



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

CRIMINAL WRIT PETITION NO.153/2024

Bhushan S/o Chandrakant Pohokar,
aged about 22 Yrs., Occ. Labour,
R/o Mahatma Fule Nagar, Navsari,
Amravati, Distt. Amravati.

... Petitioner

- Versus -

1. The State of Maharashtra,
through its Secretary, Home
Department (Special),
Mantralaya, Mumbai.
2. The Commissioner of Police,
Amravati City, Distt. Amravati.
3. The Police Inspector,
Police Station Gadge Nagar,
Distt. Amravati.

... Respondents

Mr. Sumit Gandhe, Advocate for the Petitioner.
Mr. A.R. Chutke, A.P.P. for Respondent Nos.1 to 3.

CORAM: VINAY JOSHI & MRS.VRUSHALI V. JOSHI, JJ.
DATED: 3.9.2024.

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

Heard Mr. Sumit B. Gandhe, learned Advocate for the
petitioner and Mr. A.R. Chutke, learned A.P.P. for respondent
Nos.1 to 3. **Rule.**

2. The petitioner challenges the order of detention dated 14.10.2023 passed by respondent No.2 which is confirmed by respondent No.1 vide order dated 4.12.2023.

3. Learned Advocate for the petitioner has taken us through the impugned orders and the material which was before the Authorities at the time of passing the impugned orders. He submits that two offences are considered for passing the detention orders. The first offence is Crime No.554/2023 punishable under Sections 363, 366, 376(2)(n), 376(3), 504 and 506 of Indian Penal Code and Sections 4 and 6 of Protection of Children from Sexual Offences Act. It was registered on 20.4.2023. Another offence is registered against him as he has violated the externment order and, therefore, the offence i.e. Crime No.575/2023 is registered under Sections 142 and 135 of the Maharashtra Police Act along with Sections 4/25 of Arms Act. It was registered on 25.4.2023. Both the cases are pending before

the concerned Court. In both the offences the petitioner is on bail.

4. The impugned order is passed on 14.10.2023 and confirmed on 4.12.2023. Learned Advocate for the petitioner has stated that there was no live link between the last crime registered against the petitioner and the order of detention. If we consider the F.I.R. in the first offence it would show that the incident had taken place on 20.4.2023. Though the petitioner was on bail the contents of the bail orders are not considered. The serious offence is registered against the petitioner for the offence punishable under POCSO Act and Sections 376(2) and 376 (3) of I.P.C.

5. Learned Advocate for the petitioner has contended that the petitioner was released on bail as the victim herself has filed the say stating that the offence has been registered on the say of owner of petrol pump and no incident occurred as alleged in the F.I.R. and, therefore, he has been released on bail. Another

offence is registered as the petitioner has jumped the externment order. He was found in the area from which he was externed and, therefore, the offence is registered. Considering the nature of both the offences it does not create the situation disturbing the public order. The first offence is in individual capacity and no public order is affected in said offence.

6. The petitioner was released on bail under the orders of the Court and, therefore, it will have to be held that there was no subjective satisfaction of the authority to pass the detention order. As regards in-camera statements it appears that the verifying authority is different and the detaining authority has only put remark as 'seen'. The record does not show that the detaining authority has personally verified the contents of in-camera statements by calling those witnesses. The petitioner has further relied on the decision in case of Khaja Bilal Ahmed V/ s. State of Telangana reported in (2020) (13) SCC 632 wherein it is observed that “.....*In the absence of a clear indication of a*

causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.”

7. Further reliance has been placed on Alakshit V/s. The State of Maharashtra and others reported in **2023 ALL MR (Cri) 1919** in support of his argument that the contents of the bail orders are necessary to be considered while passing the detention order. He has also relied on the decision in case of Alam Hussain Sheikh V/s. Commissioner of Police and others reported in **2018 ALL MR (Cri) 1098** in support of his argument that there is delay in passing the detention order and there is no live link. He has further submitted that no confirmation of such order ought to have been done by the State as it was suffering from illegality and it deserves to be set aside.

8. *Per contra*, learned A.P.P. has strongly opposed the petition supporting the detention order passed by the detaining authority. He has stated that there is no delay in passing the detention order. Considering the offences committed by the petitioner and the detenue is a famous criminal and is involved in criminal activities with his active role from 2019. He is involved in various offences like simple hurt, grievous hurt, attempt to murder, robbery, damage to property, breach of peace, threatening, possession of dangerous weapon, violation of prohibitory order, violation of notifications, abducting, kidnapping a girl and raping her etc. Deputy Commissioner of Police Zone-1, Amravati City had passed the externment order against the detenue for the period of one year but the detenue during such period entered intentionally in externment area without previous permission of superior authority and violated the said order. Ample opportunity was given to the detenue to change his behaviour but he is continuously committing offences and his behaviour is not changing. Because of his activities the

public peace and public order is breached and there is certainty of damage to the life and property of the general public. The detainee was continuously engaged in criminal activities during his bail period. Hence prayed to dismiss the petition.

9. The learned A.P.P. has relied on the following judgments:-

- (i) Vishal Aananda Mahabal V/s. The State of Maharashtra and others reported in **2022 ALL MR (CRI) 2494**,
- (ii) Rohit @ Karan S/o Purshottam Naukariya V/s. State of Maharashtra and others reported in **2022 ALL MR (Cri) 3758**,
- (iii) Allauddin Nigro @ Babu Chand Sayyed V/s. The State of Maharashtra and another reported **2013 ALL MR (Cri) 801**,
- (iv) Shri Sujit Suresh Menpal V/s. Shri A.N. Roy, Commissioner of Police, Br. Mumbai and others reported in **2006 ALL MR (Cri) 3017**,
- (v) Segar @ Sekar K. Nadar V/s. Shri R.H. Mendonca, Commissioner of Police and others reported in **1999 ALL MR (Cri) 1768**,
- (vi) Iqbal Munna Sayyed V/s. The Commissioner of Police, Pune City and others reported in **2108 ALL MR (Cri) 968**,

- (vii) Jagdish Suresh Kudekar V/s. The Commissioner of Police, Thane and others reported in **2020 ALL MR (Cri) 3898** and
(viii) Ashok Kisan Jadhav V/s. The State of Maharashtra and another reported in **2021 ALL MR (Cri) 1873**.

10. From the detention order it is to be noted that for the purpose of passing it, two offences were considered as aforesaid. It is not in dispute that in both the cases the petitioner has been released on bail. It is well settled law that the grounds on which the detinue is granted bail also form important part of the material available against such person and, therefore, it is the duty of detaining Authority to consider that material. Grant of bail is an important factor which goes into making up of requisite satisfaction of Authority. Though it is mentioned in the grounds that the petitioner was on bail, the orders passed by the competent Courts are not considered while passing the detention order. When those offences were considered the detaining authority ought to have considered the proceedings of those cases. In first case the offence is committed for the serious offence like

rape and offence under the POCSO Act. He was released on bail. If the detaining authority would have considered the contents of bail orders then said offences would not have been considered for passing the detention order because victim herself had given the statement that no such offence is committed and she had given no objection for releasing the petitioner on bail and then the detenue is released on bail. When the judicial opinion leans in favour of petitioner, the detaining Authority is obliged to pay its difference to it. This has not been done by the detaining Authority. The petitioner has placed reliance on judgment of this Court in case of *Alakshit (supra)* in support of his argument. The question, therefore, arises as to how the said offence can be considered to assess the behaviour of the petitioner as detrimental to public order. The preventive action was taken against the detenue as he has violated the said order passed by the S.D.M., therefore, the crime is registered under Sections 142 and 135 of the Maharashtra Police Act i.e. violating the externment order which cannot be taken into consideration for passing the detention

order. We, therefore, held that there was no subjective satisfaction arrived at by the detaining authority before passing the impugned detention orders.

11. In-camera statements of witnesses “A” and “B” though taken into consideration they would certainly about the extortion. The witness has stated the incident of 28.8.2023 and statement was recorded on 19.9.2023. Another witness has also stated the incident dated 15.8.2023. It is also of extortion by showing the knife. We, therefore, agree with the submissions of learned Advocate for the petitioner passed in Khaja Bilal Ahmed (supra) wherein Ameena Begum V/s. State of Telangana and others reported in **2023(9) SCC 587** and Dr. Ram Manohar Lohia V/s. State of Bihar and others reported in **1966 SCR (1) 709** are considered holding that the offences which are pending before the Court can at the most create law and order situation and not the public order.

12. The petitioner has also raised the ground of delay in passing the detention order from the date of last crime. Let us consider the date wise incidents. The time will not start to run from the date of the last offence that was registered. For considering delay, we will have to consider the time till last offence, then in-camera statements, verification by superior officers and also the detaining Authority. Two offences which were considered by the detaining authority are dated 20.4.2023 and 25.4.2023. The statements were recorded on 16.9.2023 and 14.9.2023. The incidents mentioned in said statements are of 15.8.2023 and 28.8.2023. The order was passed on 14.10.2023 and confirmed on 4.12.2023. Even if we consider the dates of verification which is done by Assistant Commissioner on 26.9.2023, Commissioner of Divisional Office Amravati on 9.10.2023 and seen by Authority on 13.10.2023, there is delay in passing the order. No explanation is given by the respondents in the reply as to why there is delay. According to respondents there is no delay in passing the detention order and there is live link but

considering the dates of the offences and the order passed there is inordinate delay which is not explained.

13. Though the Advisory Board has approved the detention order yet for the aforesaid reasons we do not find that there was any material before the detaining authority to detain the petitioner and, therefore, confirmation of the said order cannot be upheld.

14. The judgements relied upon by the learned A.P.P. are not applicable to the case in hand as the facts stated therein are different than the present case.

15. For the above said reasons, the petition deserves to be allowed and it is accordingly allowed.

The petitioner be set at liberty forthwith, if not required in the any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Tambaskar.