



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

CRIMINAL WRIT PETITION NO. 430 OF 2024

Swapnil Ashok Kale,
Age 22 years, Occ. Labour,
R/o. Shivaji Nagar, Karanja,
Tq. Karanja, Dist. - Washim.

... **PETITIONER**

...**VERSUS**...

1. The State of Maharashtra,
Home Department (Special),
Through its Section Officer, Second Floor,
Main Building, Mantralaya, Mumbai – 32.
2. The District Magistrate, Washim,
Dist. - Washim.
3. The Superintendent,
Central Jail, Nagpur, Dist. - Nagpur.
4. The Police Inspector,
Karanja City Police Station,
Tq.- Karanja, Dist. - Washim.

... **RESPONDENTS**

Mr. Sagar Rawate, Advocate with Mr. P. S. Thakur, Advocate for
petitioner.

Mr. A. R. Chutke, A.P.P. for respondents/State.

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

JUDGMENT RESERVED ON : 09.08.2024

JUDGMENT PRONOUNCED ON : 21.08.2024.

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. By way of this petition, the petitioner is challenging the order passed by the respondent No.1 on 26.10.2023 by virtue of which the petitioner is detained under Section 12(1) 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).

3. In the copy of documents of proposal at Annexure- 3 filed by Police Station Officer, Karanja Lad, Dist. Washim, there are a total of six offences, out of which, two recent crimes have been taken into account for passing the detention order.

4. In Crime Nos. 278/23, under Sections 143, 147, 148, 149, 302, 307, 323, 506, 107, 109 of the Indian Penal Code, arrest has been made by the Investigating Officer in which, the present detainee was accused No. 7 and was arrested on 28.05.2023.

5. In another offence, i.e., Crime No. 479/23, as the punishment is under seven years, the concerned police issued a notice to the detainee under Section 41(1)(a) of the Code of Criminal Procedure.

6. The main grounds urged by the learned Counsel for the petitioner in the petition and during the arguments are as under :

a) Non-communication of the grounds of detention to the petitioner. The order and the documents were received on 8.02.2024 and the impugned order was confirmed on 26.10.2023. That, the representation could not be filed.

b) That the order of detention was passed by the learned authority after a delay of more than two months having no live link and thus vitiating the said detention order.

7. Shri Rawate, learned Counsel for the petitioner submitted that, the in-camera statements recorded do not indicate the time as to when they were recorded. He further submitted that the police authorities took signature of the petitioner on the detention order but the copy was not supplied.

8. In reply to the petition, the respondent No.2 has filed an affidavit in reply dated 22.07.2024. Learned APP for the respondents argued that, the respondent No.2 passed the detention order on 05.09.2023. The detention order, the committal order and grounds of detention and the other relevant documents were duly served on petitioner on 05.09.2023 and 06.09.2023. It is further submitted that the communication dated 16.10.2023 regarding the date of hearing before Advisory Board was communicated to the petitioner by Superintendent, Washim District Prison, Washim.

9. The criminal activities of the petitioner continued in Karanja and Manora locality as a dangerous person, which were prejudicial to the maintenance of public order.

10. The petitioner has raised the ground that he has not received the documents and the grounds of detention along with the order. On perusal of the original papers, it reveals that the entire bunch of documents along with the order of detention are received by the detainee on 05.09.2023, therefore, there is no substance in this ground.

11. Two grounds which are raised by the petitioner along with other grounds that there is no subjective satisfaction as the offences which are considered by the detaining authority and the statements of the confidential witnesses does not create any public order situation. The another ground is that though the petitioner was on bail, the bail orders were not placed before the authority and it was not considered at the time of passing the detention order, hence, the detention order is vitiated. The ground for which the petitioner has challenged the order of detention, the two crimes are considered. In first Crime No.278/2023, the offences under Sections 143, 147, 148, 149, 302, 307, 323, 506, 107, 109 of the Indian Penal Code are registered. It is the case of murder. One Pravin Malghane and his friends committed the murder of the brother of his wife and injured the other persons, who came to give him understanding not to harass his sister. The First Information Report does not disclose the name of this applicant,

his present was not there. The allegations against this applicant is that he helped the accused to flee away and, therefore, the crime is registered against him and the charge-sheet is filed against him. He was immediately released on bail but his bail order was not placed before the authority and, therefore, the authority has not considered the reasons given by the trial court while granting the bail.

12. The learned Counsel for the applicant has relied on the judgment of the Hon'ble Apex Court in the case of ***Abdul Sattar Ibrahim Manik Vs. Union of India, AIR 1991 SC 2261*** held that :

“In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should be supplied to the detenu”.

That the above mentioned judgment has been followed by this Court in the case of ***Elizabryh Gaikwad Vs. The State of Maharashtra (Criminal Writ Petition No.677/2020)***, ***Manoj Trivedi Vs. The State of Maharashtra (Criminal Writ Petition No.470/2006)*** and recently on 27.10.2021 in the case of ***Indragol Ramchawre Vs. The State of Maharashtra (Criminal Writ Petition No.477/2021)***.

13. The another offence is Crime No.479/2023 for the offences punishable under Sections 4 and 25 of the Arms Act. The petitioner was wondering with a knife near the petrol pump. On receiving the information, complainant - head constable went there and apprehended him and released him on notice under Section 41(1)(a) of the Code of Criminal Procedure. On perusal of the First Information Report it reveals that there is no any statement of any witness that the public at large was under fear because of his wondering with weapon.

14. The two statements on which the detaining authority has relied. The witness 'A' has stated that when he was waiting for his friend in April 2023 in front of Bus Stand, the petitioner came there and he tried to put the motorcycle on his person. He was frightened and was standing at the side. At that time, without any reason he abused him in the filthy language and, thereafter, he gave him threats by putting the dagger to his neck. As the petitioner has given threat, he has not lodged the complaint. The witness 'B' has also narrated about the personality of the petitioner according to witness "A". He has stated that the accused extorted money for consuming liquor and abused him by showing dagger not to inform about him to police. Both the incidents are of April and March. The order is passed in September. On perusal of both the crimes and the statements, it does not appear that the situation of disturbing the public order was there.

15. While considering whether it is situation of breach of public order or law and order, the Hon'ble Apex Court in the case of ***Ameena Begum Vs. The State of Telangana & Ors [Arising out of SLP (Criminal) No.8510/2023]*** has held in para Nos.31, 32 and 34 which read as under :

“31. It is trite that breach of law in all cases does not lead to public disorder. In a catena of judgments, this Court has in clear terms noted the difference between "law and order" and "public order.”

*32. We may refer to the decision of the Constitution Bench of this Court in **Ram Manohar Lohia vs. State of Bihar [(1966) 1 SCR 709]**, where the difference between “law and order” and “public order” was lucidly expressed by Hon’ble M. Hidayatullah, J. (as the Chief Justice then was) in the following words:*

*“54. *** Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to*

disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.

55. It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

*34. In **Kuso Sah vs. The State of Bihar** [(1974) 1 SCC 195], Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that:*

*"4. *** The two concepts have well defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ****

*6. *** The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to*

ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised. ***”

16. In view of above said observations, the offence which are considered for detention, does not come under the purview of public order. The bail orders are not placed before the detaining authority.

17. Considering the above said observations, the subjective satisfaction about truthfulness of the statements made by the confidential witnesses is not there and as the public order does not affect by the crimes which are considered in the detention order, the order is required to be set aside.

18. The writ petition is allowed.

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

20. Rule is made absolute in aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)