



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

CRIMINAL WRIT PETITION NO.350 OF 2024

Ballan Shyamlal Goswami

Aged about 32 Years, Citizenship: Indian,

Occ.: Driver, R/o: Mine No. 6, Kanhan

Tah., Parsheoni, Kamptee, Nagpur.

(Presently in Central Prison, at Nagpur)

**Petitioner**

**-Versus-**

1. The State of Maharashtra, through its Additional Chief Secretary, Home Department, Government of Maharashtra, Mantralaya, Mumbai-32.
2. Collector and District Magistrate, at Nagpur.

**Respondents**

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Shri Nirav S Padia, counsel for the Petitioner.

Shri S.S. Doifode, APP for R-1 and 2.  
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**CORAM : VINAY JOSHI AND**

**MRS.VRUSHALI V. JOSHI, JJ.**

**Date of Reserving the judgment:- 06/09/2024**

**Date of Pronouncing the judgment:- 24/09/2024**

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

1) 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) The petitioner is raising the challenge to the impugned order dated 16 December, 2023, passed by respondent No.2 under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous persons, Video Pirates, Sand Smugglers and Person Engaged in Black-Marketing of Essential Commodities Act, 1981 (for short referred to as the “MPDA Act”) thereby ordering his detention as a dangerous person, which was confirmed by the Government vide order dated 30.01.2024 bearing no. MPDA-1223/CR-714/Spl-3B.

4) The detaining authority has taken into consideration two crimes registered against him, i.e. C.R. No.703/2023 registered under Sections 341, 504, 506 of Indian Penal Code on 15.11.2023 and C.R. no. 705/2023 u/s 143, 147, 149, 323, 324 of IPC on 19.11.2023. The Respondent no.2 has also taken into consideration statements of couple of anonymous witnesses to arrive at the subjective satisfaction while passing the detention order. On the very day of the order, after the grounds of detention were communicated to the petitioner on 16.12.2023, he was committed to the prison.

5) The learned counsel for the petitioner, would submit that, there was no nexus between the alleged prejudicial activities and the detention order as the live-link is snapped therein with a substantial unexplained delay of twenty eight days in passing the detention order. He would then submit that, in-camera statements are not corroborated by any document to support the contents made in the said confidential statements and the crimes which are considered does not create any disturbance of public order.

6) The learned APP would oppose the petition relying upon the affidavit of the Collector and District Magistrate, Nagpur. He would submit the occurrence of the crimes as in the manner in which they took place. On perusal of the in-camera statements of the witnesses, it appears that the incidents occurred are not identical in nature. These criminal activities of causing grievous hurt with lethal weapons, to commit unlawful restraint, to form unlawful assembly has continuously affected the peace of the citizens, produced insecurity and constant shadow of fear in their daily lives and businesses within the limits of Police Station, Kanhan.

7) Shri Doifode, learned APP would submit that, on the aspect of absence of live-link, the petitioner was aware that the procedure under Section 56(1)(b) of the Maharashtra Police Act, was going on against him, on the basis of which proceedings under the MPDA, Act, were initiated to deter him from committing offences further and the last offence is within six months, the time period was consumed in verification of in-camera statements and to ascertain its truthfulness. He further submitted that, the verification report of the confidential statements was forwarded to the Detaining Authority on 08.12.2023. There was also an endorsement regarding verification on the statements itself, the original copies are with the detaining authority while the dummy copies were supplied to the detenu to conceal the identity of the witnesses. Hence, prayed to dismiss the petition.

8) The Hon'ble Apex Court in the case of *Nenavath Bujji etc Vs. State of Telangana and ors* reported in **2024 SCC OnLine SC 367** in paragraph No.20 has observed thus:-

20. The law is well settled that the power under any enactment relating to preventive detention has to be exercised with great care caution and restraint. In order to pass an order of detention under the Act, 1986 against any person, the detaining authority must be satisfied that he is a

‘GOONDA’ within the meaning of Section 2(g) of the Act, 1986. Who either by himself or as a member of or a leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the IPC is according to the explanation to Section 2(a) of the Act, 1986, it is such a ‘GOONDA’ who for the purpose of Section 2 of the Act, 1986, shall be deemed to be a person acting in any manner prejudicial to the maintenance of public order and against whom an order of detention may lawfully be made”.

9) The Hon’ble Apex Court has referred the judgment in the case of *Pushkar Mukherjee V. State of West Bengal* , (1969) 1 SCC

10, in which in paragraph No.13, it is observed as under:-

13. “Does the expression "public(1) [1951] S.C.R. 167. order" take in every kind of infraction of order or only some categories thereof. It is manifest that every act of assault or injury to specific persons does not lead to public disorder. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases are dealt with under the powers vested in the executive authorities under the provisions of ordinary criminal law but the culprits cannot be detained on the ground that they were disturbing public order. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act”.

10) In view of above observations, we have to first consider the crimes and the statements which are considered by the detaining authority are amount to disturbing the public order. The two offences which the detaining authority has considered are crime Nos. 703 of 2023 and 705 of 2023. Both the offences are on the spot of Chhatpuja. The offence in Crime No.703 of 2023 is occurred on 15.11.2023. Shubham Mukhiya is the complainant. He was going towards his house for Chhatpuja at Gadegaon. The petitioner along with his associates came in Nexon car and by blowing horn, he has given threats to the applicant, why he has not given him side and abused him. Therefore, he lodged the complaint and crime is registered for the offence punishable under Sections 341, 504, 506 of the Indian Penal Code. From the nature of offence it is clear that it does not create any situation of public order.

11) Another crime is dated 19.11.2023 (Crime No.705 of 2023). One Deepak was distributing the tea and biscuits to devotees at Kanhan river. He has given threats to him, why he is coming there and he is the *don* of said area. He told him that first

he tornd the tires of his car now he will tear him. He beat him with fighter.

12) The learned APP has stated that as he has used fighter which is normally used by the habitual offender and therefore, he is a dangerous person. After going through the First Information Report of this crime, it appears that it is the fight between individual and not creating any situation of public order.

13) Learned counsel appearing for the petitioner has heavily relied upon the judgment of *Nenavath Bujji etc Vs. State of Telangana and ors* reported in supra **particularly paragraph No. 31, the relevant portion of which is reproduced as under:-**

“31.....What has been alleged against the appellant detenu could be said to have raised the problems relating to law and order but we find it difficult to say that they impinged on public order. This Court has time and again, reiterated that in order to bring the activities of a person within the expression of “acting in any manner prejudicial to the maintenance of public order” the activities must be of such a nature that the ordinary laws cannot deal with them or prevent subversive activities affecting society. Inability on the part of the state’s police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention”.

14) The statements of confidential witnesses are also considered for passing of the detention order. The statements are though verified by the SDPO and the original copy of the statement shows that it is seen by the detaining authority but on perusal of the Xerox copy given to the petitioner, it appears that there is no signature of the detaining authority as seen, which clearly shows that the detaining authority has signed as 'seen' afterwords. Therefore, the question of subjective satisfaction of truthfulness of the statement is there. The statements also show that it creates law and order situation and it is between the individuals. Though it is mentioned that the gun is used in the said crime and the knife is used, the statements are not reliable as the authority has not seen it while passing the detention order. Though, the learned APP has stated that it is verified by the SDPO and the other officers is sufficient and if it is mentioned by the detaining authority he is subjectively satisfied on enquiring with the Officers, it is sufficient for subjective satisfaction of truthfulness of the said statement. Only on the report of Sub Divisional Officer the detaining authority has come to the conclusion that the statements are true

and justified. As the crime, which are considered can be controlled by the ordinary law. The cases are still pending for investigation. The subjective satisfaction of the truthfulness is not sufficient for detaining the petitioner. Hence, we pass the following order.

15) In the result, we find that this Writ Petition deserves to be allowed and it is allowed.

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

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

18) Rule is made absolute in aforesaid terms.

(MRS.VRUSHALI V. JOSHI, J)

(VINAY JOSHI, J)