



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

CRIMINAL WRIT PETITION NO.300 OF 2024

Pankaj Fekanlal Katekhaye, aged about 28
years, R/o Katekheda, Tah. Paoni, District
Bhandara.(In jail).

Petitioner

-Versus-

1. The State of Maharashtra, through
Principal Secretary (Appeals and Security),
Home Department, Mantralaya, Mumbai-
32
2. The District Magistrate Bhandara, Tq.
And District Bhandara.

Respondents

Mr.Abhishek A.Zade a/w Adv. A.P.Modak, Advocate for the
petitioner.

Mr.S.S.Doifode, APP for respondent Nos.1 and 2.

**CORAM : VINAY JOSHI AND
MRS.VRUSHALI V. JOSHI, JJ.**

Date of Reserving the judgment:- 05/09/2024

Date of Pronouncing the judgment:- 12/09/2024

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

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

2. The petitioner has filed this Writ Petition being aggrieved by the detention order dated 29.12.2023 in O.No./AK/DAND-1/C.R.30/MPDA/1150/2023 passed by the respondent No.2, District Magistrate Bhandara, which was latter confirmed by the respondent No.1 on 21.02.2024. The detention order is based on one offence namely, crime No.320 of 2023 for the offence punishable under Section 307,353,333,379,506,109 of the Indian Penal Code r/w Section 48(7)(8) of Maharashtra Land Revenue Code, 1966 and two in-camera statements of confidential witnesses.

3. The learned counsel for the applicant has stated that for same offence and on same statement, the co-accused i.e. Krishna Katekhaye was detained and this Court has set aside the detention order on 22.08.2024. The grounds for challenging the detention order are; there is a delay of four months in passing the detention order from the date of last crime and the crime and statements considered for passing the detention order does not create any public disorder. The bail order is not considered though placed before the detaining authority. The order of rejection of the representation made by the detenue is informed to the detenue after confirmation of order. Hence, prayed to allow the petition by setting aside the order passed by the detaining authority.

4. The learned counsel appearing for the petitioner has relied upon the following judgment of the Supreme Court as well as judgments of this Court.

- (i) Mallada K Sri Ram Vs. The State of Telangana and ors. Criminal Appeal No.561 of 2022 SC (Arising out of SLP (Cri.) No.1788 of 2022).
- (ii) Chandrakant @ Chandar Basu Chavan Vs. The Commissioner of Police and ors. Criminal Writ Petition No.1901 of 2022, D.O. 21/11/2022.
- (iii) Dipak @ Fantya Ashokrao Kawanpure Vs. The State of Maharashtra and ors (Criminal Writ Petition NO.126 of 2022), D.O 23/08/2022.
- (iv) Akshay Kishor Madavi .Vs. State of Maharashtra and ors. (Criminal Writ Petition No.258 of 2022), D.O. 19/08/2022.
- (v) Krishna Ramesh Katekhaye Vs. The State of Maharashtra and anr. (Criminal Writ Petition No.366 of 2024), D.O. 22/08/2022.

5. The learned APP has stated that the applicant is the main accused as he directed the driver to put the tractor on the person of the government official. He has given threats to the government official. The grounds of not considering the bail order is not raised in the grounds of challenging the detention order. The grounds available on

record including the in-camera statements of the witnesses show that criminal activities of the petitioner such as giving threats to kill the government officials, when they obstructed the illegal transport of the sand in the district of Bhandara, illegal excavation of sand from Wainganga river flowing through Paoni Taluka and lifting the sand in the vehicle without a valid licence, wandering with associates and abusing villagers, when they went to complain in relation to sand transport, all these illegal activities were creating terror and constant threat to the lives and property of people in the vicinity of Police Station Pauni. Hence, the learned APP has prayed to reject the petition.

6. Learned APP has relied on the following judgments :-

- (i) Salauddin Imamuddin Ansari and ors. Vs. The State of Maharashtra and ors. Reported I 2020 ALL MR (Cri.) 1641
- (ii) MST.L.M.S.Ummu Saleema Vs. B.B.Gujaral and anr. reported in AIR 1981 Supreme Court 1191.

7. After going through the record, it appears that one crime is considered for passing the detention order. Crime No. 323 of 2023 for the offence punishable under Sections 307, 353, 333, 379, 506, 109 of the Indian Penal Code read with section 48(7)(8) of Maharashtra Land

Revenue Code, 1966 has been taken in to consideration. On the complaint given by one Mayur Chaudhari, Nayab Tahsildar of Pauni, the crime is registered on receiving information about the unlawful excavation of sand, the complainant went along with his team and he found that one tractor without number was there, which was loaded with sand. Though it is mentioned in the grounds of the detention that accused had put the tractor on the person of Talathi and injured his leg, on perusal of the FIR, it appears that the driver of the tractor was Aashish Katekhaye. The driver told him that the tractor is of Pankaj Katekhaye i.e. the petitioner. During that period Talathi took the key and mobile of the driver of the tractor. The driver told him that the owner of the tractor is coming. At that time, one two wheeler came there and the petitioner along with one Krishna Katekhaye came there. At that time, the petitioner asked him why they are seizing his tractor frequently and he asked the driver of the tractor to start the vehicle. At that time, the driver of the tractor asked Kiran More-Talathi to give the key and mobile and after taking key from Talathi, he put the tractor on the person of the Talathi. At that time, the injury caused to the Talathi is to his thigh. On going through the FIR, the statement made by the learned APP that on his say, the driver has put the tractor on his person is not correct. The driver on his own has put the vehicle on his person.

Therefore, the role of this applicant is that he is the owner of the said tractor and he came there and he gave threats. Though the offence punishable under Section 307 of the Indian Penal Code is registered against this applicant, his role is not that of offence attempt to commit murder. Moreover, the trial is pending before the competent court.

8. The petitioner was on bail. His bail order though placed on record was not considered. The learned APP relied on the judgment in the case of *Salauddin Imamuddin Ansari and anr. Vs. The State of Maharashtra and ors.* reported in **2020 ALL MR (Cri.)1641** in support of his argument that non supply of the order of bail would not vitiate the detention order. The facts in this case are different. If the bail order would have been considered by the detaining authority, then the detaining authority would come to know the exact role played by this applicant and application of mind while passing bail orders. Then, there is possibility that he would not have considered said offence for passing the detention order. Reliance is also placed on the judgment in the case of *MS. L.M.S.Ummu Saleema V.B.B.Gujaril and anr.* reported in **SCC 1191AIR 1981**, which is about supply of documents along with detention order and non consideration of bail order, certainly vitiates the detention order.

9. A mere apprehension of 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 disturbance of public order owing to a crime, that was reported over prior to the detention order has no basis in fact. The petitioner has relied on the judgment passed by this Bench in Criminal Writ Petition No.366 of 204 in which the reliance is placed on *Ram Manohar Lohiya Vs.State of Bihar* reported in **5 AIR 1966 SC 740**, in which it is held that every disorder does not meet the threshold of a disturbance of public order unless it affects the community at large.

10. The two statements, which are considered by the detaining authority; one of it is against the earlier accused in said offence i.e. Krishna Katekhaye and it is not against the petitioner. The name of the witnesses are not mentioned even in the original statements.

11. Ground of delay is also raised by the petitioner. According to the petitioner, the crime was registered on 12.08.2023 and the order was passed on 29.12.2023 there is inordinate delay in passing the detention order. We have to consider the dates of statement, verification for considering the delay. No doubt, the period starts to consider the

delay from the date of the recording of statement, the verification and consideration by the detaining authority. After going through the statements, it appears that the statements were recorded on 23.10.2023. The incident mentioned in the statement is of 06.03.2023. Though it is signed by the Divisional Police Officer and seen by the detaining authority, the date is not mentioned to ascertain when it was verified and when it was seen by the authority. Therefore, the statement, which is recorded against the another witness and the date of the statement and the date of last crime, it can not be said that, it is within time, therefore, there is a delay in passing the detention order.

12. Though the offence under Section 307 of the Indian Penal Code is registered, considering his role he was released on bail. The allegations against the detenue is that he has given threats. He is not a person who has put the tractor on the person of Talathi. Statement of confidential witnesses also show that he has given the threats which is not sufficient to make out the case for detention on the ground of disturbing the public order.

13. As no situation of disturbance of public order is *prima facie* appears from the crime considered and the statements of the

confidential witnesses on this ground alone, the order of detention passed by the detaining authority can be set aside and it is accordingly set aside.

14. In the result, we find that this Writ Petition deserves to be allowed and it is allowed in terms of it's prayer clause (b).

15. The petitioner be released forthwith, if not required in any crime.

Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J)

(VINAY JOSHI, J)