



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

CRIMINAL WRIT PETITION NO.741/2023

Rajendra @ Raja S/o Ashokrao Pusadkar,
aged about 24 Yrs., Occ. Private, R/o Hudco
Colony, Kalmeshwar, Tah. Kalmeshwar,
District Nagpur, At Present detained at
Central Prison, Nagpur.

... Petitioner

- Versus -

1. Government of Maharashtra,
Home Department, 2nd Floor,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai 400 032.
2. Collector and District Magistrate,
Home Section, Nagpur City, Nagpur. ... Respondents

Mr. Indrajeet Ghagarkar, Advocate for the Petitioner.
Mr. M.J. Khan, A.P.P. for the Respondents.

CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 12.2.2024.
DATE OF PRONOUNCING THE JUDGMENT: 22.2.2024.

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 order passed by
respondent No.1 dated 8.8.2023 based on the order dated
27.6.2023 passed by respondent No.2.

3. Brief facts leading to this petition can be stated as under:-

The proposal for detention was made by Assistant Police Inspector of Police Station, Kalmeshwar to detain the petitioner under the provisions 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 (for short "M.P.D.A. Act") on the ground that the petitioner is a dangerous person.

Number of offences have been registered against the petitioner. The detaining authority after relying on two crimes registered within last six months as well as in camera statements of witnesses "A" and "B" came to the conclusion that the petitioner has created terror in peoples mind. The witnesses and the victim do not come forward to lodge complaint against the petitioner because of the fear. The activities of petitioner are adversely likely to affect the maintenance of public order. Therefore, respondent

No.2 Detaining Authority has passed the impugned order dated 27.6.2023 which is confirmed by respondent No.1 vide order dated 8.8.2023. Feeling aggrieved by the said orders present writ petition came to be filed.

4. Heard the learned Counsel for the petitioner and the learned A.P.P. for respondents and perused the record.

5. Though various grounds have been raised in the petition the learned Counsel for the petitioner principally raised following two grounds:-

(i) None of the two offences relied upon by the detaining authority forming basis for passing the detention order is detrimental to the maintenance of the public order and those offences can be at the most termed as facts which are disruptive of law and order.

(ii) There is no live link of the alleged incident stated by the witness "A" and "B" with the detention order.

6. In answer to the allegations made in the petition respondent No.2 has filed affidavit-in-reply reiterating its stand that the petitioner was considered as dangerous person under the

M.P.D.A. Act and sought to justify his detention and supported the impugned order.

7. The petitioner has contended that respondent Nos.1 and 2 have taking into consideration non-cognizable offence registered against the petitioner bearing Crime No.171/2023 for the offence punishable under Sections 504 and 506 of the Indian Penal Code registered at Kalmeshwar Police Station. It was lodged by the father of the petitioner alleging that on 21.2.2023 the petitioner allegedly came to home in a drunken condition and the father of the petitioner asked him to stop drinking and start doing some work which resulted into a verbal quarrel between them causing the father of the petitioner to lodge a complaint in the hit of the moment.

8. The alleged incident was purely domestic in nature and cannot be termed to endanger to the public safety in any manner. The learned Counsel for the petitioner has stated that the matter was amicably resolved and petitioner and his father

were living peacefully together in same house till he was detained and thereafter his father died on 26.6.2023 due to heart attack.

9. The another crime registered on 23.3.2023 bearing Crime No.190/2023 for the offence punishable under Section 4 read with Section 25 of the Arms Act is registered at Kalmeshwar Police Station. The complainant in this case is the Police Constable. On receiving the confidential information that one person is carrying a large knife and abusing the people who were passing by in Kalmeshwar Matan Market and on the basis of this alleged information the petitioner was arrested and was later released on bail by the police.

10. After going through the details of both the offences it reveal that both the crimes are in nature of personal dispute. The first offence is of domestic nature. It is non-cognizable. Another offence is of roaming with weapon. The second crime can be said to be of the nature of breach of law and order and not a breach of public order. There is difference between breach of public order and breach of law and order. The Hon'ble Apex Court in

paragraphs 6 and 7 of Kanu Biswas Vs. State of West Bengal

reported in (1972) 3 SCC 831 has observed as follows:-

“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 ? ”

11. Applying the ratio laid down in the above decision it is clear that facts alleged in two crimes referred to in the detention

order could not form the basis of material for recording subjective satisfaction by the Detaining Authority in terms of Section 3 of the M.P.D.A. Act as none of the facts in these two crimes would either be termed as disruptive of maintenance of public order or in any manner detrimental to its maintenance. Clearly in this case regular penal laws would deal with those two offences which are under trial. One is the non-cognizable and in another the petitioner is on bail.

12. This takes us to in camera statements of the witnesses. On perusal of in camera statements it is clear that there is non-application of mind by the Detaining Authority while passing the detention order. The confidential statement of witness "A" did not refer to any specific incident. Witness "A" claims that by way of knife the petitioner threatened him and extorted from him Rs.100/- in last week of April 2023. Witness "B" claims that he does not remember exact date but somewhere in the month of April 4 to 5 days before Dr. Ambedkar Jayanti the petitioner along with his companion allegedly threatened the witness by way of knife and allegedly took Rs.1,000/-. On perusal of these

statements it can be labelled as personal dispute. Therefore these statements could not be considered for arriving at subjective satisfaction for passing the impugned orders.

13. Another ground raised in the petition is about delay in passing the order and there is no live link. The last crime was registered on 23.3.2023 against the petitioner i.e. Crime No.190/2023 and the initial proposal was sent by Police Station, Kalmeshwar on 2.6.2023 which clearly indicates that there is no live link between the last crime registered against the petitioner and the object sought to be achieved by the order of preventive detention. The petitioner has relied on para 7 of the judgment of Bombay High Court in the case of Ajay @ Golu Shyam Solanki V/s. State of Maharashtra decided in 2023 (1) ABR (CRI) 124 which reads as under:-

“The effect of the discussion thus far held is that there is an unexplained delay of about four months between 12.04.2021, the date on which last crime was registered against the applicant, which was actually considered by the authority and 19.08.2021, the date on which initial proposal of preventive detention of the petitioner was sent by the Police Station

Awadhutwadi. Of course, on 6 and 8 July, 2021, statements of confidential witnesses were recorded, but even in between 12.04.2021 and these dates of July 2021, there is delay of almost three months, which has not been explained in any manner by the Police Authorities. The inevitable conclusion would be that there is no live link between the last crime registered against the applicant and the object sought to be achieved by the order of preventive detention of the petitioner, which is of preventing illegal activities of the petitioner having prejudicial impact on maintenance of public order.”

14. The Hon’ble Apex Court has time and again reiterated that the order of detaining authority has to be reasoned and should explain the material on the basis of which subjective satisfaction has been arrived. It is observed by the Hon’ble Apex Court in the case of Pebam Ningol Mikoi Devi V/s. State of Manipur and others reported in (2010) 9 S.C.C. 618 in para 26 as under:-

“26. What emerges from these rulings is that, there must be a reasonable basis for the detention order, and there must be material to support the same. The Court is entitled to scrutinise the material relied upon by the authority in coming to its conclusion, and accordingly determine if there is an objective basis for the subjective satisfaction. The

subjective satisfaction must be twofold. The detaining authority must be satisfied that the person to be detained is likely to act in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order and the authority must be further satisfied that it is necessary to detain the said person in order to prevent from so acting.”

15. The respondents have not given any explanation for considering stale incidents and there is gap of five and half months between last offence and order of detention which snapped the live link.

16. The Authorities felt apprehension of repeating offences by the petitioner against the complainant. A mere breach of law and order is not sufficient to hold that the activities of the petitioner would likely to adversely affect the maintenance of public order. Though nature of offence in second crime is serious the personal liberty of a detainee cannot be sacrificed under garb of preventive detention. The case in hand is a clear example of non-application of mind to the material placed before the detaining authority to arrive at a subjective satisfaction. We are

of the opinion that there is no material on record of the detaining authority which could justify the order of detention of the detainee under Section 3 of the M.P.D.A. Act.

17. For the reasons stated above, we quash and set aside the impugned order dated 27.6.2023 passed by respondent No.2 which is confirmed vide order dated 8.8.2023 by respondent No.1 and direct that the detainee shall be set at liberty forthwith unless his detention is required in some other crime. Rule is made absolute in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)