



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

CRIMINAL WRIT PETITION NO. 558 OF 2024

Sheikh Hussain @ Shahrukh Sheikh Fatru,
Aged about 27 years, Occ- Labour,
R/o Rajendraprasad Ward, Umarkhed,
Dist. Yavatmal.

... **PETITIONER**

...**VERSUS**...

1. State of Maharashtra,
Through its Secretary, Home Department
(Special) Mantralaya, Mumbai.

2. District Collector, Yavatmal.

... **RESPONDENTS**

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

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

JUDGMENT RESERVED ON : 14.12.2024

JUDGMENT PRONOUNCED ON : 20.12.2024

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 27.03.2024 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. M. N. Ali, learned Counsel for the petitioner and Mr. A. B. Badar, learned A.P.P. for the respondents/State.

4. The learned Counsel for the petitioner challenges the impugned order dated 27.03.2024 passed against the petitioner. The grounds of detention which have been given, appears to have been based on two offences and two in-camera statements. The offences namely, Crime No.598/2023 registered with Police Station, Umarkhed on 21.09.2023 against the petitioner for the offences punishable under Sections 326, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code and another Crime No.811/2023 registered with Police Station, Umarkhed on 21.12.2023 for the offences punishable under Sections 4 and 25 of the Arms 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 under investigation, the petitioner has been released on bail and the bail order appears to have been not produced before the Detaining Authority. The contents of the case would show at the most that there was a 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 is even not seen by the Detaining Authority. The last crime was allegedly committed on 21.12.2023 and the detention order has been passed on

27.03.2024. There is a delay which has not been properly explained. 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 many offences out of which, two of them pending for investigation have been considered. Even 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.598/2023, it appears that when the complainant along with his friend came in front of Chandles's shop in Khadakpura Chowk on a motorcycle, the petitioner along with his two friends came in front of the motorcycle without any reason and after stopping the motorcycle, the petitioner i.e. Sheikh Shahrukh assaulted him on his head twice with knife and also stabbed him in the stomach with a knife. The other two persons knocked the complainant down and beat him with kick and blows. On the complaint of the complainant, the crime was registered.

6. Another offence is of roaming with sword in public. When the police persons were on a patrolling duty at Churmura Fata along with the complainant, they received an information from the Police Station, Umarkhed that the petitioner is carrying sharp weapon with intent to disturb public peace at Mahagaon Road Bypass Umarkhed. When the

complainant and accompanying police staff along with two panchas went there, they found that the petitioner was roaming with sword, which was seized by the police in the presence of panchas. This indicate that he wanted to create terror among public at large. In the earlier offence a knife was used and it was stabbed in the stomach of the informant. Further in-camera statements would show that in both the incidents, the witnesses have stated about nuisance created by the petitioner in creating communal riots and used sharp weapon for giving threats so as to prevent them from informing about his illegal activities to police. This is nothing but an act to establish supremacy by creating terror in the minds of public at large so that the petitioner can continue his illegal activities.

7. The offence, in view of punishment being less than seven years, the petitioner was intimated that he is required to be present in the Court at the time of submission of the chrg-sheet. 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.

8. The statements of witnesses '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. The same characteristics of the petitioner is mentioned by both the witnesses that he has created communal riots. Therefore, these incidents and facts would certainly show that it is the public order that was disturbed.

9. The petitioner has come with the story that earlier the petitioner was detained and he was discharged by the Court, which was not considered. The Authority has considered the offences which were placed before it and the confidential statements, it found that the activities of the petitioner are dangerous to public at large.

10. Learned Counsel for the petitioner has relied on *Khaja Bilal Ahmed Vs. State of Telangana and others [2019 DGLS (SC) 1677]* to support his contention that the District Magistrate before passing the order of detention had other material also before him, it cannot be said to what extent the District Magistrate was influenced by 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. We do not find that while passing the order of detention, the Authority has considered the extraneous material.

11. The petitioner has also relied on the judgment of *Deepak Dattu Suryawanshi Vs. Commissioner of Police and Ors. [2016 DGLS (Bom.) 1001]* wherein it is observed that the Detaining Authority has not at all recorded a subjective satisfaction that the incidents narrated in the in-camera statements were truthful. He has also relied on the judgment of *Khailesh Pancham Salame Vs. State of Maharashtra and Anr. [Criminal Writ Petition No.834/2023]* so as to substantiate that there was non application of mind and the Detaining Authority was influenced by the entire material

placed before him. He has also placed reliance on *Mustakmiya Jabbarmiya Shaikh Vs. M. M. Mehta, Commissioner of Police [1995 DGLS (SC) 389]*, wherein the distinction between disturbance to law and order and the disturbance to “public order” is observed. It is also observed in *Arjun s/o. Ratan Gaikwad Vs. The State of Maharashtra and Ors.*

12. For delay in passing the order he has relied on the judgments in the cases of *Prakash Chandra Yadav Vs. The State of Jharkhand and Ors. [Civil Appeal No.4324/2023]* and *Niyazuddin @ Sonu Sirajuddin Ansari Vs. State of Maharashtra [2014 (2) Bom. C.R.(Cri.) 826]*. In *Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Ors. [2012(2) AIR Bom R 67]*, it was held that remoteness of the offence and want of proximity are the grounds for setting aside the detention order. However, we observe that those observations are made taking into consideration the facts of each case.

13. As discussed aforesaid, we are of the view that subjective satisfaction has been arrived at on the basis of one 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. 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.

14. The Criminal Writ Petition is dismissed.
15. Rule stands discharged.
16. Pending application(s), if any, stand(s) disposed of accordingly.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)