



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

CRIMINAL WRIT PETITION NO.671/2023

Pratap S/o Ajay Kharare,
aged about 32 Yrs., R/o Vijay Nagar,
Near Government Godown,
Distt. Akola (Presently at District
Prison, Akola)

... Petitioner

- Versus -

1. The State of Maharashtra,
through its Secretary, Home
Department, Mantralaya,
Mumbai - 32.

2. District Magistrate, Akola.

3. Superintendent,
District Prison, Akola,
Distt. Akola.

... Respondents

Mr. R.M. Daga, Advocate for the Petitioner.
Mr. S.A. Ashirgade, A.P.P. for Respondent Nos.1 to 3.

CORAM: VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 26.3.2024.
DATE OF PRONOUNCING THE JUDGMENT: 5.4.2024.

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. Being aggrieved by impugned orders passed by respondent No.2 dated 14.6.2023 and confirmed by respondent No.1 dated 8.8.2023 the petitioner has filed this petition.

3. The learned Counsel for the petitioner has submitted that the order was passed as the petitioner was alleged to have engaged in criminal activities and has created reign of terror in the locality falling within the jurisdiction of Khadan and Ramdaspath Police Stations, Akola. On 11.6.2023 Police Inspector attached to Khadan Police Station had forwarded the proposal to respondent No.2 in respect of detaining the petitioner under the provisions of 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 "MPDA Act") and

respondent No.2 by order dated 14.6.2023 formulated the grounds of detention and passed the order under Section 3 of the Act.

4. Two main grounds are raised to challenge these orders along with other grounds.

5. The learned Counsel for the petitioner has made submission that the preventive detention cannot be made basis to substitute the ordinary law and to absolve the investigating authority of investigating crimes. Two crimes specifically relied on by respondent No.2 do not relate to any 'breach of public order' nor the two in-camera statements relate to 'breach of public order' and, therefore, the provisions of Section 2(a) of the Act will not be attracted. Mere disturbance of law and order would not be sufficient for action under the preventive detention. Apprehension of breach of law and order is not sufficient to meet

the standard of adversely affecting the maintenance of public order.

6. Two F.I.Rs. i.e Crime Nos.259/2023 and 18/2023 registered against the petitioner are capable of being dealt with by ordinary course of criminal law. The respondent No.2 has failed to record subjective satisfaction as to why ordinary law of land was ineffective in curbing the activities of petitioner. The in-camera statements of witnesses “A” and “B” were recorded on 10.6.2023 and sent to respondent No.2 in a sealed envelope along with proposal forwarded by Police Inspector, Khadan Police Station, Akola on 11.6.2023 for detaining the petitioner. The said statements were verified by respondent No.2 on 12.6.2023 a day after the statements were sent to respondent No.2 in a sealed envelope which shows that the verification is not genuine. The said aspect raises doubt about the verification done by respondents.

7. In answer to allegations made in the petition the respondents have filed affidavit in reply and reiterated their stand that the petitioner was considered as a dangerous person under the MPDA Act and sought to justify his detention and support the impugned orders.

8. The learned Counsel for the petitioner has stated that two crimes relied upon by the detaining authority i.e. Crime No.259/2023 and 18/2023 cannot constitute the material for the authority to arrive at subjective satisfaction to justify passing the detention order.

9. The learned Counsel for the petitioner has relied on the judgment of Division Bench of this Court delivered on 3.10.2023 in Criminal Writ Petition No.430/2023 (Mrs. Sarla Makhan Gupta V/s. The District Magistrate, Chandrapur and others) to which one of us was party (Shri Vinay Joshi, J.). The learned Counsel for the petitioner has also relied on the judgment

of Division Bench of this Court delivered on 29.9.2023 in Criminal Writ Petition No.307/2023 (Govind S/o Banduji Tulsewar V/s. The State of Maharashtra and another) to which one of us was party (Shri Vinay Joshi, J.).

10. We have gone through the record.

11. The Crime No.18/2023 was registered on 18.1.2023 for the offence punishable under Sections 323, 324, 504 and 506 of Indian Penal Code and thereafter three months later on 24.4.2023 an offence under Section 394 of Indian Penal Code was added in the crime and the petitioner was arrested on 10.6.2023. On perusal of statement dated 28.1.2023 complainant Ganesh Kalaskar has not stated the name of petitioner and has stated that someone had assaulted on his head and he was taken to the hospital. In reply to this ground in para 9 the respondent No.2 has stated that the complainant had resiled from his version because of terror of the petitioner. Though the

statement is given by the complainant the offence under Section 394 of Indian Penal Code is registered after three months. The trial is pending before the Sessions Court for said offence. Therefore, involvement of the detainee in offence under Section 394 of Indian Penal Code creates doubt.

12. In another crime namely Crime No.259/2023 which was registered for the offence punishable under Section 4/25 of the Indian Arms Act. Informant is P.S.I. Ravindra Kaylas Dhule, Police Station Khadan, Akola. He got the information that petitioner is roaming on public cement road at Sindi Camp with a sharp sword in the hand. When he reached on the spot along with Panchas he found that the petitioner was roaming with sword. He took him in custody and registered the crime. The petitioner was taken in custody on 8.6.2023.

13. The petitioner was already in custody on 10.6.2023. Proposal was sent by Police Inspector, Khadan Police Station,

Akola to respondent No.2 for detaining the petitioner under MPDA Act, it mentions that the in-camera statements of witnesses “A” and “B” are recorded and are sealed in a separate envelope and sent to respondent No.2 on 11.6.2023. On careful perusal of in-camera statements it reveal that the statements were verified on 12.6.2023 i.e. after the proposal was sent to respondent No.2 and they are not verified by the detaining authority. The detaining authority has only signed the statements by mentioning ‘seen’ on it. There is no contemporaneous record to show that the S.D.P.O. has verified the same in accordance with law. Considering the vagueness of statements the petitioner was deprived to make representation as the specific date was not mentioned. The detaining authority was satisfied about truthfulness regarding action of those incident and about fear expressed by the witness. There is no contemporaneous record.

14. The Hon’ble Apex Court in Kanu Biswas V/s. State of West Bengal reported in (1972) 3 SCC 831 has observed in

paragraph Nos.6 and 7 on the question what constitutes 'breach of public order' as opposed to 'breach of law and order' as under:-

"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 tranquility of the society undisturbed? "*

The Hon'ble Supreme Court in paragraph Nos.13 and 14 in the case of *Banka Sneha Sheela V/s. State of Telangana* reported in (2021) 9 SCC 415 has observed as under:-

“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.

14. There can be no doubt that what is alleged in the five FIRs pertain to the realm of ‘law and order’ in that various acts of cheating are ascribed to the Detenu which are punishable under the three sections of the Indian Penal Code set out in the five FIRs. A close reading of the Detention Order would make it clear that the reason for the said Order is not any apprehension of widespread public harm, danger or alarm but is only because the Detenu was successful in obtaining anticipatory bail/bail from the Courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the Detenu, there can be no doubt that the harm, danger or alarm or feeling of security among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is make believe and totally absent in the facts of the present case.”

15. Applying the ratio laid down in the above judgments to the facts of the present case one has to examine the contents of in-camera statements to come to the conclusion as to whether the same would factually cause disturbance to maintenance of public order. On perusal of both the statements it clearly reveals that the acts, though have been alleged to have committed in public place they nowhere refer to any member of the public having witnessed them or having experienced a sense of panic or having affected or disrupted the tempo of regular life of the area. Two statements also cannot form the material as verification on it was not done at the time of sending proposal to arrive at a subjective satisfaction required under Section 3 of MPDA Act.

16. Under these circumstances, on the two grounds held by us above, in favour of the petitioner, we are of the opinion that the impugned orders of detention are not sustainable and are passed contrary to provisions of Section 3 of MPDA Act.

17. In that view of the matter, the petition is allowed.

We hereby quash and set aside the impugned orders dated 14.6.2023 and 8.8.2023.

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

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)