



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

Criminal Writ Petition No.557 of 2024

Gajanan Ashok Dahale (In Jail),

Aged about 25 years,

Occupation – Labour,

R/o Sarafa Line, Gocharswami Ward,

Umarkhed, Dist. Yavatmal.

... **Petitioner**

Versus

1. State of Maharashtra,

through its Secretary,

Home Department (Special),

Mantralaya, Mumbai.

2. District Collector, Yavatmal.

... **Respondents**

Shri Mir Nagmal Ali, Counsel for Petitioner.

Shri S.S. Doifode, Additional Public Prosecutor for Respondents.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : DECEMBER 02, 2024

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.) :

1. Styling the petitioner to be a ‘dangerous person’ within the meaning of Section 2(b-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, the petitioner’s activities were found to

be detrimental to the maintenance of public order, which has led to passing of the impugned order of detention dated March 27, 2024.

2. For the purpose of order of detention, the following three offences were taken into account :

Sr. No.	Police station	Offence no. And Sections	Filed on	Charge sheet no and CC No	Present situation
01	Umarkhed	728/2023 Sec. 392, 504, 506, 34 of IPC	29-11-2023	--	Under investigation
02	Umarkhed	797/2023 Sec. 4, 25 Arm Act r/w Section 188 IPC	17-12-2023	Charge sheet no.14/24 dt. 15/01/2024 C.C. No.61/24 Dt. 23/01/2024	Court pending
03	Umarkhed	182/2024 Sec. 4, 25 Arm Act r/w.	17-03-2024	--	Under investigation

3. While questioning the order of detention, it is claimed that the last crime is of March 17, 2024 and the perusal of the allegations in the said crime being Crime No.182 of 2024 would reflect that the offence had allegedly taken place in the house of the detenu. As such, it is claimed that there is no violation of the public order.

4. Similarly, about Crime No.797 of 2023, it is claimed that the petitioner was roaming around with a knife in his hand and he was accordingly apprehended on the information received from the confidential informant.

5. Both these crimes, viz. Crime No.797 of 2023 and Crime No.182 of 2024, are punishable under Sections 4 and 25 of the Arms Act, and in

Crime No.797 of 2023, the punishment for an offence under Section 188 of the Indian Penal Code is also alleged.

6. The contention of Shri Mir Nagman Ali, learned counsel appearing for the petitioner, is that since perusal of both these crimes does not speak of disturbance of public order, the said crimes cannot be taken into account for the purpose of ordering detention by styling the petitioner as a 'dangerous person'.

7. The next contention is that Crime No.728 of 2023 was registered on November 29, 2023 and the petitioner was apprehended on December 17, 2023. It is claimed that the petitioner was released on bail in the aforesaid crime by the Magistrate and the Detaining Authority has neither considered the bail order nor applied its mind so as to record a subjective satisfaction, which results into the detention order being vitiated.

8. Another contention is that the perusal of the in-camera statements of Witness-A and Witness-B does not reflect that the Detaining Authority has verified the said statements.

9. As against above, Shri Doifode, learned Additional Public Prosecutor for the respondents, would submit that the bail order in Crime No.728 of 2023 is not required to be taken into account, as the cumulative effect of the offence being committed by the petitioner at public places thereby

resulting into disturbance of public order is found to be an opinion for ordering detention. According to him, the in-camera statements were very much placed before the Detaining Authority. That being so, the order passed by the Detaining Authority cannot be said to be vitiated.

10. We have considered the submissions made by both the counsel.

11. The fact remains that in Crime No.797 of 2023 and Crime No.182 of 2024, there is no iota of evidence to infer that the conduct of the petitioner has resulted into disturbance of public order. So as to support our finding, we can rely on the First Information Report and the other material in both these crimes. Of the two crimes, we are informed that Crime No.182 of 2024 punishable under Sections 4 and 25 of the Arms Act is under investigation.

12. Apart from above, the fact remains that the petitioner was apprehended on December 17, 2023 in Crime No.728 of 2023 punishable under Sections 392, 504 and 506 read with Section 34 of the Indian Penal Code.

13. No doubt, the learned Additional Public Prosecutor was justified in claiming that the conduct of the petitioner, as reflected in the FIR, based on the complaint, and the in-camera statements of the witnesses, sufficiently speak of disturbance of public order. The learned Additional Public Prosecutor was also justified in claiming that even a single offence

can be said to be sufficient to infer a subjective satisfaction by the Detaining Authority for ordering detention in case of breach of public order. However, we are required to be conscious of the fact that the order granting bail in Crime No.728 of 2023 was not made available to the Detaining Authority.

14. We are of the view that while recording a subjective satisfaction in the matter of breach of public order, the Detaining Authority must be sensitive to the order directing release of the detenu in a crime which is sought to be relied on for forming a subjective satisfaction of breach of public order. In the case in hand, Crime No.728 of 2023 punishable under Sections 392, 504 and 506 read with Section 34 of the Indian Penal Code is sought to be relied on. However, the order granting bail to the detenu was not a part of the record of the Detaining Authority. As such, it has to be inferred that the Detaining Authority was not conscious of the fact that the detenu was not only released on bail but also the reasons recorded by the Court granting bail and the contentions incorporated therein so as to make the bail available to the petitioner-detenu were not considered. The Apex Court had an occasion to deal with an identical situation in the matter of *Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others*, reported in *2012 DGLS(SC) 4*. The Apex Court while dealing with a similar incident has made the following observations -

“8. It would be, thus, seen that the order releasing the detenu on bail in the crime registered on August 14, 2010 and the order relaxing the bail condition were passed by the Judicial Magistrate, 1st Class, Dharangaon much before the issuance of detention order dated January 10, 2011. However, the detention order or the grounds supplied to the detenu do not show that the detaining authority was aware of the bail order granted in favour of the detenu on August 15, 2010.

9. In a case where detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

10. In the present case, since the order of bail dated August 15, 2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the granting bail to the detenu would have effect the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority.”

15. The Apex Court has held that in case the detenu is released on bail in a crime, which is also formed to be a basis for ordering detention and such bail order is not taken into account by the Detaining Authority, such order cannot be said to be based on consideration of sufficient material to record a subjective satisfaction.

16. Admittedly, in the case in hand, the Detaining Authority has not applied its mind to the bail order. As such, the bail order in Crime No.728

of 2023 was not a part of the record of the Detaining Authority. That being so, in our opinion, the order of detention stands vitiated.

17. There is one more ground which warrants the observation of the non-sustainability of the detention order. We have perused the original in-camera statements which are produced by the learned Additional Public Prosecutor. There is no material on record to infer that the Detaining Authority has verified the said documents by looking into the same, as even in the detention order, there is no reference to the Detaining Authority having verified the in-camera statements. The perusal of the in-camera statements also does not reflect that such material is verified by the Detaining Authority, in absence of there being an endorsement to that effect. As such, the order of detention also stands vitiated for this reason.

18. That being so, the petition stands allowed. The order of detention dated March 27, 2024 styling the petitioner to be a 'dangerous person', is hereby quashed and set aside.

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

20. The petition is disposed of in the aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)