



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

CRIMINAL WRIT PETITION NO.405 OF 2024

Rohit @ Mari @ Kawdya Namdev
Chandekar Aged about 28 years,
Occup.Labour, R/o Near Ayachit Mandir
bus Stop, Nawabpura,Nagpur.

Petitioner

-Versus-

1. State of Maharashtra, through its Secretary,
Home Department (Special) Mantralaya,
Mumbai.
2. Commissioner of Police, Nagpur.

Respondents

Mr.M.N.Ali, Advocate for the petitioner.
Mr.S.S.Doifode, APP for respondent Nos.1 and 2.

**CORAM : NITIN W.SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.**

Date of decision:- 26/11/2024

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

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

2. The petitioner is challenging the order passed by the detaining authority dated 04.03.2024 under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords,

Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the MPDA Act) whereby a detention order is passed against the petitioner.

3. The learned counsel appearing for the petitioner has taken us through the impugned order and the material which were before the authorities at the time of passing of the impugned order. He submits that though certain cases were registered against the petitioner, three cases were considered for passing the detention order. First offence was registered with Lakadganj Police Station in Crime No. 614 of 2023 for offence punishable under Section 324 r/w 34 of the Indian Penal Code. Two offences bearing C.R.No.446 of 2024 for offence punishable under Sections 326, 294, 506-B, 452, 427 r/w 34 of the Indian Penal Code r/w 4/25 of the Arms Act, and another offence being Crime No.2 of 2024 for offence punishable under Section 326,323 and 506 of the Indian Penal Code are registered at Kotwali Police Station. All the three offences are pending before the concerned Court.

4. It is further claimed that the impugned detention order came to be passed on 04.03.2024 therefore, there was no

live-link between them. If we consider the First Information Report in the first offence, the First Information Report show that the incident had taken place inside the house that means the incident was not in public so as to threaten the public at large. Both the offences are against an individual. The first offence is registered by the same family as there was an allegation of eve teasing by the complainant. Another complaint is also filed by the same family member. It was a private dispute, the victims were individuals and therefore, no public was affected in both the matters. The third offence arose out of family dispute between the brothers, wherein, detenue assaulted his elder brother out of property dispute and therefore, that incident also cannot said to be disturbing to the public at large.

5. Further, the petitioner was released on bail under the orders of the Court and therefore, it will have to be held that there was no subjective satisfaction of the authority to pass the detention order. It appears that the statements are verified belatedly. The statement was recorded on 02/02/2024 and it was verified on 8.02.2024 by Dy.S.P. The detaining authority has only put a

remark as seen on 04/03/2024. The record does not show that the detaining authority had personally verified the contents of the in-camera statements by calling those witnesses.

6. The petitioner has relied upon the judgment of this Court in the case of *Deepak Dattu Suryawanshi Vs. Commissioner of Police and others* reported in **2016 DGLS(Bom.)1001** in support of his argument that the detaining authority has not at all recorded the subjective satisfaction about truthfulness in regard to the incidents narrated in the in-camera statements. It is also observed in the said judgment that the District Magistrate before passing the order of detention had other material before him. It cannot be said to what extent the District Magistrate was influenced by the other materials and not by the material which is mentioned in the grounds of detention. Thus, the order of detention suffers from a very serious infirmity which goes to the root of the matter.

7. In the matter of *Parvez Khan @ Bunty Lala Shammi Khan (Criminal Writ Petition No. 203 of 2024)* decided on 09.05.2024 and in the case of *Mustakmiya Jabbarmiya Shaikh Vs.*

M.M. Mehta, Commissioner of Police reported in **1995 DGLS(SC) 389** this Court has observed about the distinction between the disturbance of law and the order and the disturbance of public order. Reliance is also placed upon *Sheikh Adil Sheikh Israil.Vs.State of Maharashtra (Criminal Writ Petition No.800 of 2023) decided on 08.03.2024*, wherein it is observed that the detaining authority has not recorded its satisfaction to the effect that he has not considered the in-camera statements more particularly that truthfulness of the incidents which is a mandatory requirement of law. Further reliance is placed on the case of *Niyazuddin @ Sonu Sirajuddin Ansar Vs. State of Maharashtra* reported in **2014(2) Bom.C.R.(Cri.)826** and on the case of *Jakir @ Jakira Hussain Vs. State of Maharashtra (Criminal Writ Petition No.587 of 2023) decided on 14/02/2024 in support of his argument that, if there is delay in passing the order of detention then the order of detention will vitiate.*

8. He has also argued that the detention order cannot be passed only on the basis of statements of in-camera witnesses. So as to support his contention, reliance is placed on *Osama*

Mohd.Rafique Patka Vs. State of Maharashtra and anr. (**Criminal Writ Petition No. 64 of 2024**) decided on **10/07/2024** and the guidelines set in the matter of detention, in *Navanath Bujji etc. Vs. State of Telangana and others*, reported in **2024 SCC OnLine SC 367**. In view of the order suffering from illegality he has submitted to set aside the order passed by the detaining authority.

9. Per contra, the learned APP has strongly supported the action taken against the petitioner. He has submitted that the petitioner is habitual to commit the offence against human body. Though, a preventive action against him was taken, however, the petitioner has breached the terms and conditions of the said bond by committing three offences, which show that the petitioner does not want to improve himself rather he is continuing with his acts which can be seen from the in-camera statements. The in-camera statements clearly show that both the incidents occurred in public. It is a case of extortion and after seeing the crowd gathered, the petitioner took out a knife from his waist and by showing it to the people, he threatened them, which proves that the petitioner moves around with a sharp weapon and he has no fear for law. All these

factors were taken into consideration by the detaining authority to arrive at subjective satisfaction.

10. He further submits that there is absolutely no delay in passing of the impugned orders. The last in-camera statement was recorded on 02/02/2024. The Kotwali Police Station, Nagpur initiated the proposal for detention of the detainee on 05/02/2024 under the MPDA, 1981 (Amendment of 2015) and the same was submitted to the Assistant Commissioner of Police, Kotwali Division. The Assistant Commissioner of Police, Kotwali Division verified the in-camera statements of witness "A" and "B" on 05/02/2024 and recommended the proposal to the Dy. Commissioner of Police, Zone-III, Nagpur on 08/02/2024. The Dy. Commissioner of Police, Zone-III, Nagpur verified the in-camera statement and after scrutinizing, recommended it to the Addl. Commissioner of Police, North Region, Nagpur on 09/02/2024. The Addl. Commissioner of Police, North Region, Nagpur City on 09/02/2024 forwarded it to the Commissioner of Police, Nagpur i.e. the Detaining Authority and on 10/02/2024, it was received in the Detention Cell, Crime Branch, Nagpur. On

22/02/2024, the Detention Cell, Crime Branch, Nagpur initiated the proposal to the Detaining Authority i.e. Commissioner of Police, Nagpur. It is submitted that the Detaining Authority prima facie found, that it was a fit case for detention under MPDA and directed the office of the Detention Cell, Crime Branch, Nagpur to prepare compilation, translation, fair typing and comply with other requirements of law. The Detention Cell, Crime Branch, Nagpur complied with these directions and on 22/02/2024 the draft of grounds of detention were forwarded to the Deputy Commissioner of Police (Detection) Crime Branch, Nagpur City who went through the draft of grounds of detention and other relevant documents and gave his endorsement on 23/02/2024 which were then forwarded to the Addl. Commissioner of Police (Crime), Nagpur City who went through the draft of grounds of detention and other relevant documents and gave his endorsement on 23/02/2024 which were then forwarded to the Joint Commissioner of Police, Nagpur City. The Joint Commissioner of Police, Nagpur went through the draft of grounds of detention and other relevant documents gave her endorsement on 26/02/2024 before forwarding to the Detaining Authority. The Detaining Authority

carefully went through the grounds of detention and other relevant documents and after being subjectively satisfied, passed the detention order and on the same day, i.e. 04/03/2024, the detainee was detained. Hence, there is no delay in passing of the detention order and there is a direct link between the prejudicial activities of detainee, and passing of the detention order by the Detaining Authority, after due application of mind. The detention order is legal and proper and therefore needs to be maintained. Hence, prayed to dismiss the writ petition.

11. From the detention order passed by the respondent No.2, it is to be noted that for the purpose of passing the detention order, three offences were considered as aforesaid. It is not in dispute that in all the three cases, the petitioner has been released on bail. The detaining authority had considered the bail orders passed by the Sessions Court in respect of all the offences. In first two offences, it appears that the same arises out of enmity between the two families and out of which the complaints are lodged and the incident occurred inside the house. The question therefore arises as to how those offences can be considered to assess the

behaviour of the petitioner as detrimental to the public.

12. The third offence is between two brothers. It is a family dispute. The in-camera statement of the witness 'A' and 'B' though taken as it is, would certainly show that people had gathered at the spot, but the detention order cannot be passed only on the basis of statements of the in-camera witnesses. We therefore, agree to the submissions on behalf of the petitioner based on the decision in *Khaja Bilal Ahmed Vs. State of Telangana and others* reported in **2020(13) SCC 632** and **Ameena Begum Vs. State of Telangana and ors.** reported in **2023(9) SCC 587** wherein Dr.Ram Manohar LohiaVs. State of Bihar and others reported in 1966 SCR (1) 709 was considered, that those offences which are now pending before the Court would have at the most raised law and order situation but they are not detrimental to the maintenance of the public order.

13. The breach of terms of bond is also one of the point that has been raised. If already further action in pursuant to the said preventive action has been taken thereby penalising the petitioner by asking him to deposit the bond amount for whatever period, we

are of the opinion that the petitioner cannot be in any way punished twice by imposing the detention order against him. We therefore, arrive at a conclusion that there was no subjective satisfaction arrived at by the detaining authority before passing the impugned order.

14. Taking into consideration the dates on record, in-camera statements, the same being verified by different authorities and the detaining authority, there is absolutely no gap, which can be termed as delay. The time will not start to run from the date of the last offence that was registered. For considering the delay we will have to consider the time between the date of last offence and the in-camera statements verified by the superior Police Officers and detaining authority. Even though there is no delay, we do not find that there was any material before the detaining authority to detain the petitioner therefore, the confirmation of the said detention order by the State cannot be upheld.

15. In the result, we find that this Writ Petition deserves to be allowed and it is allowed in terms of its prayer clause (i).

16. The order of detention dated 04/03/2024 passed by the detaining authority is hereby quashed and set aside.

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

Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J) (NITIN W. SAMBRE, J.)