



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

CRIMINAL WRIT PETITION NO. 239 OF 2024

Vrushabhh @ Vrushikesh @ Jabba
Umeshrao Wankhade,
Aged about 24 years, Occ.- Labour,
R/o. Ramakrishnanagar, Mulaki,
Yavatmal.

... **PETITIONER**

...VERSUS...

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

2. Collector/District Magistrate, Yavatmal.

... **RESPONDENTS**

Mr. Mir Nagman Ali, Advocate for Petitioner.
Smt. S.S. Jachak, APP for Respondents/State.

CORAM : VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 25.09.2024
JUDGMENT PRONOUNCED ON : 03.10.2024

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. By way of this petition, the petitioner has challenged the detention order dated 11.01.2024 passed by respondent No.2 under Section 3(2) 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), which was confirmed by the respondent No.1 for a period of one year.

3. A proposal was sent to the detaining authority through the Superintendent of Police, Yavatmal and Sub-Divisional Police Officer, Sub-Division, Yavatmal, co-jointly on 19.12.2023. The petitioner is alleged of indulging into certain criminal activities since the year 2018 to 2023 which comprises of creating terror by possessing a dangerous weapon, threatening to kill, verbal abuse, extortion, inculcating the habit of alcohol consumption among young within the community.

4. Shri Ali, learned Counsel for the petitioner submitted that the detention order passed by the Collector/District Magistrate, Yavatmal, was without personally seeing and verifying the truthfulness of the in-camera statements. He submitted that, the in-camera statements do not give the details of the date of incidence. The learned Counsel submitted that in Crime No. 1259/2023, the order granting the bail has not been placed before the detaining authority but only the bail application. The learned Counsel for the petitioner placed reliance on the contention that old and stale offences have been taken into account which have no bearing on the live link to pass the impugned order. He further submitted that the

subjective satisfaction is vitiated as the statements are related to individual incidents and in no manner disturbs the public order.

5. Learned A.P.P, Smt. Jachak, vehemently opposed the submissions of the petitioner and relied upon the affidavit-in-reply. Learned A.P.P submitted that, respondent No.2 has seen and perused the statements of in-camera witnesses and verified the statements on 05.01.2024 before passing the detention order from Police Inspector, Police Station, Awdhutwadi, Yavatmal and Sub-Divisional Police Officer, Umarkhed who have personally verified these statements. She further submitted that as per the documents provided by the Police Authority along with the proposal of detention of the petitioner, in Crime No.1259/2023, it contained injury certificate which is provided to the detainee. Learned A.P.P submitted that the copy of the bail order in Crime No.1259/2023 is not supplied by the Superintendent of Police, Yavatmal, however, the bail application along with the proposal and the detention order with grounds have been put-forth before the detaining authority. She further submitted that date of incident and location of the incidents are not disclosed in order to keep the identity of the witnesses confidential as per Article 22 (6) of the Constitution. Therefore, there is no substance in the grounds raised by the petitioner. Hence, prayed to dismiss the petition.

6. Heard both learned Counsel for the parties.

7. The challenge to the detention order is on the ground of public order and delay in passing the detention order. The provisions of Act are intended to deal with habitual criminals, dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal laws and fear of punishment for crime are not sufficient deterrents for them. Section 3 of the Act is, therefore, intended to deal with such criminals who cannot readily be apprehended to be booked under the ordinary law and who for special reasons, cannot be convicted under the penal laws in respect of the offences alleged to have been perpetrated by them. In order to pass an order of detention under the Act against any person the detaining authority must be satisfied that he is a “dangerous person” within the meaning of Section 2(c) of the Act who habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI and XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act as according to Sub-Section 4 of Section 3 of the Act, it is such “dangerous person” who for the purpose of Section 3 shall be deemed to be a person “acting in any manner prejudicial to the maintenance of public order” against whom an order of detention may lawfully be made.

8. Section 3(1) of the Act confers power on the State Government and a District Magistrate or a Commissioner of Police under the direction of the State Government to detain a person on being satisfied that it is necessary

to do so with and view to preventing him from acting in any manner prejudicial to the maintenance of “public order”. The “public order” shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of the person referred to in Sub-Section 4 directly or indirectly, are causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any Section thereof or a grave or widespread danger to life, property or public health.

9. The Hon’ble Apex Court in the case of *Mustakmiya Jabbarmiya Shaikh Vs. M. M. Mehta, Commissioner of Police [1995 DGLS (SC) 389]* has observed that, if the activity falls within the category of disturbance of “public order” then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of Arun Ghose v. State of West Bengal this Court had an occasion to deal with the distinction between law and order and public order. Hidayatullah, C.J. (as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or eves a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb

the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land.

10. In view of the above discussion, we have to consider the crimes considered for passing the detention order. Two crimes and two statements are considered for passing the detention order. Crime No.1259/2023 is registered for the offence punishable under Sections 307, 504, 506 of the Indian Penal Code. The first informant was standing in front of his house on the date of the incident. The detainee came there with knife in his hand and he asked the first informant where is his son Suraj Netam. At that time, Suraj was not at home. Therefore, the detainee left the place. The first informant followed the detainee and the detainee has stabbed his son Suraj at his waist. The petitioner abused him and threatened to kill him. Therefore, the first informant left the home. The crime is registered against the petitioner. He was released on bail in said offence. At the time of passing the order, the crime was pending for investigation.

11. On perusal of the contents of the First Information Report, it appears that it is against the individual and not against the public at large. The bail order is also considered while passing the order.

12. Another offence Crime No.1266/2023 is registered for the offence punishable under Sections 4 and 25 of the Arms Act. The information received to the Police Constable that one person is coming towards Vande Mataram Chowk, Near Bhosa Road, the name is also mentioned by the informant i.e. Jabba Wankhade is roaming on the road with koyata (sickle). He is carrying it in one bag. Thereafter, the police went there and seized the sickle, which was in the plastic bag and was wrapped in paper. The police seized it and the offence punishable under Sections 4 and 25 of the Arms Act is registered. Though the offence is registered for carrying the weapon and allegations are made about brandishing it in the public road, but it appears that the petitioner was not creating threats by showing it or carrying it in the hand. It was in the plastic bag and even wrapped in paper. It was not visible. Therefore, it creates doubt in the mind about creating threats in public at large.

13. The statements of two confidential witnesses are considered for passing the detention order. The statements are recorded on 11.12.2023 and 13.12.2023. They are about extortion and giving threats. On perusal of it, it appears that the Superintendent of Police has signed it but date is not

mentioned. The Sub-Divisional Police Officer has also signed it without mentioning the date. Though it is stated by the learned A.P.P. that the verification by the Superintendent of Police or Divisional Officer is sufficient and if it is mentioned in the affidavit by the authority that it is verified by discussing it while passing the detention order that is sufficient, it is not necessary that the detaining authority should personally verify it. On perusal of the grounds of the detention it appears that it is not specifically mentioned by the detaining authority that he has discussed with the Sub-Division Police Officer or the Superintendent of Police about the truthfulness of statements.

14. On considering the incident in the statements, it reveals that it does not create any situation of law and order and it is against the individual. Therefore, considering the judgment passed by the Hon'ble Apex Court in *Kanu Biswas vs. State of West Bengal [(1972) 3 SCC 831]* wherein the observations are about what constitute "breach of public order" or "breach of law and order" is given in detail. The contents of the statements and the crimes considered against the petitioner, does not create breach of public order.

15. The petitioner has also relied on the judgment of *Mallada K. Sri Ram Vs. State of Telangana [Live Law (SC) 358]* passed by this Court in support of his contention.

16. 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.

17. 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 extortion form of threats to an individual, but cannot be termed to be acts disruptive of public order.

18. The another ground for challenging the detention order is about delay in passing the detention order. The order is passed on 11.01.2024. The last crime, which is considered by the detaining authority is of dated 05.10.2023. Even if, we consider that the period shall be considered from the date of the recording of statements, the statements were recorded on 11.12.2023 and 13.12.2023 and verified by the Sub-Divisional Police Officer and the Superintendent of Police but there is no date below the signature. The incident mentioned in the statement of witness "A" does not disclose any period. In the statement of witness "B", the incident is

mentioned 2 to 3 months before recording of statement. Even after considering the dates mentioned in the confidential statements, there is delay in passing the detention order.

19. In view of above observations, 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. There is delay in passing the detention order.

20. In the result, the petition is allowed.

We hereby quash and set aside the order dated 11.01.2024 passed by respondent No.2, so also order dated 29.02.2024 confirmed by respondent No.1 and direct the detenue to be set at liberty forthwith, unless his detention is required in some other crime.

21. Rule is made absolute in aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)