



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

CRIMINAL WRIT PETITION NO.564 OF 2024

Dhiraj Prakash Beriyekar,
aged about 36 years, Occup.Labour
R/o Sant Ravidas Ward,
Tiroda, Dist.Gondia.

Petitioner

-Versus-

1. State of Maharashtra, through its Home
Department (Special), Mantralaya,
Mumbai-32
2. The District Collector, Gondia.

Respondents

Mr.Mir Nagman Ali, Advocate for the petitioner.
Mr.M.K.Pathan, APP for respondent Nos.1 and 2.

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

Date of Decision:- 19/12/2024.

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

Heard. **Rule.** Rule 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 Respondent No.2, 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) dated 12.04.2024 and confirmed on 07.06.2024 by the Respondent No.1.

3. The learned Advocate appearing for the petitioner has taken us through the impugned orders and material which were before the authorities at the time of passing of the impugned orders. He submits that though, certain cases were registered against the petitioner, only one case is considered for passing the detention order. For passing the impugned order, following material were considered i.e. Crime No.1 of 2024, for the offence punishable under Section 460,394,427 of the Indian Penal Code r/w Section 4 and 25 of the Arms Act and the two statements of the confidential witnesses. The case is pending before the trial Court. The offence is registered on 01/01/2024.

4. The learned counsel appearing for the petitioner has stated that the offence, which is considered for passing the detention order was committed on 01.01.2024 and the order of detention was passed on 12/04/2024. There is a delay in passing

the detention order and therefore, there is no live-link between the detention order and the crime committed by the detenue. If we consider the First Information Report of the offence, it shows that it occurred at Tiroda district Gondia at Taj traders at about 3.30 a.m. The petitioner along with two other persons entered the office of Taj Traders and threatened them not to step forward and after breaking glass of the vehicles, which were parked outside, took the amount of Rs.52,000/- from the vehicles. He also hit the driver and took Rs.8,000/- from his pocket. On the next day, the complainant, who is the Diwanji of Taj Traders lodged the complaint and the petitioner was arrested.

5. On perusal of the grounds of detention, it appears that one offence is considered, but whether the petitioner was on bail is not even mentioned and no bail order is placed on record. There is no subjective satisfaction of the authority to pass the detention order. Two in-camera statements are mentioned but the masked copy of the in-camera statements are not provided to the petitioner. The gist of the statements is mentioned in the grounds, from which it cannot be ascertained whether it is verified by the authority. Statement of witnesses 'A' and 'B' are of general nature. Nothing is

specifically mentioned against the petitioner by witness 'B'. The quarrel took place because the witnesses asked the petitioner to close the liquor shop due to nasty smell of the alcohol as the same causes inconvenience to the people. In return, he gave threats and quarreled with him by abusing them in filthy language. In both the statements same allegations are made against the petitioner.

6. The petitioner has placed reliance on the decision of *Khaja Bilal Ahmed Vs.State of Telangana and ors. reported in 2019 DGLS (SC)1677* in support of his argument, that the earlier offences and First Information Reports in the said offences as well as the bail orders of earlier offences are placed before the detaining authority which influenced the mind of the authority. It is observed by the Hon'ble Apex Court in paragraph No.17 as under:-

“17. The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order

of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. See *G. Reddeiah V.State of A.P* [*G.Reddeiah V. State of A.P.*, (2012) 2 SCC 389 : (2012) 1 SCC (Cri) 881] and *P.U. Iqbal v. Union of India* [*P.U.Iqbal V.Union of India*, (1992) 1 SCC 434; 1992 SCC (Cri)184].

7. He has also placed reliance upon the judgment of this Court in the case of *Deepak Dattu Suryawanshi Vs Commissioner of Police and others*, reported in **2017(1) Mh.L.J,(Cri.)201**. The same deals with the arrival of the subjective satisfaction about the incidents narrated in the in-camera statements. While pointing out the distinction between law and order and the disturbance to public order, the petitioner has relied on the judgment of *Bharat Kisan Mekale Vs. Commissioner of Police and others* reported in **2021 DGLS (Bom.)1243** and *Rushikesh Tanaji Bhoite Vs. State of Maharashtra and ors.* reported in **2012 ALL SCR 1373**. There is delay in lodging the First Information Report. He has relied on the judgment of *Sheikh Husain @ Shahrukh Sheikh Fatru Vs. State of Maharashtra* (**Criminal Writ Petition No.873 of 2022**) decided on

21/04/2023 and lastly relied on the judgment in the case of *Osama Mohd. Rafique Patka Vs. State of Maharashtra and anr*, (**Criminal Writ Petition No.64 of 2024**) **decided on 10/07/2024**, wherein the guidelines in *Nevanath Bhujji etc Vs.State of Telangana and ors.* reported in **2024 SCC Online SC 367** are given.

8. On the contrary, the learned Assistant Public Prosecutor has strongly supported the action taken by the detaining authority. He submits that the petitioner is habitual to commit offences against the human body. Though the preventive action is taken against him, the petitioner has breached the terms and conditions of the said action. It shows that the petitioner does not want to improve himself rather, he is continuing with the acts which could be seen from the in-camera statements. The petitioner has stated that statements of the confidential witnesses are not provided to the petitioner. However, there is no provision to provide the said statements, which are sealed so as to maintain confidentiality and therefore, there is no substance in the contention of the petitioner about non supply of the said statements. The crime which he has committed and the weapons, which he has used proves that the petitioner moves around with

sharp weapon and he has no fear of law. All these factors were taken into consideration by the detaining authority and the subjective satisfaction was arrived at.

9. He further submits that there is no delay in passing the impugned order from the date when the in-camera statements were recorded. The statement of witness 'B' refers to the incident of January-February 2024 committed by the petitioner and the order is passed on 12/04/2024. Thus, there is hardly any delay in passing the detention order.

10. The learned Assistant Public Prosecutor relied on the judgment of *Magar Pansingh Pimple Vs. State of Maharashtra and anr.* reported in **2006 ALL MR (Cri.) 491** in support of his argument that the delay is not of such magnitude that the same can vitiate the detention order itself. The time gaps cannot be termed as delay.

11. We have carefully gone through the detention order passed by the respondent No.2. It is to be noted that one offence is considered for passing the detention order. The authority has not considered in the grounds of detention, whether the petitioner was

on bail in this case. The bail order is not placed on record. Earlier offences are also considered by the detaining authority while passing the detention order and the First Information Report and the bail orders of earlier offences are placed on record. The petitioner has rightly relied on the judgment of *Khajia Bilal Ahmed* (supra), wherein it is observed that if other material is placed on record and considered by the authority, which influenced the mind of the authority thus, the order of detention suffers from various infirmities.

12. On perusal of the statements of the confidential witnesses 'A' and 'B' would certainly show that the detention order cannot be passed only on the basis of the statements in which the general statement about the character and nuisance created because of the liquor shop of the petitioner is stated. Therefore, we agree with the submissions on behalf of the petitioner based on the decision in *Khaja Bilal Ahmed* (supra) and *Amina Begum Vs. State of Telengana and others reported in 2023 (9) SCC 587*, wherein *Dr. Ram Manohar Lohiya Vs. State of Bihar and others, reported in 1996 SCR (1) 709* was considered that those offences which are now pending before the Court would have at the most raise law and

order situation but not the question of maintenance of public order. As the extraneous material was placed before the authority and the material which is necessary for preparing the representation before the authority, is not supplied to the petitioner, we are of the opinion that there was no subjective satisfaction arrived at by the detaining authority before passing the impugned order.

13. Subjective satisfaction is one of the basic requirement for passing the order of detention. It can be arrived at on the basis of various facts involved in the matter. Each fact will have to be considered independently as well as its effect together with other evidences, that has been brought on record. The other offences which are mentioned in ground of detention though the authority has stated that the said offences are not considered and can be taken as background or past conduct they *per se* will not give live link. The statements whether verified by the authority cannot be ascertained by the petitioner as no masked copies were supplied to the petitioner. Therefore, when the statements were recorded and verified cannot be ascertained from the gist given in the grounds of the detention. The crime on which the authority has relied on is dated 01/01/2024 and the order was passed on 12/04/2024.

Though in reply, respondent No.2 has tried to explain the delay by stating that the incident mentioned in the statement is of the month of January or February. In the reply also, it is not mentioned when the statements were recorded as the statements were not available to produce before the Court, therefore, there is delay in passing the detention order.

14. For the aforesaid reasons, the Writ Petition deserves to be allowed and it is accordingly allowed in terms of prayer clause (i) and (ii). The petitioner be released forthwith, if not required in any other case.

15. Rule is made absolute in the aforesaid terms.

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