



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

CRIMINAL WRIT PETITION NO.903/2023

Abhishek @ Golu Pawan Kharbalkar,
aged about 22 Yrs., Occ. Labour,
R/o Kale File, Washim.

... Petitioner

- Versus -

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

2. Collector/District Magistrate,
Washim.

... Respondents

Mr. Mir Nagman Ali, Advocate for the Petitioner.

Mr. S.M. Ukey, A.P.P. for Respondent Nos.1 and 2.

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

DATE OF RESERVING THE JUDGMENT : 20.6.2024.

DATE OF PRONOUNCING THE JUDGMENT : 28.6.2024.

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

Heard Mr. Mir Nagman Ali, learned Advocate for the
petitioner and Mr. S.M. Ukey, learned A.P.P. for respondent Nos.1
and 2. **Rule.**

2. By this petition the petitioner has challenged the detention order dated 20.9.2023 passed by respondent No.2-the District Magistrate, Washim, under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (for short MPDA Act) which was confirmed by respondent No.1.

3. The grounds raised for challenging the impugned order of detention are as follows:-

(a) The in-camera statements of witnesses have been verified by the Deputy Superintendent of Police, Washim instead of detaining authority.

(b) The in-camera statements do not show that they had created a public order situation, at most, it can be said that they had created the law and order situation.

(c) In Crime No.699/2023, the detainee was issued notice under 41(1)(a) of the Code of Criminal Procedure, bail orders in respect of all the offences have not been placed before the detaining authority and Crime No.448/2023 is under investigation.

4. Mr. M.N. Ali, learned Advocate appearing for the petitioner submits that confidential statements speak of the incidents of the month of April 2023 and May 2023 which itself show that the statements are merely recorded to fill up the time gap. He further submits that there is non-application of mind while passing the detention order as the detaining authority was not aware whether the petitioner was released on bail in Crime No.448/2023. That the detaining authority considered stale offences which were registered against the detenue in past.

5. Mr. S.M. Ukey, learned A.P.P. submitted that when P.I. Jadhav raided the place Vrundawan Park, Flat No.402, where detenue was found in possession with one country made pistol and Rs.20,000/- and his associates were armed with other weapons.

6. It is submitted by learned A.P.P. that there is material available on record which could show that the petitioner was in possession of weapons which can be used for commission of

offence. In the in-camera statement of witness “A” it is stated that detenue and his associates came to his office, detenue removed gun from his waist and placed it in front of the witness, used abusive language and forcibly took Rs.1,50,000/- from his counter.

7. Similarly, in the statement of witness “B” it is stated that he was stopped by three persons and the petitioner was holding a dagger in his hand who snatched Rs.5,500/- from the pocket of the witness and 5 gram gold ring. Thus, it clearly shows that panic was created in Washim city by the petitioner and his associates but for the same, no witness had come forward to depose against the petitioner.

8. The learned Advocate for the petitioner has relied on the following judgments:-

- (i) Khaja Bilal Ahmed V/s. State of Telangana and others reported in 2020 (13) SCC 632,
- (ii) Ameena Begum V/s. State of Telangana and others reported in 2023 (9) SCC 587,

(iii) Deepak Dattu Suryawanshi V/s Commissioner of Police and others reported in **2017 All MR (Cri) 416**,

(iv) Criminal Writ Petition No.434/2023 (Harshal Rakesh Brahmne V/s. State of Maharashtra and another, decided on 11.9.2023,

(v) Criminal Writ Petition No.671/2023 (Pratap S/o Ajay Kharare V/s. The State of Maharashtra and others, decided on 5.4.2024,

(vi) Criminal Writ Petition No.546/2023 (Hanif @ Illu Hafiz Ansari V/s. The State of Maharashtra and others, decided on 22.1.2024,

(vii) Ratnamala Mukund Balkhande V/s. State of Maharashtra reported in **2022(3) Bom. C.R. (Cri) 501** and

(viii) Criminal Writ Petition No.1383/2023 (Ibrahim @ Tipu @ Tipya S/o Sattar Maniyar V/s. The State of Maharashtra and others, decided on 28.11.2023.

9. The main ground raised to challenge the detention order is though the detaining authority has relied on confidential statements of two witnesses forming basis for passing the detention order it is alleged that the activities of the petitioner were not detrimental to the maintenance of public order and

further the facts alleged in the offences at the most can be termed as facts which are disruptive to law and order. What constitutes breach of public order is discussed by the Hon'ble Apex Court in the case of Kanu Biswas V/s. State of West Bengal reported in (1972) 3 SCC 831 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? ”*

10. In *Banka Sneha Sheela V/s. State of Telangana* reported in (2021) 9 SCC 415 the Supreme Court has considered the very same question and has set down the distinction between what acts constitute of breach of public order and those which are, in

contradistinction, to be in-contravention of law and order in the following terms :-

“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.”

11. Going by the ratio laid down in the above two judgments, the facts alleged in the two offences referred to in the detention order, which formed basis for arriving at the subjective satisfaction by the authority, would require analysis, to determine whether they would be disruptive of public order or they would only constitute breach of law and order.

12. The first offence which the detaining authority has considered is Crime No.448/2023 for the offence under Sections 3, 4 and 25 of the Arms Act. The Head Constable received the information during his patrolling that the detenu along with two persons was present in Vrundavan Apartment, Flat No.402 with

weapon and on the basis of information complainant raided that place along with panchas. Three persons were found. Complainant asked their names and addresses and the detenue was found with one country made pistol and Rs.20,000/- which were seized from his possession. From two other persons the revolver and dagger and amount of Rs.30,000/- and Rs.51,000/- were seized. The crime is registered against all the three persons.

13. Another offence is Crime No.699/2023 registered for the offence 4 and 25 of Arms Act. Again Head Constable received the information about the detenue moving around with dagger. He has inspected the spot and he found petitioner with dagger and Rs.200/- which were seized and the offence was registered.

14. After going through both the incidents it reveals that they had not created any impact on public order as the information was received by the Head Constable who raided the spot which was not public place.

15. We then examined the contents of two confidential in-camera statements “A” and “B” regarding creating terror and fear in the mind of people. Statement “A” shows that before few days of giving statement the petitioner along with his associates came to the place of witness “A” and placed his gun in front of the witness and demanded money from witness. The witness expressed his unwillingness to pay money and the detenue forcibly took Rs.1,50,000/-. The detenue and his associates obstructed the witness “B” and demanded valuables and detenue forcibly took Rs.5,500/- from the pocket of the witness and the gold ring weighing 5 grams. There is no allegation or fact recorded in the statement that incidents took place in broad public place or that citizens public view and that they caused alarm or fear in the public at large. Though as per the statement of witness “A” huge amount of Rs.1,50,000/- alleged to be taken by the detenue he has not taken any steps.

16. We also note that the impugned orders only specify that the authority has gone through the confidential statements “A” and “B” and the verification report, but do not make any mention as to

whether the detaining authority interacted with the said witnesses or whether the authenticity and genuineness of the statements recorded in-camera were true and genuine or whether the witnesses had expressed fear of lodging specific complaints. In affidavit-in-reply respondent No.2 stated that it is mentioned in the order that the confidential statements are verified by the detaining authority. Respondent No.2 has relied on the judgment reported in the case of Pravin Rajaram Shinde V/s State of Maharashtra reported in **2001(5) Bom CR 462** to contend that statements were seen by the detaining authority and thereafter order of detention has been passed.

17. In the judgment passed by this Court in Criminal Writ Petition No.434/2023 (Harshal Rakesh Brahmne V/s. State of Maharashtra and another) this Court has relied on the judgment of Shaikh Husain @ Shahrukh Shaikh Fatru V/s. State of Maharashtra reported in **2023 DGLS (Bombay) 1318**.

“18. First of all, it is observed that the grounds of detention nowhere discloses that the detaining

authority interacted with the witnesses A and B so as to satisfy itself that the statements of these witnesses and genuine to be true and or instances which they disclosed were correct. There is no interaction by the detaining authority with the Assistant Superintendent of Police, who verified such statements. The copies of statements of witnesses A and attached to the petition and provided to the detinue, nowhere show any endorsement of the detaining authority so as to confirm that such statements were perused by the detaining authority and said authority considered that the witnesses were depicting true events. There is absolutely no whisper in the grounds of detention as to on what count the detaining authority found itself satisfied about the truthfulness or genuineness of such statements made by the witnesses.

19. This Court in the case of Shahjahan w/o Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra & Anr. 2016 ALL MR (cri) 4233 (supra), observed in para 5 that, in the absence of any record of the statements being seen by the Commissioner of the Police thereby affecting his subjective satisfaction, the petitioner is entitled to

succeed in the petition. These observations are clearly attracted to the matter in hand. There is no contemporaneous material placed before us to show that the detaining authority had in fact verified the statements and had any interaction with the Assistant Superintendent of Police, who recorded his report. Similarly, by reproducing the contents of statements of witness A and B in the grounds of detention without the material to show that the detaining authority had in fact interacted either with the witnesses or discussed it with the authority, who verified such statements, the order of detention stands vitiated.”

18. Applying the ratio laid down in the Sheikh Husain (supra) the subjective satisfaction of the detaining authority not having been arrived at after asserting either with a direct interaction with the Assistant Commissioner of Police or the authority who had recorded the in-camera statements, as to the genuineness of their contents, the two confidential statements could not have formed the basis for recording subjective satisfaction.

19. We have gone through the report of Advisory Board. We considered it independently.

20. Having concluded that the two offences which formed basis for arriving at subjective satisfaction by the detaining authority do not disclose any acts which could be termed as acts prejudicial to or in breach of the maintenance of public order, we are of the considered opinion that the impugned orders cannot be sustained. Consequently, we quash and set aside impugned order dated 20.9.2023 passed by respondent No.2 which was confirmed by respondent No.1.

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

The writ petition stands disposed of in the above terms.

(MRS.VRUSHALI V. JOSHI, J.)

(SMT. VIBHA KANKANWADI,J.)