



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

CRIMINAL WRIT PETITION NO.702/2023

Ravi S/o Manoj Mahato,
aged about 22 years, Occ: Labour
R/o Dasara Road, Sweeper Mohalla
Kotwali, Tq. Nagpur, District Nagpur. ... Petitioner

- Versus -

1. Additional Chief Secretary,
Govt. of Maharashtra,
Home Department, Mantralaya,
Mumbai 440 032.
2. Commissioner of Police,
Nagpur Division,
Tq. and District Nagpur.
3. The Police Inspector,
Police Station Kotwali,
District Nagpur.
4. The Police Inspector,
Police Station Sakkardara,
District Nagpur. ... Respondents

Mr. G.H. Chandok, Advocate for the petitioner.
Mr. S.S. Doifode, A.P.P. for Respondent Nos.1 to 4.

CORAM: SMT. VIBHA KANKANWADI & MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 21.6.2024.
DATE OF PRONOUNCING THE JUDGMENT: 16.7.2024.

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

Heard Mr. G.H. Chandok, learned Advocate for the petitioner and Mr. S.S. Doifode, learned A.P.P. for respondent Nos.1 to 4. **Rule.**

2. The petitioner is detained under the order of detention dated 18.7.2023 issued by the Commissioner of Police, Nagpur, under Section 3(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 (for short “M.P.D.A. Act”). The said order was approved by respondent No.1 on 26.7.2023 and the proposal for detaining the petitioner was sent on 18.7.2023.

3. The petitioner in para No.3 contends that after perusal of grounds of detention it reveals that the respondent No.2 relied on 9 cases and 2 in-camera statements, however, on

careful consideration, it appears that 3 crimes were taken into account for passing the detention order.

4. The offences which have been relied upon are as follows:-

(i) Crime No.0027/2023 under Sections 294, 506-B, 323, 427, 34 of Indian Penal Code read with Sections 4/25 of Arms Act and Section 135 of Maharashtra Police Act.

In this crime, on the complaint of one Sau. Rekha Ramuji Zade offence was registered against the detenue and his associates at Sakkardara Police Station, Nagpur. The nature of the offence involved is abusing in filthy language and swinging sword towards son of the complainant namely Arpit.

(ii) Crime No.0028/2023 under Sections 326, 143, 147, 149, 294, 506-B of I.P.C. read with Sections 4/25 of Arms Act and Section 135 of Maharashtra Police Act.

In the above crime, the complainant was beaten with iron rod by the detenue and was attacked with knife by one of his associates Piyush Bele. It is also stated by the complainant that the

detenue was arrested in association with the murder of one Shailesh Ughade in the year 2020.

(iii) The details of third crime under section 504 of I.P.C. on the basis of which the F.I.R. was registered on 10.4.2023 are not mentioned at all it being a non-cognizable offence. Thus the number of offences lower down to two.

5. In both the above-mentioned crimes i.e. crime at serial Nos.(i) and (ii) the detenue was released on bail by the J.M.F.C. Corporation Court No.1, Nagpur on depositing minimum cash security of Rs.3,000/- and P.R. bond of Rs.15,000/- and both the matters are pending before the concerned Court.

6. Mr. Chandok, learned Advocate for the petitioner contends that it was orally informed to the petitioner that his case has been referred to Advisory Board and he will be summoned soon for hearing. Thereafter, the petitioner patiently waited for

hearing but there was no communication made. Later it was found that he was communicated with an order dated 26.7.2023 whereby the detention was continued for a period of twenty four months.

7. It is further submitted by the petitioner that the respondents failed to consider the fact that detention order which is without trial is a serious encroachment of liberty of the petitioner.

8. Mr. Doifode, learned A.P.P. asserts that the petitioner was supplied with each and every document relied upon by the detention authority for passing the detention order. The petitioner has failed to show as to which document was not received by him which had adversely affected his right to make an effective representation. If the authority is subjectively satisfied that the activities of the detinue are detrimental to the maintenance of public order, it can pass the detention order.

9. The petitioner has relied on the following cases:-

(i) Ameena Begum v. the state of Telangana and others reported in (2023) 9 SCC 587,

(ii) Pradeep Nilkanth Paturkar v. S. Ramamurthi and others reported in 1993 Supp. (SCC)61,

(iii) Austin William Luis Pinto v. Commissioner of Police, Greater Mumbai and others reported in 2005 ALL MR (Cri) 28

10. The respondents have relied upon Vishal Aananda Mahabal V/s. State of Maharashtra and others reported in 2022 ALL MR (Cri) 2494.

11. Heard both sides. Perused the record.

12. The ground raised by the petitioner is that the opportunity was not given to the petitioner to represent and he was not heard by the Advisory Board. On perusal of reply it appears that though the petitioner was informed about his right of representation by communication dated 26.7.2023 he failed to represent before the authority. His right to represent against

detention order to the detaining authority stands terminated as the detention order has been approved by the Government under Section 3 of the M.P.D.A. Act on 26.7.2203. Thereafter he was heard by the Advisory Board which is mentioned in the report of Advisory Board. As the petitioner was produced before the Advisory Board through video conferencing and the Board has heard the detenue the ground raised by the petitioner that opportunity was not given is not correct. Therefore, there is no substance in this ground.

13. The another ground is that whether crimes and the confidential statements on which the authority has relied caused problem of maintenance of public order.

14. It is trite law that breach of law in all cases does not lead to public disorder. In number of judgments the Hon'ble Apex Court in clear terms has made distinction between law and order and public order.

15. Under Section 3(1) of the M.P.D.A. Act the Government has to arrive at a subjective satisfaction that “Goonda” has to be detained in order to prevent him from acting in a manner prejudicial to the maintenance of public order. Therefore, we have to first examine what constitutes public order. Even within the purview of the Act the term “public order” has been defined in narrow and restricted terms. An order of detention under Section 3(1) of the Act can only be issued against the detainee to prevent him from acting in any manner prejudicial to public order. Public order is defined in the explanation to Section 2(a) of the Act as encompassing situation that causes harm, danger or alarm or a feeling of insecurity among general public or any section thereof or a grave widespread danger to life or public health. The Hon’ble Apex Court in Ram Manohar Lohia V/s. State of Bihar reported in (1966) 1 SCR 709, the difference between “law and order” and “public order” is lucidly expressed by Hon’ble Justice M. Hidayatullah (as the Chief Justice then was) as follows:-

*“54. ***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.*

55. 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.

16. In Kuso Sah V/s. The State of Bihar reported in (1974) 1 SCC 195, Hon'ble Y.V. Chandrachud, J. speaking for the Bench held that:

“4. *** The two concepts law and order' 'and 'public order' have well defined contours. Stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law we bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder.

6. ***The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised.

17. In view of the observations made by the Hon'ble Apex Court we have to consider the crimes considered for passing the detention order.

18. Regarding continuous criminal activities of the detainee confidential enquiry was made relating to terror and fear in the minds of people and during the enquiry witnesses have

given in-camera statements. The recent criminal activity of detainee relied upon in respect of the detention order consists of Crime No.0027/2023 registered at Sakkardara Police Station, Nagpur City under Sections 294, 506-B, 323, 427, 34 of I.P.C. and Sections 4/25 of Arms Act and Section 135 of Maharashtra Police Act on the basis of complaint filed by one Rekha Ramuji Zade. Crime No.0028/2023 is registered for the offence under Sections 326, 143, 147, 149, 294 and 506-B of I.P.C. and Section 4/25 of Arms Act and Section 135 of Maharashtra Police Act. In Crime No.0147/2023 in Kotwali Police Station offence under Section 504 of Indian Penal Code on the complaint filed by one Sona Borade is registered.

19. Two offences which were considered by the detaining authority are Crime Nos.0027/2023 and 0028/2023. Both the offences are registered on the complaint of one Rekha Zade and her son Arpit Zade. Those are about same incident. Though the complainants are different the date and incidents are same. The

assault is narrated by the mother of Arpit who is the complainant in first crime and as the informant has sustained injuries and he had lodged the complaint an offence under Section 326 of I.P.C. is registered. Both the offences are against the same family members. The another non-cognizable offence is also lodged by one lady Borde. It is also against the individual. When offences are against an individual they fall within the ambit of law and order and if the public at large is adversely affected by the criminal activities of a person then such a person is said to disturb the public order. The difference between law and order and public order lies not merely in their nature or quality of the act but in the proper degree and extent of its impact on the society. It do not fall within the ambit of the words “public order” or “disturbance of public order” instead it falls within the scope of “law and order” and there was no need for the detaining authority to pass the impugned order.

20. The statement of witness “A” is about extorting money from her friends and witness “B” the lady has stated that the petitioner abused her in filthy language and passed the sexual coloured comments and tried to enter in her house. Both the statements are against an individual. They have not lodged the complaint against the petitioner. Even if the offences referred in the detention order are considered, still the same are against the private individuals and both crimes are against the family members which do not cause problem of public order. The petitioner and his friends assaulted the complainant as he had committed murder of their friend. Such an act would not tend to affect even the flow of public life.

21. On overall consideration of the circumstances, it appears to us that the existing legal framework for maintaining law and order is sufficient to address like offences under consideration, which Commissioner anticipates could be repeated by the detenue if not detained.

22. Considering this issue no situation of the disturbance of public order is made out. Based thereupon the impugned order is required to be quashed and set aside. Accordingly, we quash and set aside the impugned orders dated 18/7/2023 and 26/7/2023 and direct the respondents to release the petitioner forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

Tambaskar.