



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

CRIMINAL WRIT PETITION NO.366/2024

Krishna S/o Ramesh Katekhaye,
aged about 23 Yrs., R/o Khatkheda,
Tah. Paoni, Distt. Bhandara.

... Petitioner

- Versus -

1. The State of Maharashtra,
through Principal Secretary
(Appeals and Security), Home
Department, Mantralaya,
Mumbai 32.

2. The District Magistrate,
Bhandara, Tah. and Distt.
Bhandara.

... Respondents

Mr. Abhishek A. Zade, Advocate with Mr. A.P. Modak, Advocate
for the Petitioner.

Mr. A.B. Badar, A.P.P. for Respondent Nos.1 and 2.

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

DATED: 22.8.2024.

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

Heard Mr. Abhishek A. Zade, learned Advocate for
the petitioner and Mr. A.B. Badar, learned A.P.P. for respondent
Nos.1 and 2. **Rule.**

2. Learned Advocate for the petitioner challenges the impugned order dated 29.12.2023 passed by respondent No.2, which appears to have been confirmed by the State Government by order dated 21.2.2024, on the ground that the impugned order passed by the detaining authority is passed without application of mind and without adhering to the statutory procedure. The detention order is based on one offence namely Crime No.320/2023 for the offence punishable under Sections 307, 353, 333, 379, 506 and 109 of Indian Penal Code read with Section 48(7)(8) of Maharashtra Land Revenue Code, 1966 and the in camera statements of two confidential witnesses.

3. It is submitted that the detaining authority had not considered the fact that the offences are still under investigation, the petitioner was released on bail and the bail orders were not produced before the detaining authority. This ground was not mentioned by the petitioner but while arguing he has raised it. The record shows that at the most there can be the law and order

situation and the public order was not disturbed in whatsoever manner thereby requiring the detention of the petitioner. Further there was no verification of in-camera statements by the detaining authority and they mention the incidents of March 2023 and February 2023 and the order is passed in December 2023. There is no live link and the belated order has been passed and, therefore, it is submitted that the detention is illegal and deserves to be quashed and set aside.

4. *Per contra*, learned A.P.P. Mr. Badar has submitted that the grounds available on record including the in-camera statements of witnesses show that the criminal activities of the petitioner such as giving threats to kill the government officials when they obstructed the illegal transport of sand in the district of Bhandara, illegal excavation of sand from Wainganga river flowing through Paoni Taluka and lifting the sand in the vehicle without a valid licence, wandering with associates by the petitioner and abusing villagers when they went to complain in

relation to sand transport, all these illegal activities were creating terror and constant threat to the lives and property of people in the vicinity of police station Paoni. Hence the learned A.P.P. has prayed to reject the application.

5. The impugned order is passed considering one crime and two confidential statements. Though three crimes are registered in the year 2023, two crimes are not considered because they do not fall within the immediate period of six months prior to taking the preventive action against the petitioner. Crime No.320/2023 is considered. Incident took place on 12.8.2023. The complainant in this crime is the Naib-Tahsildar, Paoni. On receiving the information that the sand is excavated by one tractor near Wainganga river, he went there with Talathi and other staff members. When he went there, he found one tractor trolley without number plate was there and one brass sand was filled in said trolley. The Talathi has taken mobile and key of the said person, at that time, accused No.2 has put the vehicle on the

person of first informant and the other persons who were with him with intention to kill them. At that time, petitioner came there on motorcycle and gave threats to the complainant. Thereafter the accused fled away with tractor.

6. On perusal of the F.I.R. it is seen that the petitioner came on the spot on motorcycle. Role of this petitioner in this crime is that he has given threats to the complainant and his companion. On perusal of the statements of both the witnesses it is seen that they have stated that when they asked the petitioner to drive slowly, at that time, he had given threats to kill them. Both statements and one crime, which is considered by the detaining authority while passing the detention order, does not create any situation of public order. A mere apprehension of 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 disturbance of public order owing to a crime that was reported over 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 detainee was released on bail.

7. The distinction between disturbance to law and order and disturbance of public order has been clearly settled by a Constitution Bench in Ram Manohar Lohiya V/s. State of Bihar reported in 5 AIR 1966 SC 740. The Court has held that every disorder does not meet the threshold of a disturbance to public order, unless it affects the community at large. The Constitution Bench held:

“51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and

order" because the latter undoubtedly takes in all of them. 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. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52. 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. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

(emphasis supplied)

8. The petitioner was immediately released on bail for the offence punishable under Section 307 with other offences registered against him. Considering his role, the trial Court has released him on bail. The bail order was not placed before the detaining authority and it was not considered by the detaining authority while passing the impugned order.

9. The Nagpur Bench of this Court in its judgment dated 01.07.2022 passed in Ratanmala Mukund Balkhande Vs. State of Maharashtra and Ors., Criminal Writ Petition No.820/2021; (2022 ALL MR (Cri.) 3106), has considered situation where the detaining authority had knowledge that the detenu was on bail in all seven crimes referred to in the detention order, that the reasons for grant of bail were not placed before the detaining authority, whilst considering the effect of non-

placement of the reasons contained in the bail orders passed by the competent Court, it has held:

“8. In this case, although, seven crimes registered against the detenu formed the material for reaching the subjective satisfaction of the detaining authority, admittedly, in five of the crimes, in which the detenu was on bail, no bail orders were placed before the detaining authority. This lacuna, in our opinion, has vitiated the satisfaction reached by the detaining authority as it was deprived of opportunity to consider relevant material, though available.”

The bails orders in case in hand are not placed before the detaining authority which also vitiates the satisfaction reached by the detaining authority.

10. Though the offence under Section 307 of Indian Penal Code is registered considering his role he was released on bail. Allegation against the detenue is that he has given threats. He is not the person who has put the tractor on the person of Talathi i.e. government official. The statements of confidential witnesses also show that he has given the threats which is not

sufficient to make out the case for detention on the ground of disturbing public order.

11. As no situation of disturbance of public order is *prima facie* appears from the crime considered and the statements of the confidential witnesses, on this ground alone, the order detention passed by the detaining authority can be set aside. Accordingly it is set aside.

12. The petition is allowed in terms of prayer clause (i) and (ii).

The petitioner be released forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)