



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

CRIMINAL WRIT PETITION NO. 362 OF 2024

Akshay S/o. Nagesh Patil,
Age 23 Yrs., Occu.- Labour,
R/o. At – Indira Nagar, Jattarodi No.1,
Near Gadling Kirana Stores, Nagpur,
Police Station – Imamwada, Dist. Nagpur. ... **PETITIONER**

...VERSUS...

1. State of Maharashtra
Through its Secretary,
Home Department, Mantralaya,
Mumbai – 32.
2. State of Maharashtra,
Through The Commissioner of Police,
Nagpur City, Tah. - Nagpur, Dist. -Nagpur.
3. State of Maharashtra,
Through the Assistant Commissioner
of Police, Zone-IV, Sakkardhara,
Nagpur, Dist.-Nagpur.
4. State of Maharashtra,
Through Police Inspector,
Police Station Imamwada, Dist.-Nagpur. ... **RESPONDENTS**

Mr. S. N. Nandeshwar, 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 : 14.08.2024
JUDGMENT PRONOUNCED ON : 27.08.2024.

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/detenué has preferred this petition questioning the preventive detention order passed against him on 16.02.2024 by respondent No.2 – Commissioner of Police, Nagpur. The said detention order has been passed in exercise of the powers 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 MPAD Act, 1981). The said detention order has been passed as the detenué is the dangerous person.

3. The learned Counsel for the petitioner challenges the impugned order which appears to have been confirmed by the State Government by order dated 16.02.2024. The order challenged is based on the non-application of mind and without adhering to the statutory procedure. The grounds of detention which have been given appeared to have been based on two offences namely Crime No.276/2023 for the offences punishable under Section 143, 144, 147, 148, 149, 504, 506-B of the Indian Penal Code and Crime No.608/2023 for the offences punishable under Sections 399 and 402 of the Indian Penal Code read with Sections 3 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act. The first offence does not come under chapter XVI and XVII of the Indian Penal Code on the basis of which, as per Section 2(b) of the MPDA Act, the detention order cannot be passed. The approval is not issued within twelve days. The approval

order is not communicated and it is also the ground of petitioner that the order must be forwarded within six weeks to the Advisory Board. The said compliance is not there. The detaining authority has also considered in-camera statements of two witnesses. It is submitted that detaining authority had not considered that in both the offences which are pending before the Court and the petitioner has been released on bail and the bail order appears to have not been produced before the detaining authority. The contents of the case would show at the most that there was law and order situation and not the public order was disturbed requiring the detention of the petitioner. Further there was no proper verification of in-camera statements by the detaining authority and only that it is seen and verified, but there is no remark that the verification has been properly done.

4. Mr. S. S. Doifode, learned A.P.P. vehemently opposed the contentions of the petitioner. He specifically marked that the detaining authority has considered the details of the bail orders and mentioned the same in the 9.1.5 and 9.2.4 in the detention order. With regards to the non-fulfillment of the subjective satisfaction the Counsel further placed reliance upon the judgment of the Hon'ble Supreme Court in ***Golam Hussain alias Gama Vs. Commissioner of Police, Calcutta and Ors. [(1974) 4 SCC 530]***, in which it was observed that the basic imperative of truth beyond reasonable doubt does not apply to subjective satisfaction component of imprisonment for reasons of internal security. Thus, discharge or want of any evidence or

witnesses not coming forward or grant of bail, would not impact the decision based on subjective satisfaction of the detaining authority for the purpose of issuing orders under Section 3 of the Act. Learned A.P.P. further states that the petitioner formed an unlawful assembly and attacked the house of the woman complainant with swords and wooden sticks in their hands, causing panic in the minds of the complainant and the people of the area and disturbing the public order. Hence, prayed to dismiss the petition.

5. The two offences are considered by the detaining authority, the learned Counsel for the petitioner stated that the first offence cannot be considered as per Section 2(b) of MPDA Act as it does not come under Chapter XVI and XVII of the Indian penal Code and Chapter V of the Indian Arms Act. On perusal of the contents of the First Information Report, it appears that one Jotsna Parchake has lodged the complaint against the petitioner. The petitioner along with other co-accused went to the house of the complainant with deadly weapons i.e. sword and wooden stick in search of the nephew of complainant Sunny, to assault him. Earlier the petitioner called on the mobile phone of Sunny and when his sister took the phone call, he asked her why Sunny came in his house at night and he will show by coming at his house with other persons, accordingly, the petitioner went there with the co-accused and he asked the complainant where is Sunny and showed the sword and told her that she should tell him whereabouts of Sunny, otherwise, he will kill her. They created terror in said area by

showing weapons. At that time, the petitioner and his associates heard the siren of police and they fled away. On the complaint, the crime is registered. In said offence, the sword and wooden sticks were seized. All the accused persons have obtained the anticipatory bail. This petitioner has also obtained the anticipatory bail in said crime.

6. The facts of the case is that if a person is roaming with sword in his hand in public, then *prima facie*, we can consider that it would raise public order and not only law and order situation though the offence does not come under Chapter XVI and XVII, the petitioner along with his friends went in the house of the complainant with intention to commit the offence and created terror in said area. It would raise public order and not only law and order situation.

7. In the second offence Crime No.608/2023, the crime is registered under Section 399 and 402 of the Indian Penal Code read with Sections 3 and 25 of the Arms Act. In this case, the information was received by the police about preparation of dacoity and the raid was conducted, the petitioner along with other co-accused found there in suspicious condition. They were in preparation of committing dacoity. They were conspiring near one Saoji Dhaba. When one of them was arrested, the pistol was found in his possession and all others fled away from the spot, but thereafter, they were arrested one by one and they confessed that they were under the preparation to commit dacoity. The chilly powder in a

plastic bag, one nylon rope, one magazine, pistol and one iron knife were seized from one of the accused in recovery panchanama during the custody. The accused was arrested and was released on bail on 05.10.2023. The order of the bail is considered while passing the detention order. The petitioner was in preparation of dacoity and weapons were seized.

8. The statements of witness 'A' and 'B' would show that the incident has taken place in public and said witnesses were threatened and assaulted by the petitioner in public. Witness 'A' has stated that in the third week of December, 2023 at night, the witness was returning from his work to home, he was standing near his bicycle and talking on phone, at that time, the petitioner asked him with whom he is talking and when he told him that he is talking with his brother-in-law, the co-accused shouted at him loudly and asked him why he was talking in a loud manner whether he is not knowing them. When the witness asked him not to abuse then he slapped him for three to four times and beat him with fist blows and kick. When passers-by gathered there, he snatched the mobile of the witness and threw it. When the people gathered there, he took out the gupti from his pocket and showing it to the crowd, he asked them to go away from there otherwise, he will kill them. Because of loud noise and terror caused people ran away from there. At that time two-three people fell down as they ran away helter – skelter. Nearby hawkers went away from there. Nobody helped him by seeing the knife in his hand. The petitioner forcibly took

Rs.825/- from his pocket. The petitioner has given threat not to inform police, otherwise, he will kill him.

9. Another witness 'B' has stated that the incident took place in third week of December, 2023 when he was returning from his work, while he was going from railway line towards Hanuan Mandir besides his home, the petitioner was standing there with his associate. The witness was ill and having cough, when the witness spit on the roadside, the petitioner asked him why he spit by seeing him and he abused him. At that time, witness told him that he is not well. The petitioner punched and kicked him for two-three times. He whipped out a big knife and pointed it on the stomach of witness and forcibly took out Rs.530/- from the pocket of the witness. When he scream for help, the passers-by gathered there. When one of them asked him not to beat a poor person, the petitioner loudly shouted at him saying that not to become a smart and not to teach him. The petitioner asked the people gathered there to go and do their own work otherwise he will see each of them. The people ran away from there. At that time, he gave threats not to lodge the complaint against him in Police Station. The witnesses have given the statement only after giving assurance that their names will not be disclosed and will not be called for giving evidence. The crimes which are considered and the statements in which the witnesses have narrated these facts would certainly show that it is the public order that was disturbed. The petitioner has come with the case that the

statements of witnesses are not properly verified. If we consider that statements of those witnesses were taken and they were verified and the verification has been categorically stated by the detaining authority that is sufficient compliance.

10. The learned Counsel for the petitioner has relied on the judgment of this Court in *Sanjay Vs. The Commissioner of Police, Nagpur City and Ors. [Criminal Writ Petition No.2335/2021]* in support of his argument that in the statements, the names, incidents, place of incident, and date of incident were not mentioned. In said judgment, this Court has held that it is expected that the detaining authority should disclose the date and place of the incident so as to enable the detainee to make an effective representation and reply to the statements of those witnesses. The petitioner has made representation which was considered by the Advisory Board and he appeared before the Advisory Board, opportunity was given to him.

11. The petitioner has also relied on the judgment of this Court in *Mujib Vs. District Magistrate Aurangabad and Ors [Criminal Writ Petition No.221/2023]* in support of his argument that in absence of concrete record to demonstrate that impugned order of detention in petitioner's case was placed before Advisory Board within three weeks from date of impugned detention. There is a fundamental breach of provision of Section 10 of MPDA Act which goes to root of legality of order.

12. In the case of *Shaikh Husain @ Shahrukh Shaikh Fatru Vs. State of Maharashtra [2023 DGLS 1318]* wherein it has observed that the detaining authority must record its subjective satisfaction that the statements of witnesses were genuine and that it had interacted with Assistant Commissioner of Police to verify such a statement. Here said satisfaction has been arrived at. In support of his argument he has also relied on the judgment of *Mohammad Arbaz @ Sanu S/o. Mohammad Israil @ Manja Ansari Vs. State of Maharashtra and Ors. [Criminal Writ Petition No.347/2023]* decided on 17.01.2024 to which one of us was party (Mrs. Vrushali V. Joshi, J) which is also on similar line as to what ought to have been considered and what has not been considered, especially in respect of subjective satisfaction. Similarly, in *Shahjahan Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra & Anr. [2016 ALL MR (Cri) 4233]*, this Court observed that there is no reference to the two in-camera statements that they were either seen or the facts stated therein being ascertained by the Commissioner of Police. However, we observe that those observations made taking into consideration the facts of each case.

13. Though as per contention of the petitioner, first crime cannot be considered for passing the detention order and relying only on the second crime, the detention order cannot be passed. The learned A.P.P. has relied on the judgment of *Ramesh Balu Chavan Vs. The Commissioner of Police & Ors. [2017 ALL MR (Cri) 3683]*, wherein it is held as under :

“Thus, even if it is assumed that the ground relating to C.R. No. 276/2017 is not relevant for issuing the detention order under the MPDA Act or is invalid for some reason, the same can be severed in view of Section 5A of the MPDA Act. This would mean that the detention order is based on the remaining four grounds. These 4 grounds, in our opinion, are sufficient for the detaining authority to reach his subjective satisfaction that it was necessary to detain the detenu under the provisions of MPDA Act as he is a 'bootlegger'.”

14. Further he has relied on the judgment of *Jafar Ahmed Alias Jafar Fantoosh Mohamad Razzak Khan Vs. M. N. Singh and Others [2002 Cri. L. J. 1723]* wherein it is observed that in view of provisions contained in Section 5-A of MPDA Act on the mere failure of the grounds pertaining to one crime the detention order would not be vitiated.

15. The reliance is also placed on the judgment of this Court in *Badal S/o. Manoj Sahare Vs. State of Maharashtra & Ors. [2024 ALL MR (Cri) 102]*.

16. We do not have any doubt that the detenu could have been categorized as a dangerous person under Section 2(b-a) of the MPDA Act because the said provision provides that if a person either singly or as a member or leader of gang, habitually commits offences punishable under Chapter XVI of the Indian Penal Code, he could be dangerous person thereunder. In the instant case, the petitioner is brandished the dagger and threatened the crowd, due to which crowd dispersed. The petitioner was roaming with deadly weapon. He was under the preparation of committing

dacoity. The in-camera statements show that he has created a terror in public. Since both the statements show that he was habitually committing the offences of extortion, he could have been detained as a dangerous persons on the basis of the said in-camera statements.

17. As aforesaid subjective satisfactions has been arrived at on the basis of two offences as well as two in-camera statements, we do not find that this is to be a fit case where we should exercise our constitutional power to set aside the detention order. We may also refer to the opinion that has been given by the Advisory Board and the said opinion is made available to us which shows that the petitioner was heard through video conferencing. The detention order has been confirmed taking into consideration the opinion of the Advisory Board as contemplated under law and, therefore, we pass the following order.

18. The Criminal Writ Petition is dismissed.

19. Rule stands discharged.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)