



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.235 OF 2024

Shri.Akash Raviprasad Dixit,
aged about 22 years, R/o. Shivaji
Ward, Umarkhed, Ta. Umarkhed,
Dist. Yavatmal.

Petitioner

-Versus-

1. The State of Maharashtra,
Through Principal Secretary
(Appeals and Security),
Home Department, Mantralaya,
Mumbai-32.
2. The District Magistrate,
Yavatmal, Tah and Dist.
Yavatmal.

Respondents

Shri Abhishek A Zade, counsel for the Petitioner.
Shri S.S. Doifode, APP for R-1 and 2.

CORAM : VINAY JOSHI AND

MRS.VRUSHALI V. JOSHI, JJ.

Date of reserving the judgment: 04/09/2024

Date of pronouncing the judgment : 24/09/2024

JUDGMENT (Per :Vrushali V.Joshi, J.)

Heard.

2. **Rule.** Rule made returnable forthwith. The Criminal Writ
Petition is heard finally with the consent of the learned counsels
appearing for the parties.

3. Invoking the powers of this Court under Articles 226 and 227 of the Constitution of India, the petitioner is impugning the detention order no. Home/Pol/Desk-12/ws/1633/2023 dated 14.09.2023 passed by the Respondent no.2 -District Magistrate under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders,Dangerous Person and video Pirates, Act, 1981 (herein after referred to as the MPDA,Act.) and confirmed by the State Government in terms of Section 12(1) of the said MPDA Act, on 14.12.2023.

4. The grounds of detention were supplied to the petitioner as contemplated under Section 8 of the MPDA, Act, on the same day of the order of detention i.e., 14.09.2023. It was mentioned in these grounds of detention that he was a dangerous person responsible for causing communal riots hurting the religious sentiments of communities, committing forcible theft by injuring those belonging to scheduled castes and scheduled tribes creating nuisance, threat and danger among the citizens.

5. In the recent past, four crimes: C.R.No.192/2023 dated 09.03.2023, C.R.No.230/2023 dated 26.03.2023, C.R.No.

276/2023 dated 17.04.2023 and C.R.No.426/2023 dated 10.07.2023, have been registered, in which, the first and the third offence is sub-judiced before the concerned Court while the second and the fourth is under investigation. The statements of couple of witnesses were recorded in-camera and verified through the Sub-Divisional Police Officer, Pusad, before Respondent no.2 – District Magistrate formed a subjective opinion that the activities of petitioner were prejudicial to the public order.

6. Learned advocate for the petitioner challenges the order of detention on following grounds:-

(i) The order comprises of old and past record, the Respondent no.2 has referred that these crimes have not been taken into consideration for passing the impugned order.

(ii) The petitioner was not informed about the action of approval of the said order within the period of five months and the same does not disclose the date of approval as well.

(iii) The petitioner was served upon with the letter dated 14.09.2023 before the hearing of matter by the Advisory Board without obtaining his acknowledgement, therefore, opportunity of hearing has not been given to the petitioner violating the principle

of natural justice, as a consequence of which he was not able to make representation.

7. Learned counsel for the petitioner submitted that, the statement of witness “A” appears to have been recorded, when the incident was alleged to have occurred in the month of May 2023, So also, the statement of witness “B” appears to have been recorded with regards to the incident alleged to have occurred eighteen months prior to the statement given. He further submitted that, due to the hasty action of the authorities, it appears malicious that the in-camera statements of witness “A” and “B” were verified to be true and bonafide.

8. The learned APP referring to the affidavit-in-reply filed by the Respondent no.2 supports the order. He submitted that, the petitioner was detained on 21.10.2023 in District Prison, Akola. He was absconding after commission of crime on the day of ‘Pola’ festival and the copy of the order of approval along with the communication was made by the office of Respondent no.1 on 25.09.2023.

9. Learned APP further submitted that, while passing the detention order, Respondent no.2 has properly considered the recent four crimes which are clearly mentioned in the grounds of detention. It is submitted that, the petitioner was issued notice by the Secretary, Advisory Board, Government of Maharashtra, on 20.11.2023 with respect to the hearing to be held on video conferencing on 30.11.2023 at about 4:00 P.M. for which he appeared. The report of the Advisory Board states that there is sufficient cause for the detention of the petitioner to be continued further. It is submitted that the criminal activities of the petitioner shows his tendency to commit serious criminal offences after being released from the prison, creating danger and a sense of insecurity among people which is adversely affecting the maintenance of public order. Hence, prayed to dismiss the writ petition.

10. The detaining authority has considered four offences and two statements for passing the detention order. The ground of the petitioner is that there is delay in passing the detention order and there is no situation of disturbance of public order to pass the detention order. Four crimes are considered. First Crime No.192 of

2022 is for the offence punishable under Section 324 of the Indian Penal Code. In this case, the petitioner has beaten the complainant with stones and fists and blows under the influence of liquor when the complainant went to take a tea in market. In this crime, whether the complainant was on bail, or the notice is issued is not mentioned.

11. The another Crime No.230 of 2023 is for the offence punishable under Section 394, 336, 323, 504, 506 r/w 34 of the Indian Penal Code. In this case, the petitioner assaulted his neighbour Aniket with fists and blows along with his associates and took 1550 from his pocket and when people gathered there, he left the place.

12. The third Crime No.276 of 2023 is for the offence punishable under Sections 294, 323, 506 r/w 34 of the Indian Penal Code and for the offence punishable under Sections 4 and 25 of Arms Act. The complainant has stopped his car near the signal at that time the applicant along with his associates came there and he asked him why he has parked his car there and he slapped him and thereafter by taking knife he broke the glass of his car.

13. The fourth Crime No.426 of 2023 is for the offence punishable under Sections 324, 323, 294, 506 r/w 34 of the Indian Penal Code. In this case, the petitioner assaulted the complainant with beer bottle on his head at that time, associates were with him. The offence is registered. The last offence is committed on 10.07.2023. The order was passed on 14.09.2023 after near about two months. Considering the nature of offences, it reveals that though it is on public place, the ordinary law is sufficient to handle.

14. After going through the crime record, it reminds us that recently this Bench has passed the order in Criminal Writ Petition No.113 of 2024 on 29.08.2024 by considering same offences, who is one of the associates of this petitioner. This Court has taken the view that in all the three offences, the assailant is the petitioner and his associates, though the weapons are used and the petitioner has assaulted in public, these offences are not sufficient to term as it is disturbing public order.

15. While considering whether it is situation of breach of public order or law and order, the Hon'ble Apex Court in the case of *Ameena Begum Vs. The State of Telangana & Ors* [Arising out

of SLP (Criminal) No.8510/2023] has held in para Nos.31, 32 and 34 which read as under :

“31. It is trite that breach of law in all cases does not lead to public disorder. In a catena of judgments, this Court has in clear terms noted the difference between "law and order" and "public order.

*32. We may refer to the decision of the Constitution Bench of this Court in **Ram Manohar Lohia vs. State of Bihar [(1966) 1 SCR 709]**, where the difference between “law and order” and “public order” was lucidly expressed by Hon’ble M. Hidayatullah, J. (as the Chief Justice then was) in the following words:*

*“54. *** Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.*

55. It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

34. In **Kuso Sah vs. The State of Bihar** [(1974) 1 SCC 195], Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that:

"4. *** The two concepts have well defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ***

6. *** The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. ***"

16. The cognizance of the offences is taken under ordinary criminal law in existence and two cases are pending for investigation and two cases are pending before the Competent Court.

17. In view of above said observations, the offences which are considered for detention, does not come under the purview of public order.

18. Two statements, which are considered by the detaining authority are not even seen by the detaining authority while passing the detention order. One of the ground for challenging the detention order is that there is no subjective satisfaction about the truthfulness of the statement of confidential witnesses.

19. The learned A.P.P. has placed reliance on the judgment of *Zebunnisa Abdul Majid Vs. M. N. Singh and Others. [2001(3) Mh.L.J. 365]*, in which it is observed that though the truthfulness of the statements are not physically verified by the detaining authority, it is verified by the recording authority and it is discussed by the detaining authority and if it is mentioned in the affidavit that he is satisfied by discussing and going through the statements of the

witnesses, that affidavit is sufficient for the subjective satisfaction of the truthfulness of the said statements.

20. In support of his argument about subjective satisfaction of the truthfulness of the statements he has also relied on the following judgments :

i] Mohammed Mustafa S/o. Mohammad Mastan Vs. The State of Maharashtra and Anr. [2018 ALL MR (Cri) 37].

ii] G. Reddeiah Vs. Government of Andhra and anr. [(2012) 2 SCC 389].

21. On perusal of the grounds in this case, it appears that the detaining authority has not even discussed with the recording authorities and verifying authorities and not subjectively satisfied about the truthfulness of the statements. Both the witnesses have mentioned the incident of 18 months before giving the statement. Though the statement was recorded on 21.08.2023, the incidents are mentioned prior to 18 months while recording the statement. Though it was verified by the S.P on 28.08.2023, it is not even seen by the detaining authority. Nothing is there on record to show that the detaining authority has discussed with the person who have

verified it. Though it is mentioned in the affidavit that he is satisfied by the correctness and truthfulness of the statement which is not even seen by the detaining authority, therefore, the statements cannot be considered for passing the detention order.

22. There is delay in passing the order, the bails orders are not considered while passing the detention order. The bail orders are not even placed before the detaining authority and it is not mentioned by the detaining authority in the grounds of detention. Therefore, the detention order stands vitiated. In view of above observations, the application is allowed.

23. The detention order passed by the detaining authority is quashed and set aside.

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

25. Rule is made absolute in aforesaid terms.

(MRS.VRUSHALI V. JOSHI, J)

(VINAY JOSHI, J)