apex Court in ***Kanu Biswas V/s. State of West Bengal reported in (1972) 3 SCC 831*** has observed in paragraph Nos.6 and 7 on the question what constitutes 'breach of public order' as opposed to 'breach of law and order' as under:-

"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

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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

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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 tranquility of the society undisturbed? ”

7. The Supreme Court in paragraph Nos.13 and 14 in the case of ***Banka Sneha Sheela V/s. State of Telangana***, (2021) 9 SCC 415 has observed as under:-

“3. There can be no doubt that for ‘public order’ to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects ‘law and order’ but before it can be said to affect ‘public order’, it must affect the community or the public at large.

14. There can be no doubt that what is alleged in the five FIRs pertain to the realm of ‘law and order’ in that various acts of cheating are ascribed to the Detenu which are

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punishable under the three sections of the Indian Penal Code set out in the five FIRs. A close reading of the Detention Order would make it clear that the reason for the said Order is not any apprehension of widespread public harm, danger or alarm but is only because the Detenu was successful in obtaining anticipatory bail/bail from the Courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the Detenu, there can be no doubt that the harm, danger or alarm or feeling of security among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make believe and totally absent in the facts of the present case.”

8. Applying the ratio laid down in the above judgments to the facts of the present case one has to examine the contents of in-camera statements to come to the conclusion as to whether the same would factually cause disturbance to maintenance of public order. On perusal of both the statements, it clearly reveals that the acts, nowhere refer to any member of the public having witnessed them or having

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experienced a sense of panic or having affected or disrupted the tempo of regular life of the area. Two statements also cannot form the material as verification on it was not done at the time of sending proposal to arrive at a subjective satisfaction required under Section 3 of Act of 1981.

9. On said parameters itself the impugned order is not sustainable. Moreover it reveals that though certain prior offences have been stated as a background offences, however while passing order, they have been considered which has affected the mind of the Detaining Authority. It is not in dispute that the counter case as well as the order of acquittal prior to the detention order have not been considered.

10. Thus, the order suffers from various lapses which would not sustain in the eyes of law. The order of detention pertains to curtailment of right of liberty and thus, on slippery material, liberty of individual cannot be curtailed. In view of that, the order is not sustainable in the eyes of law. Hence, writ petition is allowed. We

hereby quash and set aside the impugned order of detention dated 13.02.2024 passed by the District Magistrate along with confirmation order dated 08.04.2024.

11. The petitioner shall be released forthwith, if not required in any other offence.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)