



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

CRIMINAL WRIT PETITION NO.843/2023

Nafis Khan Aziz Khan

Aged about 41 years, Occ. Business,

R/o Near Navdar Jin, Hafizpura,

Mangrulpir, Dist Washim

... Petitioner

- Versus -

1. State of Maharashtra, through Its
Secretary, Home Department,
(Special) Mantralaya, Mumbai.

2. Collector/District Magistrate,
Washim.

... Respondents

Ms. Jaishree Tripathi, Advocate with Mr. V.D. Graham and Mr.
A.P. Paliwal, Advocates for the Petitioner.

Mr. I.J. Damle APP for Respondent Nos.1 and 2.

CORAM: SMT. VIBHA KANKANWADI & MRS.VRUSHALI V. JOSHI, JJ.

DATED: 1.7.2024.

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

Heard Ms. Jaishree Tripathi, learned Advocate for the
petitioner and Mr. I.J. Damle learned A.P.P. for respondent Nos.1
and 2. **Rule.**

2. The petitioner, who has been detained under Section 3 of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (for short "Act") by order dated 25.10.2023 passed by respondent No.2-Collector, Washim, has preferred the present petition assailing the legality and validity of the said detention order which is confirmed by respondent No.1 under Section 12 of the said Act. The subjective satisfaction was arrived at by the detaining authority as the petitioner is a person engaged in black-marketing of essential commodities.

3. It is mentioned in the detention order that the petitioner bought food-grains provided by the Government to be distributed under the public distribution system from the beneficiaries and stored them for black-marketing. The activities of the petitioner are, therefore, hazardous and prejudicial to the public order. The criminal activities of the petitioner have created terror in the minds of people.

4. Following 3 crimes have been taken into consideration by the detaining authority while passing the detention order:

(a) Crime No.406/2023 under Sections 3 and 7 of Essential Commodities Act, 1955.

In this crime, on the inspection of vehicle No.MH 29 TC 0060, 9 bags of rice weighing 5 quintle were found in the car of the petitioner without government stamping on it. The said grain was bought by the petitioner by luring the beneficiaries and for selling them at high price.

(b) Crime No.589/2023 under Sections 3 and 7 of Essential Commodities Act, 1955.

In the said offence, vehicle No.MH 28 BB 0668 was found in suspicious condition, the complainant Sima Vasantrao Dandal, Food Supply Inspector, inspected the vehicle in which 500 bags of rice and one bag of wheat were found without government stamp.

(c) Crime No.583/2023 under Sections 279, 294 and 506 of Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “Atrocities Act”).

In this crime, the petitioner hit the complainant's scooter, who was accompanied with his friend, then he showed small knife and abused obscenely, uttered caste based slurs and threatened to kill them.

5. Ms. Tripathi, learned Advocate for the petitioner submitted that in Crime Nos.406/2023 and 589/2023 the petitioner is served with notice under Section 41(1) of Criminal Procedure Code and was granted anticipatory bail. It is submitted that when normal laws of land are sufficient and as there is special enactment i.e. Essential Commodities Act, 1955 for trying the above offences there was no need to pass a detention order against the petitioner.

6. He states that the authorities have taken into consideration the offences which are registered under Sections 279, 294 and 506 of Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of Atrocities Act vide Crime No.583/2023. The said crime falls under various sections of I.P.C. and Atrocities Act and, therefore, is extraneous. The said crime cannot be said to be the prejudicial activity meaning thereby “person engaged in black-marketing” under Essential Commodities Act, therefore, this shows non-application of mind on the part of detaining authority.

7. On perusal of the in-camera statements, it can be seen that the statements of witnesses do not give any specific date of incident and both the alleged offences have been recorded on 8.9.2023 whereas the incidents have occurred in the month of June and July 2023 i.e. after about two-three months. The incidents are stated to have occurred in isolation and against an individual person.

8. Mr. Damle, learned A.P.P. vehemently opposed the contentions of the petitioner stating that the subjective satisfaction arrived at by the detaining authority is narrated in para Nos.10 and 11 of the grounds of detention. Also it is stated in para No.11 of the grounds of detention that the normal laws are not sufficient to curb the criminal activities of the petitioner.

9. Learned A.P.P. states that it is true that the incidents mentioned in the in-camera statements are of June and July 2023, however, thereafter the petitioner continued with his criminal activities and as far as the offence under the Atrocities Act is concerned, the entire criminal activities of the petitioner have been considered while passing the detention order.

10. The challenge to the detention order can be conveniently evaluated on the following grounds:-

First ground is that the activities of the petitioner are not prejudicial to the maintenance of public order. There is no subjective satisfaction arrived at by the detaining authority.

There is failure to place before the detaining authority the copy of the bail orders.

11. The learned Advocate for the petitioner has stated that none of the offences can be taken into account by respondent No.1 to pass the impugned order of detention which do not reflect that the activities of the petitioner are prejudicial to the maintenance of public order. In order to properly appreciate the aforesaid submissions it is necessary to note the narration of facts in respect of crimes considered by the authority. Three crimes are considered by the authority. Crime No.406/2023 is for the offence punishable under Sections 3 and 7 of Essential Commodities Act and Crime No.589/2023 is also for the same offence. In Crime No.406/2023 the Sub-Inspector of Tehsil of Mangrul Pir has lodged the complaint. He has stated that on 16/6/2023 while inspection of vehicle No.MH29 TC 0060, nine bags of rice weighing five quintal were found. There was no government stamping on it. The said grains were to be distributed through the public distribution system and fact that it

was purchased from them and was to be sold in open market at high price and, therefore, the crime is registered. Notice was issued under Section 41(1) of Cr.P.C. and the chargesheet was also filed.

12. In another Crime No.589/2023 Sub-Inspector has lodged the complaint on 9.8.2023. He found the vehicle MH 28 BB 0668 in a suspicious condition and, therefore, he took the vehicle to the police station and inspected the vehicle and found 500 bags of rice, one bag of wheat and there was no stamp on it. The offence is registered. In this case the anticipatory bail was granted to the petitioner.

13. Third crime is Crime No.583/2023 under Section 279, 294 and 506 of Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Atrocities Act. The complainant is Mangesh Babanrao Savke. He has lodged the complaint stating that on 10.8.2023 the complainant and his friend were going on their scooter. The petitioner came on his bicycle in front of Dinesh Thak's hotel and hit the complainant's scooter and, therefore,

both of them fell down. After that the petitioner showed small knife and abused in filthy language and abused him by insulting on his caste. The crime was registered for said offences and in said crime the accused was arrested.

14. From the nature of crimes it does not appear that it had elements prejudicial to the maintenance of public order which can be discerned from the detention order. The other accused were also arrested in the said offences.

15. It is necessary to consider two confidential statements on which the detaining authority has relied on. The witness "A" has stated that the incident occurred in the month of July 2023. The truck which was owned by the petitioner had given cut to his motorcycle and he fell down. His vehicle also got damaged. When he asked the driver why he is driving his vehicle rashly and asked him to give the damages of his vehicle the driver told that this vehicle is of the petitioner. Thereafter the petitioner came there, abused him and gave threats of committing the accident by a big vehicle.

16. The witness “B” has also stated that the petitioner gave threats to him on suspicion that he had informed the police about the grains which he was purchasing and selling and he slapped him.

17. Apparently, the basis of the aforesaid three crimes and two in-camera statements of witnesses the detaining authority has arrived at the satisfaction that the petitioner is a dangerous person and the petitioner indulged in activities which were prejudicial to the maintenance of public order. Upon careful perusal of aforesaid narration of facts, we find considerable substance that none of the three crimes relied upon by the detaining authority, justify an inference that the activities attributed to the petitioner have had propensity to disturb the public order. The distinction between the concepts of public order and law and order is well recognized. Public order is something more than ordinary maintenance of law and order. A proper test to distinguish between law and order and public order is whether the complained acts led to disturbance of the ordinary tempo of life of the community so as to amount a

disturbance of the public order or it merely affected an individual leaving the tranquillity of society undisturbed. It is, therefore, said that the essential distinction between the concepts of public order and law and order is not the nature or quality of the act but in the degree, potentiality and extent of its reach upon society. The given act by itself may not be determinant of its own gravity. It is the propensity and potentiality of the act of disturbing the even tempo of life of the community that renders it prejudicial to the maintenance of public order.

18. In case of Piyush Kantilal Mehta V/s. Commissioner of Police reported in **1989 Supp (1) SCC 322** this Court took the view that in order that an activity to be said adversely affecting the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an

offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law and the law of the land.

19. On the aforesaid observations if we take into account the offences considered for passing the order of detention it indicates that the alleged offences were committed and the offences under the Essential Commodities Act are registered. The order under Section 3 of Essential Commodities Act is not filed along with F.I.Rs. The activity of the petitioner can be controlled by taking action under the said Act, which is already taken. On perusal of the statements and in totality of the circumstances the offences do not make out acts of the petitioner being prejudicial to the maintenance of public order. Statements of witnesses also do not come under the purview of prejudice to the maintenance of public order. On the aforesaid consideration the subjective satisfaction arrived at by the detaining authority that the petitioner is a dangerous person within the meaning of Section 2(b-1) of the Act and the activities of the petitioner were

adversely affecting the maintenance of public order cannot be said to be based on sustainable grounds. Thus the subjective satisfaction is vitiated for failure to recognize distinction between public order and law and order. Reference in this context can be made to a judgment of the Hon'ble Supreme Court in case of Pushkar Mukharjee V/s State of West Bengal reported in 1970 SC

852 as under:-

“8. Does the expression "public order" take in every kind of infraction of order or only some categories thereof. It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient

for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act."

20. A useful reference can also be made to the Judgment of the Supreme Court in the case of Mustakmiya Jabbarmiya Shaikh V/s. M.M. Mehta, Commissioner of Police & Ors., (1995)

3 SCC 237. In the said case, in the context of provisions contained in Section 3 of the MPDA Act, the Supreme Court illuminatingly postulated the conditions which are required to be satisfied to pass a valid detention order under Section 3 of the MPDA Act and the distinction between "law and order" and "public order" in the following words:

"9..... It, therefore, becomes necessary to determine whether besides the person being a "dangerous person" his alleged activities fall within the ambit of the expression "public order". A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it maybe stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to

the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". If the activity falls within the category of disturbance of "public order" then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of *Arun Ghosh V. State of W.B.* (1970) 1 SCC 98 this Court had an occasion to deal with the distinction between law and order and public order. Hidayatullah, C.J. (as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. 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 amount only to a breach of law and order. It has been further observed that the implications of public order 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. Again in the case of *Piyush Kantial Mehta v. Commissioner of Police*, 1989 Supp (1) SCC 322 this Court took the view that in order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land."

21. One of the ground to challenge the detention order is that the opportunity to make representation before the authority is not given to the petitioner. On perusal of report of Advisory Board it is reveals that the opportunity was given to the petitioner to make a representation, which was considered by the Advisory Board. Therefore, this ground is not available to the petitioner.

22. The bail orders are also considered by the detaining authority.

23. The concept of law and order and disturbance of public order is totally different and the detention order in this case will not disturb the public order. Hence the impugned order deserves to be quashed and set aside.

24. The petition stands allowed as per prayer clause (1). The petitioner be set at liberty forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)