



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

CRIMINAL WRIT PETITION NO. 118 OF 2024

Tanvir Shaha Alim Shaha,
Aged About 26 years,
Occ.- Labourer,
R/o. Alkabir Nagar, Yavatmal,
Tq. Yavatmal, Dist. Yavatmal,
At Present Central Prison, Yavatmal.

... **PETITIONER**

...VERSUS...

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

2. District Magistrate/Collector,
Dist. Yavatmal.

... **RESPONDENTS**

Mr. S. V. Sirpurkar, Advocate for petitioner.
Mr. S. V. Narale, A.P.P. for respondents/State.

CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.
RESERVED ON : 08.05.2024
PRONOUNCED ON : 09.05.2024

JUDGMENT (PER : MRS.VRUSHALI V. JOSHI, J.):-

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.

2. Being aggrieved by the order of detention dated 24.08.2023 passed by the respondent No.2 thereby detaining him for a period of one year under Section 3 of the Maharashtra Prevention of Dangerous Activities

of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Person Engaged in Black- Marketing of Essential Commodities Act, 1981 (hereinafter referred to as “MPDA Act”) and confirmed by respondent No.1 on 17.10.2022, the petitioner has challenged the said impugned orders.

3. It is the contention of the petitioner that while passing the detention order respondent No.2 has not properly appreciated the confidential statements and has not supplied proper documents along with the detention order. It is the duty of detaining authority to ascertain truthfulness of the confidential statements before passing the order. Mere recording of statements of witness is not sufficient and is fatal to prosecution case. Respondent No.2 relying upon the confidential statements without recording a satisfaction about truthfulness of the same is unsustainable and the detenue is liable to be set at liberty. The endorsement on the confidential statements states that “verified” which is falling short for satisfaction about truthfulness of the confidential statements. He has further stated that Sub Divisional Police Officer, Wani has personally verified makers of statement and he has stated as per the confidential statements which is sufficient as there is no satisfaction reached as to truthfulness of confidential statements. The verification has been done by different authority while order of detention has been passed by different authority.

4. The detaining authority has relied on the remarks given during statement verification by Sub Divisional Officer, Wani which itself shows that there has been no application of mind by the detaining authority on confidential statement to arrive at truthfulness of the confidential statements. It also reflects that the same are related to individual incident and it does not have any nexus of maintenance of public order, in that view, the satisfaction recorded by the detaining authority is not subjective and there is no ground made out for passing order under Section 3 of the MPDA Act.

5. Learned Counsel for the petitioner has stated that the petitioner has been released on bail in all the offences registered against him but while passing the detention order, the application of bail and the orders passed thereto were not placed before the detaining authority. Therefore, the detention order vitiated on account of non-consideration of material, which was relevant for arriving at subjective satisfaction.

6. The petitioner has relied on the following decisions in support of his argument.

- i] **Elizabeth Ranibhai Prabhudas Vs. The State of Maharashtra and Anr. (Criminal Writ Petition No.677/2020).**
- ii] **Ksam Kalu Nimsurwale Vs. State of Maharashtra and Anr. (Criminal Writ Petition No.269/2022).**
- iii] **Vasudev Mahadev Surve Vs. The State of Maharashtra and Anr. (Criminal Writ Petition No.592/2021).**

7. Learned A.P.P. opposed the petition stating that there is consistency in crime. The subjective satisfaction is there. There are no lapses in the detaining order.

8. Heard both the learned Counsel.

9. The detention order is passed on three recent crimes registered against the petitioner. The Crime No.38/2023, which is registered for the offences punishable under Sections 143, 147, 148, 149, 323, 504, 506 of the Indian Penal Code. The incident took place on 24.01.2023. The complainant was present in his house and the petitioner along with Salim Shah and his sons came there and disputed about the sale of the field. The petitioner abused the complainant and gave threats. On lodging report, the crime was registered against him. In this crime, the petitioner was released on bail.

10. The second Crime No. 385/2023 for the offences punishable under Sections 294, 323, 506 read with 34 of the Indian Penal Code. In this case, the petitioner used bad words for the daughter of the complainant and slapped the younger daughter of the complainant. Therefore, the crime is registered.

11. In Crime No.751/2023, the offence under Sections 323, 324, 504, 506 read with Section 34 of the Indian Penal Code are registered. The

petitioner tried to stabbed the complainant with knife. The notice under Section 41(a)(1) of the Criminal Procedure Code, 1973 was issued against the petitioner.

12. Learned Counsel for the complainant has stated that though the petitioner was released on bail, the said bail order and notice under Section 41(a)(1) also not considered by the detaining authority. When the Magistrate do not feel it necessary to arrest the petitioner for said offences, the other authority cannot detained him for the same offences.

13. Two in-camera statements relied on by the detaining authority, is verified by the Sub Divisional Police Officer. It is not verified by the detaining authority. The detaining authority has not even seen the statements. There is no satisfaction by the detaining authority. Considering the contents of the statements, which are of a general nature, it can be controlled under the normal law enforcement provisions. The drastic power of preventive detention could not have been exercised on such in-camera statements.

14. There are other grounds raised by the learned Counsel for the petitioner in support of the petition. However, now we are satisfied that the impugned detention order is vulnerable for the aforesaid reasons, do not think it necessary to address the other grounds that have been raised.

15. For the aforesaid reason, we hereby quash and set aside the impugned order dated 24.08.2023 passed by the respondent No.2 and order dated 17.10.2022 passed by the respondent No.1 and direct that the petitioner be released forthwith unless his detention is necessary for any other matter.

16. Rule is made absolute in aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)