



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

CRIMINAL WRIT PETITION NO. 508 OF 2024

Shubham Keval Kotangale,
Aged – 24 years,
Occupation – Property Dealer,
R/o. Bezonbagh, Ambedkar Nagar,
Near Gurunanak School, Nagpur.
(Presently in Aurangabad Jail)

... **PETITIONER**

...**VERSUS**...

1. The State of Maharashtra
Through its Secretary,
Home Department, Mantralaya,
Mumbai.

2. Commissioner of Police,
Nagpur.

... **RESPONDENTS**

Mr. Rizwan Ali, Advocate for petitioner.
Mr. A. B. Badar, A.P.P. for respondents/State.

CORAM : **NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.**
DATE : **25.11.2024.**

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 challenges his detention order dated 08.03.2024 passed by the respondent No.2 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 (hereinafter referred to as 'MPDA Act, 1981').

3. Heard Mr. Rizwan Ali, learned Counsel for the petitioner and Mr. A. B. Badar, learned A.P.P. for the respondents.

4. The learned Counsel for the petitioner challenges the impugned order which appears to have been confirmed by the State Government by order dated 08.05.2024 on the ground that the impugned order passed by the Detaining Authority is based on non-application of mind and without adhering to the statutory procedure. The grounds of detention which have been based on two offences; namely, Crime No.717/2023 registered with Police Station, Jaripatka on 07.09.2023 against the petitioner for the offences punishable under Sections 307, 143, 144, 148, 149, 342, 504, 506 and 212 of the Indian Penal Code and under Section 135 of the Maharashtra Police Act and another Crime No.03/2024 registered with Police Station, Jaripatka on 01.01.2024 for the offences punishable under Sections 4 and 25 of the Arms Act read with Section 135 of the Maharashtra Police Act. The Detaining Authority has also considered the in-camera statements of two witnesses. It is submitted that the Detaining Authority has not considered that in both the offences which are still pending before the Trial Court, the petitioner has been released on bail. The contents of the case would show at the most that there was law and order situation and not that the public order was disturbed which required

the detention of the petitioner. Further, there was no proper verification of the in-camera statements by the Detaining Authority and that only it is seen and verified, but there is no remark that the verification has been done properly. The last crime was allegedly said to have been committed on 01.01.2024 and the detention order has been passed on 08.03.2024. There is delay of more than 61 days in passing the detention order. Therefore, there was no live link and a belated order has been passed. Therefore, the detention order is illegal and deserves to be set aside.

5. Per contra, learned Additional Public Prosecutor has submitted that a well reasoned order has been passed while authorizing detention of the petitioner. The petitioner was involved in the offences against human body. Even the preventive action was taken against him from time to time, but he has not curtailed his activities. If we consider the offence vide Crime No.717/2023, it can be seen that the offence is under Sections 307, 143, 144, 148, 149, 342, 504, 506 and 212 of the Indian Penal Code and under Section 135 of the Maharashtra Police Act. The said incident had taken place in a public place by the use of knife which has been used when the petitioner stabbed on the chest of the informant's husband. Further, in camera statements would show that in both the incidents threats were given in a public place. This is nothing but an act to establish supremacy by creating terror in the mind of public at large so that the petitioner can continue his illegal activities. There is neither a delay in passing the

detention order nor there is illegality committed by the authority. Therefore, petition deserves to be dismissed.

6. It is to be noted from the impugned detention order that one offence registered against the petitioner is under Section 307 and various other Sections of the Indian Penal Code, and the second one is under the Arms Act.

7. The learned Counsel for the petitioner has stated that though the offence under Section 4 read with Section 25 of the Arms Act is registered against the petitioner on receiving information that he was roaming with a knife near Gurunanak School, however he was not found there. The police persons went to his house and they took him from the house and at that time, the knife was recovered. According to the raiding party, it was recovered from the back pocket of his pant. As his arrest was not from a public place, the learned Counsel for the petitioner has stated that this offence cannot be considered as in view of the maintenance of public order. Even if the said offence is not considered for passing the order, an another offence which is punishable under Section 307 of the Indian Penal Code is considered by the Detaining Authority. In the said offence, the petitioner has assaulted the injured with a knife. He was also accompanied by his other friends. Due to enmity, he had stabbed the husband of the first informant with knife on his chest. When the people from the area gathered there, he gave threats to all of them. The learned

A.P.P. placed reliance on the judgment of this Court in the case of ***Jafar Ahmed Alias Jafar Fantoosh Mohamad Razzak Khan Vs. M. N. Singh and Ors.*** reported in ***2002 Cri L. J. 1723*** wherein it is held as under :

“12. For the aforesaid reasons, in view of the provisions contained in S. 5-A of the M.P.D.A. Act, on the mere failure of the ground pertaining to C.R. No. 102/01 the detention order would not be vitiated.”

In view of the aforesaid observations, the detention order can be passed by considering the first offence.

8. The statements of witness ‘A’ and ‘B’ would show that the incident has taken place in public and the said witnesses were threatened and assaulted by the petitioner in public. Therefore, these incidents and facts would certainly show that it is the public order that was disturbed.

9. The statements of those witnesses were taken and they were verified and after verification, the Detaining Authority has categorically stated that it is a sufficient compliance. The learned Counsel for the petitioner has relied on the judgment of this Court in the case of ***Vijaya Raju Gupta Vs. R. H. Mendonca and Ors.*** reported in ***2001(1) Mh.L.J. 449*** to support his contention that the detention order made on the basis of in-camera statements, the Detaining Authority must be satisfied about the truthfulness of the statements. Mere verification of statements in absence of any contemporaneous documents or material is not sufficient.

10. It is the contention of the petitioner that second offence in which he is found in possession of a weapon is not sufficient. He has placed reliance on the judgment of this Court in the case of ***Jay @ Nunya Rajesh Bhosale Vs. The Commissioner of Police, Pune and Ors.*** reported in ***2015 All MR (Cri) 4437*** in support of his argument that merely being in possession of a weapon is not sufficient to cause disturbance of public order.

11. In both the offences, the petitioner was released on bail. When one Authority is releasing him on bail, the other Authority cannot detain him for the same offence. The petitioner has placed reliance on the judgment of this Court in the case of ***Ratnamala Mukund Balkhande Vs. State of Maharashtra and Anr. [Criminal Writ Petition No.820/2021]*** wherein the Court has relied on the judgment of the ***Hon'ble Apex Court in the case of Abdul Sattar Ibrahim Manik Vs. Union of India and Others,*** reported in ***AIR 1991 SC 2261*** wherein it is observed as under :

“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 vital ground for ordering detention.”

12. The Authority after considering the material before him has passed the order of detention and the Advisory Board has also confirmed it. Therefore, there is no substance in the argument raised by the petitioner.

13. The next ground which the petitioner has raised is of delay in passing the order by the Detaining Authority from the date of last crime and on recording of statements. According to the petitioner, there is delay of 61 days. The statements are recorded on 10.01.2024 and detention order is passed on 08.03.2024.

14. The learned A.P.P. has filed the reply on record and the respondent No.2 has explained the delay in detail. The last in-camera statement of witness "B" was recorded on 10.01.2024. Jaripatka Police Station, Nagpur initiated the proposal for detention of the detenu on 19.01.2024 under the MPDA, 1981 (Amendment of 2015) and the same was submitted to the Assistant Commissioner of Police, Jaripatka Division. The Assistant Commissioner of Police, Jaripatka Division verified the in-camera statements of witness "A" and "B" on 22.01.2024 after verifying and conversing with the witnesses, recommended the proposal to the Dy. Commissioner of Police, Zone-5, Nagpur on 22.01.2024. The Dy. Commissioner of Police, Zone-5, Nagpur verified the in-camera statement and after scrutinizing, recommended it to the Addl. Commissioner of Police, North Region, Nagpur on 24.01.2024. The Addl. Commissioner of Police, North Region, Nagpur City on 27.01.2024 forwarded it to the Commissioner of Police, Nagpur i.e. the Detaining Authority and on 29.01.2024, it was received in the Detention Cell, Crime Branch, Nagpur. After scrutiny of documents, on 15.02.2024, 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 15.02.2024, 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 18.02.2024 which were then forwarded to the Additional Commissioner of Police (Crime), Nagpur City. The Additional Commissioner of Police (Crime), Nagpur City went through the draft of grounds of detention and other relevant documents and gave his endorsement on 19.02.2024 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 and gave her endorsement on 20.02.2024 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 on 08.03.2024 and, the detenu was detained.

15. On perusal of the aforesaid dates and events it appears that the

in-camera statements were recorded when the petitioner was not on bail. The affidavit explains in detail about the steps taken on various dates for the verification of the in-camera statements. The explanation in the said paragraph is satisfactory. There is nothing in the submission made on behalf of the petitioner that there is delay on the issuance of the detention order.

16. As aforesaid subjective satisfaction has been arrived at on the basis of one offence (without considering second offence) as well as two in-camera statements, we do not find that this is a fit case where we should exercise our constitutional power to set aside the detention order. 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.

17. The Criminal Writ Petition is dismissed.

18. Rule stands discharged.

19. Pending application(s), if any, stand(s) disposed of accordingly.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)