



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

CRIMINAL WRIT PETITION NO. 403/2024

Gaurav Pankaj Ragde,
Aged about 24 yrs., Occ. Labour,
R/o. Kunjilal Peth, Galli, No.2,
behind Manvata High School,
Nagpur.

...PETITIONER

VERSUS

1. State of Maharashtra,
through its Secretary, Home Department
(Special) Mantralaya, Mumbai.
2. Commissioner of Police, Nagpur.

....RESPONDENTS

Mr. M.N. Ali, Advocate for petitioner.
Mrs. S.S. Jachak, Addl. Public Prosecutor for respondent Nos. 1 & 2.

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

DATE : 23.08.2024

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

Rule. Rule made returnable forthwith. Heard finally
with consent of learned counsel appearing for the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner (detenue) seeks to quash and set aside the impugned order dated 28.12.2023 passed by the Commissioner of Police, Nagpur (respondent No.2) under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumrords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 ("MPDA Act") as well as further raises challenge to the order of confirmation dated 21.02.2024 passed by respondent No.1 under Section 3 of the MPDA Act confirming the order of detention detaining the petitioner for the period of 12 months.

3. The petitioner raises challenge to these orders on following grounds:-

(A) None of the two offences relied by the Detaining Authority, forms the basis for passing the detention order as alleged act cannot be termed as detrimental to the maintenance of the public order, therefore at the most those

offences can be at the most termed as an act which are disruptive of law and order.

(B) In camera-statements relied by the Detaining Authority do not disclose any specific incident occurred in broader public view or the alleged acts on part of the detainee would amount to disturbance of public order. The Detaining Authority has not verified the statements and there is no subjective satisfaction.

(C) There is considerable delay in passing the order, meaning thereby there is loss of live-link which vitiates the order.

4. In response to the challenge raised to the detention order, the respondents have filed affidavit-in-reply dated 27.06.2024 through the Commissioner of Police, Nagpur reiterating the stand that the petitioner was considered as a “dangerous person” within the meaning of Section 2(b-1) of the MPDA Act and sought to justify the detention by supporting the impugned orders. In support, the learned APP has relied on the decisions in cases of *Sahdeo Jha & ors. Vs.*

Union of India & ors., (1992) 2 SCC 190 and *Harpreet Kaur (MRS) Harvinder Singh Bedi Vs. State of Maharashtra and anr., (1992) 2 SCC 177.*

5. Heard Mr. Ali, learned for detenue/petitioner in support of the grounds for challenge. The main contention of the detenue appears to be that the two crimes which form the basis of passing detention order are in the nature of personal dispute between the petitioner and the respective complainant. It is argued that the incident pertaining to the first crime considered by the Authority (Crime No.420/2023) occurred in the house as well as the detenue ran away when the people gathers and therefore, it does not affect the public order. He would submit that in the second crime considered (Crime No. 713/2023), no sooner the people gathered, the detenue ran away. There are no allegations that the detenue has brandished the weapon. He has tried to conceal the same and therefore, it does not affect the public order. Moreover, the crimes dated 20.06.2023 and 26.10.2023 have been considered whilst detention order was passed on 28.12.2023. Thus, there is delay in passing order which vitiates the detention action. He would submit that the Detaining Authority has

not recorded subjective satisfaction regarding verification of the statements. To substantiate above contentions, the learned counsel appearing for petitioner relied on the following decisions:-

- (i) Osama Mohd Rafique Patka Vs. State of Maharashtra & anr. (Writ Petition No. 64/2024, dated 10.07.2024).
- (ii) Parvez Khan @ Buntty Lala Shammi Khan Vs. State of Maharashtra & anr. (Writ Petition No.203/2024 decided on 09.05.2024).
- (iii) Jakir @ Jakira Hussain Vs. State of Maharashtra & anr. (Writ Petition No.587/2023 decided on 14.02.2024).
- (iv) Niyazuddin @ Sonu Sirajuddin Ansari Vs. State of Maharashtra & anr. 2013 All. M.R. (Cri) 3870.
- (v) Abhishek @ Golu Pawan Kharbalkar Vs. State of Maharashtra & anr. (Writ Petition No.903/2023 decided on 28.06.2024).
- (vi) Deepak Dattu Suryawanshi Vs. Commissioner of Police & ors, 2017 All. M.R. (Cri) 416.
- (vii) Pratap s/o Ajay Kharare Vs. The State of Maharashtra & ors. (Writ Petition No.671/2023 decided on 05.04.2024).
- (viii) Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police, 1995 (4) JT 215.

6. The detention order bears a reference of past offences which are as below:-

Sr. No.	Police Station & Crime No.	Sections	Date of offence	Date of arrest	C.C.No. & Date	Re- marks
1.	Ajni, 344/2021	324, 34 IPC	20.07.2021	20.07.2021	602/2022	Court pend- ing
2.	Kotwali 348/2021	302, 379, 120-B, 143, 147, 148, 149, IPC r/w 4/25 Arms Act, 135 Ma- harashtra Police Act.	15.09.2021	17.09.2021	4917/2021 13.04.2017	Court Pend- ing
3.	Ajni 335/2022	294, 506 (B), 323 IPC	29.05.2022	29.05.2022 Intimation letter.	4917/2021 10.12.2021	Court pend- ing

PREVENTIVE ACTION

Sr. No.	Police Station & Preventive action No.	Sections	Date of intimation	Chapter Case No. & Date	Remarks
1	Ajni 47/2021	110(e)(g) Cr.P.C.	20.07.2021	97/2021 20.07.2021	On 20.07.2021, the Special Execu- tive Magistrate, Ajni, Division, Nagpur executed notice u/s 111 Cr.P.C. However, during the pro- ceeding you re- mained absent. As

					the proceedings could not be completed, hence after completion of six months period on 17.01.2022 the said Chapter case was closed.
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Sr. No.	Police Station & Preventive action No.	Sections	Date of intimation	Chapter Case No. & Date	Remarks
1.	Kotwali 03/2022	110(e)(g) Cr.P.C.	28.02.2022	04/2022 04.03.2022	On 04.03.2022, you had executed interim bond of Rs. 30,000/- keeping peace and good behaviour during the period of proceedings with Spl. Executive Magistrate, Kotwali Division, Nagpur City. You breached the terms and conditions laid down in the interim bond of said preventive action by continued committing serious offences in the jurisdiction of Police Station Ajni C.R. Nos. 420/2023 u/s 294, 323, 386, 452, 506-B, r/w 34 IPC and (2) C.R.No. 713/2023 u/s 4/25 Arms Act, 135 Maharashtra Police Act, Hence, the

					said Chapter case was closed.
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7. The order of detention is based on following two offences:-

Sr. No.	Police Station & Crime No.	Sections	Date of offence/FIR	Date of arrest	C.C.No. & Date	Re-remarks
1.	Ajni 420/2023	294, 323, 386, 452, 506(B), 34 IPC r/w 4/25 Arms Act, 135 Maharashtra Police Act	20/06/2023	20.06.2023	4148/2023 10.11.2023	Court Pending
2.	Ajni 713/2023	4/25 Arms Act, r/w Maharashtra Police Act.	26.10.2023	26.10.2023	4136/2023 10.11.2023	Court pending

8. At the outset, we quote the Hon'ble Supreme Court in the judgment of ***Kanu Biswas Vs. State of West Bangal, (1972) 3 SCC 831*** on the question of what constitutes breach of "public order" as opposed to breach of "law and order" as below:-

"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 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 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 tranquillity of the society undisturbed ? ”*

9. In ***Banka Sneha Sheela Vs. State of Telangana, (2021) 9 SCC 415***, (supra) the Supreme Court has considered the very same question and has set down the distinction between what acts constitute of breach of public order and those which are, in contradistinction, to be in-contravention of law and order in the following terms:-

“13. 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.”

10. We may rely further on the decision in *Nevanath Bujji etc. v. State of Telangana and others, reported in 2024 SCC OnLine SC 367*, decided by Three Judge Bench of the Hon'ble Supreme Court of India. After considering various judgments, the legal position has been summarized as follows -

“43. We summarize our conclusions as under:-

(i) *The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,*

(ii) *It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,*

(iii) *There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,*

(iv) *In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to as certain as to whether the decision-making process for reaching the subjective satis-*

faction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,

(v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,

(vi) The satisfaction cannot be inferred by mere statement in the order that "it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order". Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,

(vii) Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,

(viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s)/ grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and

(ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said per-

son would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention. For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.”

11. The ratio laid down in the above judgments and the facts alleged in two offences referred to in the detention order, couple with in-camera statements which form the basis for arriving at subjective satisfaction by the Authority would require consideration to determine whether they would be disruptive of public order or merely of breach of law and order.

12. The first offence bearing Crime No. 420/2023 is registered at Police Station Ajni, Nagpur for the offence punishable under Sections 294, 323, 386, 452, 506(B), 34 of the Indian Penal Code read with Section 135 of the Maharashtra Police Act. The said incident occurred on 20.06.2023 in the early hours at the house of informant. At the relevant time, the detenu along with his associate forcibly entered into the house of informant, abused and manhandled

him. The detainee deterred the informant by wielding a knife and sought to extort cash amount. When nearby residents gathered, the detainee left the place.

13. The second incident pertains to Crime No. 713/2023 registered at Ajni Police Station for the offence punishable under Sections 4/25 of the Arms Act read with Section 135 of the Police Act. The said crime relates to the incident occurred during intervening night of 25.10.2023 to 26.10.2023. The Police received a secret information that one person is moving with dangerous weapon on public road. Accordingly, the Police accosted the detainee on the road around 00.30 hours mid-night near Chandramani Garden. The detainee was roaming with a dangerous knife. After noticing the Police, he tried to hide weapon in his clothes and tried to run away. The first incident though occurred in the house, however it reveals that the residents of the area have gathered, on which the detainee left the place. The second incident of moving with dangerous weapon namely knife was on public road at mid-night which was within the public view.

14. We have examined the contents of two in-camera statements. The first statement “A” refers to an incident occurred in the month of October 2023 around 07.00 p.m. on a public road. The witness stated that at relevant time, he was serving food to the customers at his stall. The detainee arrived on the spot with his associate, manhandled the witness. Seeing this, the customer including family and girls got frightened. The detainee took out a big size knife and pointed at the stomach of witness and abused him. At the relevant time, the nearby people gathered. By seeing the people, detainee rushed on the mob with a knife on which the people got frightened and ran helter-skelter. The detainee abused the witness and snatched Rs. 3500/- from the cash box for permitting him to run the stall. It is apparent that the incident took place in broad public view. It caused alarm or fear in the mind of public at large.

15. The second statement of witness “B” refers to the incident took place in the month of October 2023 around 08.30 p.m. on a public road. The witness was proceeding on his motorcycle to whom the detainee accosted in the way. The detainee abused him and demanded money. The detainee also took out a knife and threatened

him for dire consequence for payment of money. The nearby people gathered on which the detenue has waived knife towards the people by giving abuses, on which the people ran away under fear. Then the detenue forcibly snatched Rs. 700/- from the pocket of witness and ran away.

16. The above incidents are clear to convey that the acts of detenue caused disturbance to the public order. Carrying big size weapon and waiving it towards the public at large is potential to disturb the tempo of life of the society which is certainly prejudicial to the maintenance of public order. The potentiality of the act of the detenue and its effect upon the public tranquillity needs to be noted. The continuous activities of detenue has disturbed the tempo of peaceful living of the public at large which affects the public order. The in-camera statements show that the detenue has disturbed the Society and the Community. The act of detenue makes the passer-by apprehensive of their life which has caused disturbance to the normal living. The impugned order is based on more than one ground. Even if the petitioner succeeds on one of the ground, by implication of

Section 5-A of the MPDA Act, the entire impugned order will not be vitiated.

17. We have gone through both the secrete statements dated 02.11.2023 and 06.11.2023. The witnesses were produced before the Assistant Commissioner of Police, Ajni who has verified the trustfulness and genuineness of the contents. He also ascertained that the witness is not ready to make complaint out of fear. Both the statement shows that respondent No.2 has verified the statements and put an endorsement to that effect. Thus, it cannot be said that the Detaining Authority did not verify the statements. Rather detention order discloses that after verifying the statements, the Detaining Authority has subjectively satisfied that the deteune is a dangerous person within the meaning of MPDA Act. The detention order further discloses that the Detaining Authority had personal discussion and verification of documents and on the basis of material placed before him, the subjective satisfaction has been recorded.

18. So far as the delay in passing detention order is concerned, the two offences dated 20.06.2023 and 26.10.2023 have been

considered for passing detention order. It reveals that two in-camera statements were recorded on 02.11.2023 and 06.11.2023. They were verified by the Assistant Commissioner of Police, Ajni. Detaining Authority on verification dated 28.12.2023, has passed the detention order on the same day. The delay by itself is not a ground, but if it is sufficiently explained then it has no effect. We see that there is live-link and in proximity the steps have been taken by the authority.

19. After analysing entire material, we are satisfied that the Detaining Authority has considered the relevant material and by recording subjective satisfaction, came to the conclusion that the detainee is a dangerous person. Though the detention order shows the previous offence including the offence of murder and the preventive action, however they are referred to show the background activities. It is apparent that detention order is based on two offences and two in-camera statements. The material indicates that the petitioner is habitual offender and involved in serious offences. The preventive action fails short to deter him from repeating the anti-social activities. The act of petitioner moving with weapon and deterring the member of public would certainly create fear in the mind of people. It would

dispute the tempo of common citizen affecting the public order. The satisfaction recorded by the Authority cannot be altered unless the orders suffer from the material irregularity. In the circumstances, we see no error or illegality committed by the Authority in passing the detention order, its approval and confirmation by the State.

20. In view of above, petition stands dismissed.

(MRS.VRUSHALI V. JOSHI, J.)

Gohane

(VINAY JOSHI, J.)