



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

CRIMINAL WRIT PETITION NO.424 OF 2024

Gajanan Kashinath Kamble, Aged 49
years, R/o Panchashil Nagar, Washim,
Bypass Road, Old City, akola.

Petitioner

-Versus-

1. The State of Maharashtra, through
Section Officer of the Home Department
(Special), Second Floor, Main Building,
Mantralaya, Mumbai.
2. Collector and District Magistrate, Akola
Office of the Collector and district Magis-
trate, dist.Akola.

Respondents

Shri Sangram Vikas Sirpurkar, counsel for the Petitioner.
Ms.S.S.Jachak, APP for Respondent Nos.1 and 2.

CORAM : VINAY JOSHI AND

MRS.VRUSHALI V. JOSHI, JJ.

Date of Reserving the judgment:- 27/09/2024

Date of Pronouncing the judgment:- 04/10/2024

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 challenge in this Writ Petition is to the impugned detention order dated 26.02.2024 and confirmation order dated 05.03.2024 detaining the petitioner preventively in terms of Section 12(1) of the Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Person, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (for short MPDA).

4) Heard the learned counsel appearing for the petitioner and the learned APP for the State.

5) The learned counsel appearing for the petitioner challenges the impugned order, which appears to have been confirmed by the State Government by an order dated 05.03.2024 on the ground that the impugned order passed by the detaining authority on 26.02.2024 is based on the non-application of mind. The irrelevant material supplied and considered by the detaining authority. The grounds of detention, which have been given appeared to have been based on two crimes: Crime No.465 of 2023 for the offence punishable under Section 327, 324, 294, 506 r/w 34 of the Indian Penal Code and Crime No.447 of 2023 for

the offences punishable under Sections 324, 323, 427, 504 and 504 r/w 34 of the Indian Penal Code. The detaining authority has also considered the in-camera statements of two witnesses. Both the offences are still under investigation. The petitioner was on anticipatory bail in one offence and in another offence, the notice under Section 41-A was given. The Police have not arrested him in second offence but it is not considered by the authority. There was no proper verification of in-camera statements by the detaining authority. It is seen and verified but there is no remark that the verification has been properly done. There is delay in passing the detention order from the date of last crime. Therefore, the detention order is illegal and deserves to be set aside.

6) Per contra, the learned Additional Public Prosecutor submitted that the well reasoned order has been passed while authorising the detention of the petitioner. The petitioner was involved in both the offences. Even preventive action was taken against him from time to time. When he was externed, during that period he has committed second offence. Further, in-camera statements would show that in both the incidents, threats were

given in public. This is nothing but an act to establish supremacy by creating terror in the mind of people at large, so that the petitioner can continue his illegal activities. Hence prayed to reject the Writ Petition.

7) Two crimes are considered by the authority for passing the detention order. According to the learned counsel for the petitioner, there is non-application of mind and irrelevant material is supplied and considered by the detaining authority.

8) In Crime No.465 of 2023, the offence under Section 327,324,294, 506 r/w 34 of the Indian Penal Code was registered. The offence is committed on 09.12.2023. The complainant is Mohd. Imran Sheikh Rasul. It is alleged that when he was at Washim Road, Akola with Firoz, the petitioner came there with his two associates and by abusing him asked him in filthy language why he had not attended his birthday. When the complainant asked him why he is abusing him, the petitioner and his associates beat him and asked him to pay the expenses of his birthday function. The petitioner and his companions beat him with

wooden log and rafter and they threw the soil in his eyes. Thereafter, he has made the complaint and the crime is registered.

9) On perusal of the grounds for detention, it appears that the detaining authority has considered the bail order passed by the Sessions Court, Akola on 12.12.2023. On perusal of the said bail order it appears that the detaining authority has considered the bail order of the another accused while passing the detention order of this petitioner. At page No.180 of the grounds of detention, the bail order is attached of dated 12.12.2023. The regular bail was granted to the co-accused and it was considered by the detaining authority. The petitioner was granted anticipatory bail in said offence as the compromise took place between the complainant and the petitioner. Said order is also placed on record, but it is not considered therefore, the submissions made by the learned counsel for the petitioner have substance that the irrelevant material is considered by the authority and mechanically, the order is passed.

10) In another offence, as the punishment was within seven years, the notice was issued and the offence is under the investigation. The learned counsel for the petitioner has relied on

the judgment of this Court as well as Hon'ble Supreme Court in support of his argument, which are follows:-

1. Tanvir Shaha Alim Shaha .V. State of Maharashtra (Cri.W.P.No.118 of 2024 (Bombay High Court Nagpur Bench.)
2. Kasam Kalu Nimsurwale .V. State of Maharashtra Cri. W.P.No.269 of 2022 (Bombay High Court, Nagpur Bench)
3. Elizabeth Ranibhai Prabhuds Gaikwad .Vs. State of Maharashtra 2021 SCC Online Bom.206.
4. Hanif @ Illu Hafiz Ansari .V.State of Maharashtra Cri. W.P.No.546 of 2023 (Bombay High Court, Nagpur Bench.
5. Osama Mohd. Rafique Patka .V. State of Maharashtra Cri. W.P.No.64 of 2024 (Bombay High Court, Nagpur Bench).
6. Bhikan Buddhu Naurangabadi .V. State of Maharashtra Cri.W.P. No.476 of 2021 (Bombay High Court, Nagpur Bench).
7. Paras Ramprasad Sahu V. State of Maharashtra 2003(3) Mh.L.J.24.
8. Rushikesh Tanaji Bhoite Vs. State of Maharashtra 2012 (2) SCC 72.
9. Indragoal Debaji Ramchawre V.State of Maharashtra Cri. W.P.No.477 of 2021 (Bombay High Court, Nagpur, Bench).

10. Latabai w/o Ganpat Kale .V. State of Maharashtra
Cri. W.P.No.417 of 2024 (Bombay High Court,
Nagpur, Bench).
11. Mohd. Mubarak s/o Mohad. Umar Vs.State of
Maharashtra 2001 SCC OnLine BOM 439.
12. Vasudeo Mahadev Surve V. State of Maharashtra
Cri. W.P.No.592 of 2021 (Bombay High Court,
Nagpur,Bench).

11) The learned APP has made a submission that the accused has committed the another offence, when the externment order was operating against him. The petition filed by the petitioner challenging the said order is withdrawn as the externment period was over.

12) If one of the grounds raised by the petitioner about delay in passing the detention order is considered, there is absolute no much gap which can be termed as delay. The time will not start to run from the date of last offence that was registered. For considering the delay we will have to consider the time till last offence, then the in-camera statement verification by Superior Police Officer and also by detaining authority. The statement was recorded on 20.02.2024 for the incident of December 2023. There is no date under the signature of the authorities singed and

verifying the statements. Considering the time period started from the date of recording of statement, there is no delay in passing the detention order. As the detaining authority has mechanically passed the order without considering the bail order of this petitioner, the order passed by the detaining authority stands vitiated.

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

14) The detention orders dated 05.03.2024 and 26.02.2024 passed by the respondents is quashed and set aside.

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

16) Rule is made absolute in aforesaid terms.

(MRS.VRUSHALI V. JOSHI, J)

(VINAY JOSHI, J)