



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

CRIMINAL WRIT PETITION NO.306/2024

Gulnawaj alias Sheikhu Khan S/o Izaz Khan
Age about 32 Yrs., Occ- Business,
R/o Plot No. 107, Utthan Nagar,
Gorewada Ring Road, Nagpur.
(At present in Nagpur Central Prison)

... Petitioner

- Versus -

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

... Respondents

Mr. R.K. Tiwari, Advocate for the petitioner.
Mr. S.S. Doifode A.P.P. for respondent Nos.1 and 2.

CORAM: SMT. VIBHA KANKANWADI & MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 3.7.2024.
DATE OF PRONOUNCING THE JUDGMENT: 24.7.2024.

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

Heard Mr. R.K. Tiwari, learned Advocate for the
petitioner and Mr. S.S. Doifode learned A.P.P. for respondent Nos.1
and 2. **Rule.**

2. The petitioner has challenged the impugned order dated 20/1/2024 passed by respondent No.1 which is confirmed by respondent No.2 on 25/1/2024 passed under Section 3(1) 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 (for short “M.P.D.A. Act”).

3. The detaining authority has taken into consideration last two crimes committed in the year 2023 bearing Crime Nos.439/2023 and 466/2023 registered on respectively 20.7.2023 and 21.7.2023 i.e. the very next day. On 22.2.2018 the Deputy Commissioner of Police, Zone-II, Nagpur City had externed the petitioner under Section 56(a)(b) of the Maharashtra Police Act, 1951 for a period of one year.

4. The petitioner was served with the communication along with the order passed by the Section Officer to the Government of Maharashtra vide order dated 25.1.2024 informing that his right of

representation stood extinguished due to instant approval of the detention order by respondent No.2.

5. Some of the grounds on which the detention order is assailed by the petitioner are as follows:-

(a) The offences were registered against the petitioner on the basis of complaints lodged by his brother-in-law and father-in-law who are in cross terms with the petitioner as the petitioner performed marriage with the sister and daughter of the complainants respectively against their wishes which would not lead to disturbance of public order.

(b) The respondent No.1 in the impugned order merely stated about the verification of the in-camera statements by the A.C.P. without expressing anything about its own satisfaction.

(c) The order of detention is passed on 20.1.2024 almost after about six months from the last alleged prejudicial activity. Therefore, on account of inordinate delay in issuance of detention order, the live link between the alleged prejudicial activities of the petitioner and the detention order is snapped.

6. Mr. R.K. Tiwari, learned Advocate for the petitioner submits that for an act to qualify as a disturbance to public order the specific act must have an impact on the broader community or the general public evoking feelings of fear, panic or insecurity. The

offences taken into consideration by respondent No.1 were purely characterized by individuality and do not show that they affected even tempo of life of public at large and caused any alarm, harm or danger to the public in general.

7. He further states that the privilege claimed by respondent No.1 from disclosing the details of the incidents is not tenable in the eyes of law as it could only be pleaded with respect to the names and addresses of the witnesses and not with regard to the details of the alleged incidents.

8. The learned Counsel for the petitioner has relied on the following judgments in support of his final argument :

- i. *Ameena Begum Vs. The State of Telangana & Ors. [SLP (Criminal) No.8510/2023].*
- ii. *Sushanta Kumar Banik Vs. State of Tripura & Ors. [2022 LiveLaw (SC) 813].*
- iii. *Hrithik s/o. Sudhir Borkar Vs. State of Maharashtra and Ors. [Criminal Writ Petition No.10/2022].*
- iv. *Jakir @ Jakira Hussain Vs. State of Maharashtra and Anr. [Criminal Writ Petition No.587/2023].*
- v. *Satish s/o. Shivcharan Samudre Vs. The Commissioner of Police, Nagpur and Ors. [Criminal Writ Petition No.3327/2013].*

9. Mr. Doifode, learned A.P.P. contends that the relationship as alleged by the petitioner with the complainants is disputed. The petitioner was never married to the sister/daughter of the complainants which can be established from the fact that the complainants are Hindu and petitioner is Muslim and the statement of the complainant *prima facie* points out the illegality and the act of threatening and extortion on the part of the petitioner and, therefore, the necessary proceedings under the provisions of the M.P.D.A. Act were initiated.

10. He further states that the witnesses have come forward and expressed their willingness for giving in-camera statements against the detainee on the condition that their names, addresses, occupations and places of residence shall not be disclosed. Hence their statements were recorded in-camera. The copies of said documents were furnished to the detainee except names and identifying particulars of the witnesses which were kept secret in public interest under Article 226 of the Constitution for which the detaining authority claims privilege.

11. The learned A.P.P. has relied on the following judgments in support of his final argument:

- i. Vinod Dhannulal Jaiswal Vs. District Magistrate, Aurangabad [2024 ALL MR (Cri) 680].*
- ii. Bhushan s/o. Vijay Rane Vs. State of Maharashtra [2017(4) Mh.L.J. (Cri.) 75].*

12. Heard both sides. Perused the record.

13. Addressing the first issue that is delay in passing the order respondent No.1 relied on two offences i.e. Crime Nos.439/2023 and 466/2023 which are registered on 20.7.2023 and 21.7.2023 respectively. The first crime is registered for the offence punishable under Sections 385, 323, 294 and 506-II of I.P.C. and second crime is registered for the offence punishable under Sections 294 and 506-II of I.P.C. In-camera statements were recorded on 10.8.2023 and 11.8.2023 wherein witnesses narrated about the incidents which allegedly took place in the month of June 2023 and the order of detention is passed on 20.1.2024 i.e. almost after about six months from the last prejudicial activity of the petitioner. The reply is filed by the respondents and they have denied the delay in passing the

order. According to respondent No.2 the offences were registered against the petitioner on the complaints of Akshay Uday Moglewar and Uday Sudhakar Moglewar. He was produced before the Court. After getting released on bail for the offence which was committed on 20.7.2023, petitioner has again committed the second offence on 21.7.2023. After committing the second offence, the police took search of the petitioner, but he was not found hence the Investigating Officer prepared notice under Section 41(a)(1) of Cr.P.C. on 10.1.2024 asking him to appear in the Court on 12.1.2024 at 11 Hrs. On the same day, the above mentioned notice was pasted on the conspicuous place at the petitioner's residence at plot No.107, Utthan Nagar, Goregaon, Police Station Mankapur, Nagpur City in front of his family members and two panchas. The detaining authority carefully gone through the grounds of detention and every related document and after being subjectively satisfied has passed the detention order on 20.1.2023 hence there is no delay in passing the detention order and there is a live link while passing the detention order by the detaining authority and there is no non-application of mind in passing the detention order which is legal and, therefore, need not be quashed.

14. The respondents have relied on the judgment of Hon'ble Apex Court in the case of Subramanian V/s. State of Tamil Nadu reported in (2012) 4 SCC 699.

15. We find that the period between the last prejudicial activity of the petitioner and the passing of detention order is almost of six months. The explanation in this regard is vague. The offences for which respondent No.1 passed the detention order against the petitioner was for the offences punishable under Sections 385, 294 and 506-II of I.P.C. and were committed in the month of July 2023 and the detention order was passed in the month of January 2024. The explanation given by respondents is not satisfactory. The statements on which the respondents have relied is also of June and July 2023. There is no live link. The inordinate delay, whether short or long, particularly when the petitioner has taken a specific plea of delay vitiates the detention order.

16. Another ground is about whether the crimes considered are of disturbance relatable to law and order or public order.

17. The breach of law in all cases does not lead to public disorder. The Hon'ble Apex Court in Ram Manohar Lohia V/s. State of Bihar reported in (1966) 1 SCR 709 has lucidly differentiated between "law and order" and "public order" 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."

18. 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. The Hon'ble Apex Court in *Arun Ghosh V/s. State of West Bengal* has observed that : “Does 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 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 Hon'ble 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.”

19. In Khudiram Das V/s The State of West Bengal reported in (1975) 2 SCC 81, while examining the ‘history sheet’ of the detenu, the Hon’ble Apex Court had, in express terms, clarified that a generalisation could not be made that the detenu was in the habit of committing those offences. Merely because the detenu was charged for multiple offences, it could not be said that he was in the habit of committing such offences. Further, habituality of committing offences cannot, in isolation, be taken as a basis of any detention order; rather it has to be tested on the metrics of ‘public order’, as discussed above. Therefore, cases where such habituality has created any ‘public disorder’ could qualify as a ground to order detention.

20. At this stage, we would like to consider the crimes which were considered for passing the detention order. The respondents have taken the plea that in the year 2013, 2017 and 2022 preventive action was initiated under Section 110 of the Cr.P.C. against the detainee to deter him from committing the violent crimes, however, the detainee continued to commit serious offences hence the detainee was detained under the M.P.D.A. Act in the year 2018. After getting released from the detention, the detainee committed violent crimes. Hence in the year 2018 the Deputy Commissioner of Police Nagpur City has restrained the detainee from entering Nagpur District for a period of one year but the record shows that the said externment was breached by the detainee by repeatedly entering in the jurisdiction of Nagpur City. For earlier offences the action was taken i.e. externment order was already passed and also the detainee was detained. It can be seen from the offences which were considered by the detaining authority that they are of individual nature.

21. The complainants in both the offences are from same family and it is the family matter. In both the offences the complainant, in one case is father of victim and in another case is

brother of victim. The first offence was registered on 20.7.2023 and second offence was registered on 21.7.2023. The allegations made in said offences are that the victim who was having love affair with the petitioner was staying with him since 3 to 4 years and then she informed her parents that the petitioner is harassing her and, therefore, they took her back and gave her one flat to stay separately. Thereafter the complainant decided to send his daughter to Australia for her higher studies. They booked the tickets and made the arrangement for her education in Australia but due to petitioner she returned back as the petitioner has given threats to kill her parents. On complaint of the complainant, petitioner was arrested and released on bail. On next day again he quarrelled with the brother of the complainant and abused the wife of the complainant and, therefore, the another complaint is lodged and crime is registered.

22. Considering the nature of both the complaints, which are of individual nature. It falls within the ambit of law and order. When the public at large is adversely affected by the criminal activities of a person then such conduct of the person is said to disturb the public order. The true distinction between law and order and public order

lies not merely in the nature or quality of the act but in the proper degree and extent of its impact on the society. From the nature of the crimes it does not fall within the words “public order” or “disturbance of public order” instead they fall within the scope of law and order and there was no need for detaining authority to pass the detention order based thereon.

23. The statements of confidential witnesses are also against the individual. On an overall consideration of the circumstances, it can be said that the existing legal framework is sufficient to prove like offence under circumstances which the Commissioner anticipates could be repeated by the detainee.

24. In view of the above said discussion we cannot uphold the detention order. As a consequence, the impugned orders are set aside.

The petitioner be set at liberty forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

Tambaskar.