



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

CRIMINAL WRIT PETITION NO. 23 OF 2024

Gulam Barkat Alias Barkat Hussain Gulam
Yunus, Aged 25 years, Occupation : business
R/o Saiyadpura Balapur, Tq. Balapur, Dist.
Akola

...Petitioner

// VERSUS //

1. State of Maharashtra, through Additional Chief Secretary, Home Department Government of Maharashtra, Mantralaya, Mumbai-400 032
2. Hon'ble Collector & District Magistrate, Akola
3. Senior Police Inspector, Balapur, Balapur Tq. Balapur, Dist. Akola

... Respondents

Shri M.N.Ali, Advocate for the petitioner.

Shri S.S.Doifode, Advocate for the respondent nos. 1 to 3/State.

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

Reserved on : 3rd July, 2024.

Pronounced on : 20th July, 2024.

ORAL JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

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

2. The petitioner challenges his detention order No.Desk-2/HA/HOME/WS-438/2023 under Section 3(3) 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 (hereinafter referred as 'MPDA Act, 1981') passed by the respondent no.2 on 11th September, 2023.

3. Heard Shri M.N.Ali, Advocate for the petitioner and Shri S.S.Doifode, Advocate for the respondent nos. 1 to 3/State.

4. Learned advocate for the petitioner challenges the impugned order which appears to have been confirmed by the State Government by order dated 31st October, 2023 on the ground that the impugned order passed by the detaining authority on 11th September, 2023 is based on the non-application of mind and without adhering to the statutory procedure. The grounds of detention which have been given appeared to have been based on two offences namely Crime No. 534 of 2023 and Crime No. 499 of 2023 registered with Balapur Police Station for the offence punishable under Section 4 punishable section 25 of the Arms Act and Sections 307, 326, 323, 504 read with Section 34 of Indian Penal Code respectively. The detaining authority has also considered in-camera statements of two witnesses. It is submitted that learned detaining authority had not considered that in both the offences which are still under investigation, the petitioner has been released on bail and the bail order appears to have not been produced before the detaining authority.

The contents of the case would show at the most that there was law and order situation and not the public order was disturbed requiring the detention of the petitioner. An opportunity was not given to the petitioner to make proper representation and the order of confirmation was served on the petitioner between the date on which it was passed till the detenu continued to be in detention. Further there was no proper verification of in-camera statements by the detaining authority and only that it is seen and verified, but there is no remark that the verification has been properly done. The last crime was allegedly said to have been committed on 25th June, 2023 and the detention order has been passed on 11th September, 2023 and therefore there was no live link and the belated order has been passed. Therefore, the detention order is illegal and deserves to be set aside.

5. Per contra, learned Additional Public Prosecutor submitted that the well reasoned order has been passed while authorizing detention of the petitioner. Petitioner was involved in all five offences, out of which two of them are pending before the Court and three are under investigation. Even the preventive action was taken against him from time to time, but he has not curtailed his activities. If we consider the facts in Crime No. 534 of 2023 it can be seen that the petitioner was found roaming in market holding sword in his hand. This indicate that he wanted to create terror amongst the people at large. In another offence which is under Sections 307, 326, 323, 504 read with Section 34 of Indian Penal Code, the incident had taken place in the public place. Knife has been used when the petitioner had tried to stab the informant in his

stomach. Further in-camera statements would show that in both the incident threats were given in public. This is nothing but an act to establish supremacy by creating terror in the mind of people at large so that the petitioner can continue his illegal activities. Every opportunity has been given to the petitioner to submit his representation. He was given hearing before the Advisory Board and the detention order has been confirmed by the Advisory Board. No illegality has been committed and therefore the petition deserves to be dismissed.

6. It is to be noted from the impugned detention order that in all five offences have been registered against the petitioner, out of which two cases are pending in the court and three are under investigation. Amongst those three under investigation, they are the offences of the year 2023. Two of them are under Section 307 and other sections of Indian Penal Code and third one is under the Arms Act. Those three crimes which were still under investigation, the detaining authority has considered only two i.e. registered on 16th July, 2023 and 25th July, 2023. It appears that in the said offence under Section 4 punishable under Section 25 of the Arms Act, though he was arrested/taking in custody on the same day. The offence, in view of the punishment being less than seven years, he was intimated that he is required to be present in the court at the time of submission of the charge-sheet. The facts of the case that the police received information that the petitioner was standing on Batwadi road with the sword in his hand, therefore, the police went to the spot and confirmed the place and the accused was brought to the police station. If a person is roaming with sword in his hand in public,

then *prima facie* we can consider that it would raise public order and not only law and order situation. In the second offence i.e. Crime No. 499 of 2023, it appears that the incident had taken place on 15th July, 2023 and First Information Report lodged on 16th July, 2023 and it is stated that the petitioner had used knife to stab the informant. The petitioner was arrested on 25th July, 2023 and was not on bail when the detention order was passed. It appears that this Court in Criminal Bail Application No. 205 of 2024 passed the order of release of the petitioner under Section 439 of Code of Criminal Procedure on 2nd May, 2024. The said incident alleged to have been taken place on 15th July, 2023 was in a hostel room but it is stated that informant was forcibly taken there.

7. The statement of witnesses A and B would show that the incident has taken place in public and the said witnesses were threatened by assaulting by the petitioner in public. Therefore, these incidents and facts would certainly show that it is the public order that was disturbed. Now, it is tried to be submitted on behalf of the petitioner that when the petitioner was already in judicial custody in Crime No. 499 of 2023, there was no necessity to pass detention order. To this, we would like to say that it is the satisfaction of the detaining authority that is required to be considered because the possibility of getting released on bail will have to be then borne in mind.

8. The petitioner has not come with a case that the copies of statement of in-camera witnesses was not provided to him, but it appears that he has not filed those documents on record. Rather a ground has

been taken that the statement of those witnesses do not show breach of public order. If we consider that statement of those witnesses were taken and they were verified and the verification has been categorically stated by the detaining authority i.e. sufficient compliance.

9. Learned advocate for the petitioner has relied on *Khaja Bilal Ahmed Vs. State of Telangana and others; 2019 DGLS (SC) 1677* to support his contention that if no order of confirmation was served on detenu between date on which it was passed till detenu continued to be in detention, then order of detention stands quashed. We do not find any otherwise fact that the confirmation order is in fact served and the documents in this regard are not produced by the petitioner and therefore the said ratio is not applicable. He further relies on *Hanif @ Illu Hafiz Ansari Vs. The State of Maharashtra and others decided by this Court in Criminal Writ Petition No. 546 of 2023*, wherein relying upon the case *Kanu Biswas Vs. State of West Bengal (1972) 3 SCC 831*, the concept of “public order” as opposed to breach of “law and order”. It was also considered when the crimes were not even felt to be of serious nature and felt to warrant issuance of the notice under Clause (a) of Sub-section (1) of Section 41 of the Code of Criminal Procedure then that offence cannot be said to be creating public order. Here, it is to be noted that the offence on which those observations have been made in purporting to Sections 353, 332, 294, 506 read with Section 34 of the Indian Penal Code, but here, it is section 4 punishable under Section 25 of the Arms Act. At the cost of repetition, we would like to note the fact that the petitioner was roaming in public by holding sword in his hand. Based on the said facts

Sheikh Hussan @ Sharukh Shaikh Fatru Vs. State of Maharashtra; 2023 DGLS (Bombay) 1318, it has been observed that a detaining authority must record its subjective satisfaction that the statement of witnesses were genuine and that it has interacted with Assistant Commissioner of Police to verify such a statement. Here said satisfaction has been arrived at. Learned advocate for the petitioner further relies on *Mohammad Arbaz @ Sanu S/o Mohammad Israil @ Manja Ansari Vs. State of Maharashtra and others decided on 17th January, 2024* to which one of us was party (Mrs. Vrushali V. Joshi, J) which is also on similar line as to what ought to have been considered and what has not been considered, especially in respect of subjective satisfaction. Similarly, in *Shahjahan Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra 2016; 2016 All.M.R. (Cri) 4233*, this Court observed that there is no reference to the two in-camera statements that they were either seen or the facts stated therein being ascertained by the Commissioner of Police. Similarly, in *Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others; 2012(2) AIR Bom R 67*, it was held that remoteness of the offence and want of proximity are the grounds for setting aside the detention orders. However, we observe that those observations made taking into consideration the facts of each case.

10. As aforesaid subjective satisfaction has been arrived at on the basis of the two offences as well as two in-camera statements, we do not find that this is to be a fit case where we should exercise our constitutional power to set aside the detention order. We may also refer to the opinion that has been given by the Advisory Board and the said opinion is made

available to us which shows that the petitioner was heard through Video Conferencing and advocate representing the petitioner was also heard. The detention order has been confirmed taking into consideration the opinion of the Advisory Board as contemplated under law and therefore, we pass the following order:

- i. The Criminal Writ Petition is dismissed.
- ii. Rule stands discharged.

[MRS. VRUSHALI V. JOSHI, J.] [SMT. VIBHA KANKANWADI, J.]