



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

CRIMINAL WRIT PETITION NO.377/2024

Mohammad Mubsheer Shaikh alias
Chand S/o Shaikh Shabbir,
aged about 28 Yrs., Occ. Private,
R/o C/o Shri Nandeshwar,
Suikhmati Apartment, Flat No.203,
Vaishali Nagar, Panchpaoli, Nagpur.

... Petitioner

- Versus -

1. State of Maharashtra,
through its Principal Secretary,
Ministry of Home Affairs,
Mantralaya, Mumbai – 400 032.

2. State of Maharashtra,
through the Commissioner of Police,
(Nagpur City), Police Bhavan,
Civil Lines, Nagpur 440 001.

... Respondents

Mr. Gaurav S. Gour, Advocate for the Petitioner.
Mr. A.M. Joshi, A.P.P. for Respondent Nos.1 and 2.

CORAM: VINAY JOSHI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 13.9.2024.

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

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The petitioner has challenged the detention order passed under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981.

3. Learned Advocate for the petitioner has challenged the impugned order which appears to have been confirmed by the Government by order dated 11.10.2023 on the ground that the impugned order passed by the Detaining Authority is based on the non-application of mind and without adhering to the statutory procedure. The grounds of detention appears to have been based on three offences namely first Crime No.257/2023 for the offence punishable under Sections 452, 342, 294, 506-B, 427 and 323 read with Section 34 of Indian Penal Code. The date of offence is 8.4.2023. The second is Crime No.889/2023 for the offence punishable under Sections 5(A) and 9(A) of

Maharashtra Animal Preservation Act, 1976 and Section 11 of Prevention of Cruelty to Animals Act, 1960 and third offence is Crime No.1023/2023 for 4/25 of Arms Act read with Section 135 of the Maharashtra Police Act.

4. The Detaining Authority has also considered two in-camera statements. It is submitted that the Detaining Authority had not considered that in all the offences, which are pending before the Court, the petitioner has been released on bail and the bail orders though have been placed before the Authority are not considered while passing the detention order.

5. There is no proper verification of the statements. The stereotyped statements of two witnesses are considered. There is delay in passing the detention order from the date of last crime and no explanation is given by the Detaining Authority for passing the delayed order. Therefore, the detention order is illegal and deserves to be set aside.

6. *Per Contra*, learned A.P.P. submitted that well reasoned order has been passed while authorising the detention of the petitioner. Petitioner was involved in all other offences which are related to human body and the prevention of cruelty to animals. Even the preventive action was taken against him from time to time but he has not curtailed his activities. If we consider the facts of Crime No.1023/2023 it can be seen that the petitioner was found roaming on road holding a knife in his hand. This indicates that he wanted to create terror amongst people at large. Another offence is registered against the petitioner is Crime No.257/2023 under Sections 452, 342, 294, 506-B, 427 and 323 read with Section 34 of Indian Penal Code. Knife has been used. The petitioner has given threats to the informant and took out the gas cylinder and gave threats that he will ablaze all of them. Further in-camera statements would show that in both the offences threats were given by creating terror in the mind of people at large so that the petitioner can continue his illegal activities. The opportunity was given to the petitioner to submit

his representation. He was given hearing before the Advisory Board and the detention order has been confirmed by the Detaining Authority. No illegality has been committed and, therefore, the petition deserves to be dismissed.

7. Though three offences are considered by the Detaining Authority, the offence i.e. Crime No.889/2023 which is under the provisions of Maharashtra Animal Preservation Act and Prevention of Cruelty to Animals Act cannot be considered under the provisions of M.P.D.A. Act but two offences i.e Crime Nos.257/2023 and 1023/2023 can be considered under the M.P.D.A. Act as those are under the Indian Penal Code and would fall under the provisions of Chapters XVI and XVII of the I.P.C.

8. If we consider the offence i.e. Crime No.257/2023 in which the complainant is lady, the detenue along with other persons gave threats to the brother of the complainant as he was

talking with her daughter on road and though all accused persons were not known to the complainant they came to her house, they beat her brother and asked the complainant to leave the premises along with her children. The petitioner threw household articles from house and by taking out gas cylinder gave threats that he will ablaze all of them. Thereafter the complainant lodged the complaint. It appears from this crime that there was no personal enmity between the complainant and detainee and the detainee was not known to her. He gave threats in public place to the complainant and her brother, abused them asking her to leave the said area. Obviously, it is not against the individual person but it definitely creates situation of public order.

9. The another offence is Crime No.1023/2023. The Police Head Constable received the information that one person who is wearing yellow coloured lining T shirt and blue coloured jeans was shouting and creating terror with deadly weapon. The detainee was found when the complainant along with his staff

went there on the spot. The person was creating nuisance. He was holding knife in his hand. Knife was seized. In both the offences the petitioner was released on bail.

10. If a person is roaming with knife in his hand in public place, *prima facie* we can consider that it definitely creates a public order situation and not only law and order situation.

11. The statement of witnesses "A" and "B" would show that though the petitioner has stated that identical statements are made by both the witnesses but after going through the statements it appears that two different incidents are narrated by by them. The statements were verified and signed by the Authority and after subjective satisfaction about truthfulness of the statements, the order was passed.

12. The witness "A" has narrated about the extortion. The petitioner along with his associates went to the shop of the

witness and asked him to give Rs.5,000/-. When he stated that he is not having that much money, petitioner shouted in filthy language and took out knife from his waist and pointed on the neck of witness. The accomplices of the petitioner pushed the witness to the ground and beat him on the chest and back. When the accomplices were beating the witness passers-by gathered there, the petitioner pointed a knife at them and threatened them by saying that not to stay there otherwise he will kill them. Then the people ran away from the spot. Thereafter he took forcibly Rs.1,230/- from the right pocket of the trouser of witness and while leaving gave threat not to inform it to the police. The petitioner has created terror in public by showing the knife.

13. Another witness "B" has stated that in third week of September 2023 when he was going to his house the petitioner along with his associates obstructed the witness as the petitioner was knowing that the witness is the informant of police and as he has given information the police arrested him and, therefore, he

asked why he is informing about him to police and also asked him that “इसे ऐसा सबक सिखा, दुबारा कोई काम का न रहे” and he pushed the witness down and his associates also beat the witness with fist and blows. When people gathered there, the petitioner took out a knife from his possession and went at the people and threatened them by saying to leave the place. Thereafter people left the spot. He took forcibly Rs.5,209/- from trouser and the petitioner has given threats to the witness not to inform about it to the police.

14. From these statements the facts would certainly show that it is the public order that was disturbed.

15. Another ground for challenging the order is that there is delay of 30 days for passing the detention order.

16. According to petitioner, the last crime is dated 29.8.2023 and the order is passed on 5.10.2023. Therefore, there is delay of 30 days in passing the detention order.

17. Learned A.P.P. has filed reply and stated that there is no delay in passing the detention order. The time starts from the date of recording of statement, its verification and the consideration by the Authority. The last in-camera statements were recorded on 20.09.2023. The Pachpaoli Police Station, Nagpur initiated the proposal for detention of the detainee on 23.09.2023 under the MPDA, 1981 (Amendment of 2015) and the same was submitted to the Assistant Commissioner of Police, Lakkadganj Division. The Assistant Commissioner of Police, Lakkadganj Division verified the in-camera statements of witness "A" and "B" on 25.09.2023 and recommended the proposal to the Dy. Commissioner of Police, Zone-III, Nagpur on 26.09.2023. The Dy. Commissioner of Police, Zone-III, Nagpur verified the in-camera statement and after scrutinizing, recommended it to the Addl. Commissioner of Police, North Region, Nagpur on 28.09.2023. The Addl. Commissioner of Police, North Region, Nagpur City on 29.09.2023 forwarded it to the Commissioner of Police, Nagpur i.e. the Detaining Authority and on 02.10.2023, it

was received in the Detention Cell, Crime Branch, Nagpur. On 03.10.2023, the Detention Cell, Crime Branch, Nagpur initiated the proposal to the Detaining Authority i.e. Commissioner of Police, Nagpur. It is submitted that the Detaining Authority prima facie found, that it was a fit case for detention order under MPDA and directed the office of the Detention Cell, Crime Branch, Nagpur to prepare compilation, translation, fair typing and comply with other requirements of law. The Detention Cell, Crime Branch, Nagpur complied with these directions and on 03.10.2023 the draft of the grounds of detention were forwarded to the Deputy Commissioner of Police (Detention), Crime Branch, Nagpur City who went through the draft of the grounds of detention and other relevant documents and gave his endorsement on 03.10.2023 which were then forwarded to the Addl. Commissioner of Police (Crime), Nagpur City. The Addl. Commissioner of Police (Crime), Nagpur City went through the draft of the grounds of detention and other relevant documents and gave his endorsement on 04.10.2023 before forwarding to

the Detaining Authority. The Detaining Authority carefully went through the grounds of detention and other relevant documents and after being subjectively satisfied, passed the detention order and on the same day i.e. 05.10.2023, the detenue was detained.

18. Considering the explanation given by the respondent No.2 about the delay, we find that it is satisfactory. Therefore, there is no delay in passing the detention order.

19. Learned Advocate for the petitioner has relied on the judgment in case of Nenavath Bujji etc. V/s. State of Telangana and others reported in **2024 SCC OnLine SC 367** wherein the Hon'ble Apex Court has observed that it is preventive action of passing the detention order if the person is engaged continuously in activities prejudicial to the public order.

20. The subjective satisfaction has been arrived at on the basis of two offences as well as two in-camera statements. We do

not find this is to be fit case where we should exercise our constitutional powers to set aside the detention order. We may also refer to the opinion of the Advisory Board and the said opinion is made available to us which shows that the petitioner is heard through video conferencing and Advocate who represented the petitioner was also heard. The detention order has been confirmed taking into consideration two offences and statements of witnesses "A" and "B" as contemplated under law and, therefore, we pass the following order:-

Writ petition is dismissed. Rule stands discharged.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)