



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

CRIMINAL WRIT PETITION NO. 202 OF 2024

Shahezad Khan Shammi Khan,
Aged about 27 years, Occ. - Labour,
R/o. Indira Nagar, Bhosa Road, Yavatmal. ... **PETITIONER**

...VERSUS...

1. State of Maharashtra,
Through its Secretary, Home Department
(Special) Mantralaya, Mumbai.
2. Collector/District Magistrate, Yavatmal. ... **RESPONDENTS**

Mr. M. N. Ali, Advocate for petitioner.
Mr. S. S. Doifode, A.P.P. for respondents/State.

CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 12.09.2024
JUDGMENT PRONOUNCED ON : 20.09.2024

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. The petitioner challenges the detention order dated 15.12.2023 passed by the respondent No.2 under Section 3 sub-section (1) 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

(the MPDA Act, 1981) and which is confirmed by the respondent No.1 on 30.01.2024.

3. The learned Counsel for the petitioner has taken us through the impugned orders and material which were before the authority at the time of passing the impugned orders. He submits that though certain cases were registered against the petitioner, the cases which were considered for passing the detention order were registered with Awadhutwadi Police Station bearing Crime No.824/2023 for the offences punishable under Sections 143, 147, 148, 149, 324, 504 and 506 of the Indian Penal Code and Crime No.976/2023 for the offences punishable under Sections 326, 504 and 506 of the Indian Penal Code.

4. The learned Counsel for the petitioner has stated that considering the same offences, the brother of the petitioner Parvez was detained and this Court has set aside the detention order on 09.05.2024. Both the cases are already considered and this Court has observed that the cases do not come under the purview of the public order. In the first offence i.e. Crime No.824/2023, the informant asked one of the friends of the petitioner not to abuse, he scolded them, therefore, the petitioner came with 7 to 8 persons in City Bar. Crime is registered and notice under Section 41(1)(a) of the Code of Criminal Procedure was given to the petitioner. In Crime No.976/2023, the petitioner restrained the complainant, who is owner of tempo traveller and asked him for money to

run his business and when the complainant refused, he beat him with iron rod and gave him threat. In this case, the petitioner was arrested and released on bail. These offences are already considered by this Court by considering the judgment of ***Mallada K. Sri Ram Vs. State of Telangana*** reported in ***Live Law (SC) 358***, the Hon'ble Supreme Court has considered the distinction between disturbance to law and order and a disturbance to public order, after considering its Constitution Bench Judgment in ***Ram Manohar Lohia Vs. State of Bihar*** reported in ***AIR 1966 SC 740*** and its judgment in ***Banka Sneha Sheela Vs. State of Telangana*** reported in ***(2021) 9 SCC 415*** and has held as under : -

“..... A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the “maintenance of public order”. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the

Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law.”

Considering the crimes, similar is the situation in case at hand.

5. The detaining authority also relied on two confidential statements. The respondents have not produced the original statements on record. The learned A.P.P. has produced masked xerox copies of the statements of two witnesses for perusal of the Court as the originals were not available.

6. The contention of the petitioner is that the subjective satisfaction of the truthfulness of the statements is not there and it is not even seen by the detaining authority. On perusal of the xerox copies of the statements, it appears that the name and incidents are masked. It is not even seen by the detaining authority. Though the learned A.P.P. has stated that if the Divisional Officer has verified it and the detaining authority discussed with the Divisional Officer and passed the order considering the statements, then there is subjective satisfaction about the truthfulness of the

statements. As the original statements are not produced on record and are not available, it is not even seen by the detaining authority, it is not mentioned in the grounds of the detention that the detaining authority has discussed it with the Divisional Officer, who has verified it, cannot be considered for passing the detention order. The contents in the statements are about manhandling when the petitioner was standing on the square. Both the statements are similar. From the statements of the witnesses, it appears that it does not create any situation of public order. Therefore, following the ratio in ***Mallada K. Sri Ram*** (*supra*), it clearly shows that neither of the incidents which were referred to in the above two crimes, can be termed as incidents which have caused alarm to the citizens or that any citizen was living under the fear of the petitioner disturbing daily life in the vicinity or that he had indulged in an act which could be disruptive of public order. Both the incidents are either between two individuals or merely on a search carried out by the Police and are, therefore, not incidents which can be considered as disruptive of public order.

7. Even going through the incidents described in two in-camera statements would reveal that the acts of the petitioner could be perhaps in the nature of giving threats to an individual, but cannot be termed to be acts disruptive of public order.

8. The crimes which are considered are already considered in the earlier case, which is decided by this Court. The subjective satisfaction is

not there. The ratio laid down in the above judgments squarely applies to the facts of this case. Therefore, we hold that the contents of in-camera statements in any case do not justify holding that the incidents are disturbance to public order besides which in any case there was no subjective satisfaction of the detaining authority.

9. In the result, the petition is allowed.

We hereby quash and set aside the order dated 15.12.2023 passed by respondent No.2, so also order dated 30.01.2024 confirmed by respondent No.1 and direct the detenue to be set at liberty forthwith, unless his detention is required in some other crime.

10. Rule is made absolute in aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)