



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

CRIMINAL WRIT PETITION NO.817/2023

Pawan S/o Dhiraj Hiranwar,
aged 25 Yrs., Occ. Private,
R/o C/o Laxman Thapa, Behind
Dharampeth College, Kachipura,
Shankar Nagar, Nagpur.

... Petitioner

- Versus -

1. The State of Maharashtra,
through Principal Secretary,
Ministry of Home Affairs,
Mantralaya, Mumbai 32.

2. The State of Maharashtra,
through Commissioner of
Police, Nagpur.

... Respondents

Mr. Pawan Dhenge, Advocate Advocate for the petitioner.
Mr. S.S Doifode, A.P.P. for the respondents.

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

DATE OF RESERVING THE JUDGMENT : 13.2.2024.

DATE OF PRONOUNCING THE JUDGMENT : 21.3.2024.

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

Rule. Rule made returnable forthwith. Heard finally
by consent of the learned Counsel for the parties.

2. The petitioner being aggrieved by the detention order passed by the respondent on 24.4.2023 and confirmed by the State Government on 20.6.2023 under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981 (for short “MPAD Act”) has filed this petition.

3. On 24.4.2023 respondent No.2 passed the detention order against the petitioner and communicated the grounds of detention after considering two crimes and two in-camera statements that the petitioner is engaging himself in violent criminal activities who has created terror in the minds of people, the witnesses and victims were not coming forward to depose against him due to fear and the petitioner is causing harm and threat to public at large. People living in area coming under Bajaj Nagar Police Station are feeling insecure because of criminal activities of the petitioner. To maintain the public order, the detention order was passed against the petitioner.

4. The learned Counsel for the petitioner has relied on two grounds namely, that the subjective satisfaction of State Government pertaining to circumstances of the crimes committed by petitioner are not likely to prevail in the area of Commissioner of Police and there is no live link between the prejudicial activities of the petitioner and the detention order. The preventive detention was not warranted against the petitioner when ordinary law can take care of the situation.

5. It is argued by the learned Counsel for the petitioner that the State Government is conferred with power to pass the order of detention against a person who is acting in any manner prejudicial to the maintenance of public order under Section 3(1) of the MPAD Act. There is no live link between the last crime committed by the petitioner and the detention order. The last crime registered against the petitioner was on 23.1.2023 and detention order was passed on 24.4.2023. There is substantial delay of about 90 days in passing the detention order and further

no explanation is provided on the grounds of detention for such delay.

6. Learned A.P.P. has relied on the affidavit filed by respondent No.2 and contended that the impugned detention order has been correctly passed by following due process of law. It is submitted that since the petitioner had committed several offences in the past, the witnesses were not willing to file complaint against the petitioner and it was only when assurance was given to the witnesses that their identity would not be disclosed, two witnesses came forward and their statements were recorded. It is further submitted that after studying the proposal and the same being scrutinized by various officers of the State impugned order dated 24.4.2023 was passed looking at the propensity and potentiality of the petitioner to indulge in future in prejudicial activities in future. With respect to two in-camera statements it is submitted that they are genuine and cannot be termed as false and fabricated. Hence submitted that the impugned order be upheld.

7. We have perused the pleadings and affidavit-in-reply. We have also gone through the submissions made by the learned Counsel for the parties.

8. The purpose for which a detention order may be passed is confined to preventing the detenue from acting in any manner prejudicial to the maintenance of public order. The terms “acting in any manner prejudicial to the maintenance of public order” is defined under Section 2(a) which reads as follows:-

2. In this Act, unless the context otherwise requires,-

(a) “acting in any manner prejudicial to the maintenance of public order” means-

(i)

(ii)

(iii)

[(iv) in the case of a dangerous person, when he is engaged, or is making preparation for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.];

[(iv-a)

[(iv-b)

[(v)

Explanation.- For the purpose of this clause

(a), public order shall be deemed to have

been affected adversely, or shall be deemed likely to be affected adversely, inter alia if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health [or disturbance in public safety and tranquillity or disturbs the day to day life of the community by black-marketing in the essential commodities which is resulting in the artificial scarcity in the supply of such commodities and rises in the prices of essential commodities which ultimately causes inflation] [or disturbs the life of the community by producing and distributing pirated copies of music or film products, thereby resulting in a loss of confidence in administrations.];”

9. A person may be detained under the MPAD Act with a view to prevent him from engaging in or making preparation for engaging in any criminal activities.

10. Two offences on which the respondent relied, one is Crime No.7/2023 for the offence punishable under Sections 4/25 of the Indian Arms Act read with Section 135 of Maharashtra

Police Act and one P.S.I. Dipak Thakur is the complainant. During the patrolling he received information that one person is roaming with deadly weapon. On this information the complainant and his staff immediately went on the spot along with two panchas and found that one person was roaming in suspiciously. While they were approaching the person, he started running. Complainant surrounded the person with the help of staff and nabbed him. During interrogation he told his name as Pawan Hiranwar and in his physical search one iron knife was seized and thereafter notice was issued to him under Section 41(1) of the Code of Criminal Procedure. Another Crime No.9/23 is for the offence punishable under Sections 386 and 294 of Indian Penal Code. Complainant is Hrishikesh Teltumbade. He is Hawker, a Panipuri Seller. The petitioner asked him for money to run the business and when he refused, petitioner manhandled him and asked him to give money. These are the two offences. From the face of the same it does not appear that the nature of the offence is relating to breach of

maintenance of public order, at the most, it can be the situation of breach of law and order but obviously cannot be the situation of breach of maintenance of public order.

11. Two in-camera statements of witnesses “A” and “B” relating to the alleged antisocial activities of the petitioner. It is mentioned in the statements that the petitioner had already committed offences before the witnesses and when a group of people gathered there, the petitioner created fear and panic in their minds. Considering the material on which the authority relied is not prejudicial to maintenance of public order.

12. Another ground is that there is no live link between prejudicial activities and order of detention. Incidents which are old and stale and in which the detainee has been granted bail cannot be said to have any relation to the liberty of citizens and that too without a trial. It is observed by the Hon’ble Apex

Court in Khudiram Das V/s. State of W.B. reported in (1975) 2

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“The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. Pratap Singh v. State Punjab. If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to them, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider.”

13. It is further seen that the last crime considered by the detaining authority took place on 24.1.2023 and the detention order is passed on 24.4.2023. There is delay of more than three months. Even after the petitioner was released on bail the explanation given by the respondent for delay is not convincing. Respondent No.2 has stated in his affidavit in para 7 as under:-

“..... It is submitted that the detainee had committed two serious offences i.e. (1) Police Station Bajaj Nagar C.R. No.007/2023 u/s 4/25 of Arms Act r/w sec. 135 of Maharashtra Police Act and (2) Police Station Bajaj Nagar C.R. No.009/2023 u/s 386, 294 of I.P.C. r/w sec. 135 of Maharashtra Police Act. Two witnesses also came forward and expressed their willingness for giving in-camera statements against the detainee. Hence, their statements were recorded in-camera. These in-camera statements were recorded on 03/03/2023 and 08/03/2023. The Bajaj Nagar Police Station, Nagpur initiated the proposal for detention of the detainee on 16/03/2023 under the MPDA Act, 1981 (with Amendment of 2015) and the same was submitted to the Assistant Commissioner of Police, Sonegaon Division. The Assistant Commissioner of Police, Sonegaon Division verified the in-camera statements of witnesses “A” and “B” on 16/03/2023 and recommended the proposal to the Dy. Commissioner of Police, Zone-I, Nagpur on 18/03/2023. The Dy. Commissioner of Police, Zone-I, verified the in-camera statement and after scrutinizing it, recommended the proposal to the Addl. Commissioner of Police, South Region, Nagpur on 28/03/2023, who in turn, recommended it to the office of the Commissioner of Police, Nagpur i.e. the Detaining Authority and on 29/03/2023, it was received in the Detention Cell, Crime Branch, Nagpur. In the meantime, two MPDA detention proposals were prepared and translated and the detention order was passed. Thereafter, the petitioner’s proposal was typed and the entire documents were translated into Hindi. On 16/04/2023, the Detention Cell, Crime Branch, Nagpur initiated sending the proposal to the

Detaining Authority i.e. Commissioner of Police, Nagpur. The Detaining Authority, prima facie, found it to be a fit case for detention under the MPDA Act and directed the office of the Detention Cell, Crime Branch, Nagpur to prepare the compilation, translation, fair typing and to comply with other requirements of law. The Detention Cell, Crime Branch, Nagpur complied with the directions and on 16/04/2023, the draft of the grounds of detention were forwarded to the Deputy Commissioner of Police (Detention), Crime Branch, Nagpur City who went through this draft and other relevant documents and gave his endorsement on 17/04/2023 before forwarding it to the Joint Commissioner of Police, Nagpur City. The Joint Commissioner of Police, Nagpur went through the drafts of grounds of detention and other relevant documents and gave her endorsement on 19/04/2023 before submitting it to the Detaining Authority. The Detaining Authority carefully went through the grounds of detention and other relevant documents and after being subjectively satisfied, passed the detention order and on the same day, i.e. 24/04/2023, the detainee was detained. Hence, there is no delay in passing of the detention order.”

14. The delay is clearly writ large which on the face of record in passing the detention order after the last incident is considered by the detaining authority. The reasons given by the respondents are shocking and not convincing. The explanation

offered by the respondents authority for such delay is not satisfactory. There is no plausible explanation given for the delay in recording the statements of witnesses from the date of the incident.

15. In the light of above discussion we are of the considered opinion that the detention order dated 24.4.2023 and its confirmation order dated 20.6.2023 cannot be legally sustained. Hence the following order:-

- (i) The detention order dated 24.4.2023 and its confirmation order dated 20.6.2023 are quashed and set aside.
- (ii) The respondents are directed to release the petitioner forthwith, if not required in any other crime.
- (iii) Rule is made absolute in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)