



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

CRIMINAL WRIT PETITION NO. 1621 OF 2024

Jogindersingh Ranjitsingh Chavan
Age : 25 years, Occ : Labour,
R/o Railway Station Road, Shikalkari Vasti,
Basmat, Tq. Basmat, Dist. Hingoli, Maharashtra

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through Hon'ble Secretary,
Home Department (Special),
Mantralaya, Mumbai.
2. The Collector and District Magistrate of Hingoli,
Dist. Hingoli, Maharashtra.

..RESPONDENTS

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Advocate for the petitioner : Mr. Shaikh Faiyazuddin
APP for Respondent- State : Mrs. P.R. Bharaswadkar

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**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATED : 9th JANUARY, 2025.

JUDGMENT (PER ROHIT W. JOSHI, J.) :

. The petitioner has filed the present petition under Article 226 of the Constitution of India, in order to challenge the order of preventive detention dated 27.05.2024 issued by Respondent No.2 in exercise of powers under Section 3(1) and (2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders/ Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act,

1981 (Hereinafter referred to as “MPDA” for the purpose of brevity).

The said order is approved vide order dated 05.06.2024 passed by Respondent No.1 under Section 3(3), which is also impugned in the petition. The petitioner has been placed under preventive detention on the ground that he is a “dangerous person” within the meaning of Section 2(b-1) of MPDA. The grounds of detention dated 27.05.2024 have been communicated to the petitioner on the date of his detention. The detaining authority has referred to 15 offences registered against the petitioner from 11.08.2022 till 05.05.2024. Apart from this, one externment proceeding under Section 55 of the Maharashtra Police Act is also referred to. As per the grounds of detention, the detaining authority has taken into consideration last two offences registered against the petitioner, viz :- (I) F.I.R. No.82/2024 dated 09.02.2024, for the offences punishable under Sections 353, 332, 212, 189, 504 read with Section 34 of the Indian Penal Code and Section 4/25 of the Arms Act and Section 142 of the Maharashtra Police Act and (ii) F.I.R. No.250/2024 dated 05.05.2024 for the offences punishable under Section 142 of the Maharashtra Police Act and Section 4/25 of the Arms Act. It is stated that during the course of confidential enquiry, the Police Inspector, Police Station, Vasmat City has recorded in-camera statements of two witnesses, who have agreed for recording their statements on condition of anonymity.

2. The Advisory Board has expressed opinion after considering the representation of the petitioner that there are sufficient grounds for continuing preventive detention of the petitioner.

3. Shri Shaikh Faiyazuddin, learned counsel for the petitioner submits that the two offences, which are stated to be taken into consideration by the detaining authority are not relating to breach of public order. He states that at the best the said offences can be said to be relating to law and order and by no stretch of imagination it can be said that public order has been adversely affected due to the same. He points out that with respect to the offence registered vide F.I.R. No.250/2024, the Police has merely issued a notice under Section 41A(1) of the Code of Criminal Procedure and has not arrested him. He contends that the Police Authority itself has not considered the said offence to be a serious offence. With respect to the second offence registered vide F.I.R. No.82/2024, he states that he was arrested in relation to the said offence on 05.05.2024 and subsequently released on bail on 10.05.2024. He contends that taking the averments in the said F.I.R. on its face value at best Section 4/25 of the Arms Act and Section 142 of the Maharashtra Police Act can be attributed to him. The other sections are not attributable to him. He criticizes the order of preventive detention on the ground that for alleged breach of the

externment order passed under Section 55 of the Maharashtra Police Act, prosecution under Section 142 of the said Act is already initiated against him. He would go on to submit that when recourse can be and in fact has been taken to ordinary law in order to meet the situation, Respondent No.2 could not resort to shortcut method by passing order of prevention detention. With respect to the offence under Arms Act, he states that the detention order does not refer to any notification under the said Act and as such, the offence under the said Act is not made out. Apart from this, he states that the order refers to 15 offences in all and although it is stated that only the aforesaid two offences have been taken into consideration, in fact all 15 offences have been considered by the detaining authority. He states that since stale offences have been taken into consideration. The order stands vitiated on the ground that irrelevant considerations have weighed with detaining authority while passing the impugned order of preventive detention.

4. Per contra, Smt. P.R. Bharaswadkar, learned APP has strenuously argued that the petitioner has become a threat to the society at large, he has willfully violated the order of externment passed against him on more than one occasion, crime is his sole source of income and as such he is threat to public law and order. She states that although the detaining authority has made a reference to offences

registered against the petitioner, the said references are only for the purpose of understanding his background. She states that only two offences, which are in proximity, have been taken into consideration effectively for passing the order of preventive detention. She points out from the F.I.R. that on both occasions when the petitioner was apprehended while he has entered Vasmat City limits in breach of externment order, he was found possessing a knife. She made elaborate reference to the offence registered vide Crime No. 82/2024 to contend that the petitioner and his family members had even threatened the police authorities while they had been to his house for apprehending him on learning that he had entered city limits in defiance to externment order. She further states that the petitioner is a history-sheeter. Victims and witnesses of crime committed by him do not feel safe to depose against him or even to speak about his criminal activities due to fear. She contends that having regard to totality of circumstances, it was found essential to curtail his liberty by placing him under preventive detention. She buttresses the submissions by pointing out that even orders of externment did not deter him from entering city limit with deadly weapons. She also states that all the procedural safeguards like confirmation of order by the State Government, reference to Advisory Board, opportunity of hearing by the Advisory Board and a final order by the State Government upon

considering positive report by the Advisory Board have been followed in the present matter. She sums of the submissions urging that the petition be dismissed.

5. At the outset we state that although subjective satisfaction for preventive detention is arrived at on the basis of two offences, viz:- Crime No.82/2024 and Crime No.250/2024, we find upon perusal of grounds of detention that in fact all the 15 offences registered against the petitioner have been taken into consideration by respondent No.2. There is a specific reference to all the offences in paragraph 4.3. Respondent No.2 has observed by making a reference to the said 15 offences that complainants in the said 15 cases were belonging to different caste, religion, occupations and different age group and different accomplices were involved with the petitioner in the said offences. The offences were committed within the jurisdiction of different Police Stations. Two offences are punishable with sentence of over 7 years and deadly weapons like iron sickle, sword, iron pipe and wood stick were used while committing the offence. It is thus clear that all 15 offences have been taken into consideration while passing the impugned order of detention. The order of detention is dated 27.05.2024, respondent No.2 has referred to 13 offences registered from 11th August, 2022 to 2nd September, 2023. These offences are not

in proximity of time. It is apparent that old and stale offences have been taken into consideration while arriving at subjective satisfaction to place the petitioner in preventive detention. Since irrelevant material has weighed with Respondent No.2 while passing order of preventive detention, the subjective satisfaction stands vitiated.

6. As regards the two offences, which according to Respondent No.2 have been actually taken into consideration, the first offence was registered on 09.02.2024, vide Crime No.82/2024. The offence is registered under Sections 353, 332, 212, 189, 504 read with Section 34 of the IPC, section 4/25 of the Arms Act and Section 142 of the Maharashtra Police Act. Perusal of the F.I.R. in Crime No.82/2024 demonstrates that the informant is Police person posted at Vasmat City Police Station. He states that a secret informer revealed to him that the petitioner had entered the limits of Vasmat city in breach of the externment order and was present at his house. This information was received while he was on patrolling duty along with Police Inspector and other police personnel. He states that on gathering this information, the Police Party reached the house of the petitioner. On noticing the Police Party, the petitioner jumped out of a window in the house and climbed the tin shed of his house with a view to flee from the spot. He states that the Police Party had apprehended him and

while he and Police Inspector were taking him in Police Van, his father took out a knife and threatened them. His father and brother created a ruckus and terror at the spot. They along with mother of the petitioner had indulged in a scuffle with the police personnel and could be controlled only when the appropriate force was used against them. As regards this offence, the contents of the F.I.R. will demonstrate that offence under Section 142 of the Maharashtra Police Act and sections 189 and 504 of the IPC were committed by the petitioner, in as much as, he had breached the externment order. The offence under Section 353 i.e. assault or use of criminal force to deter public servant from discharging his duty, Section 332 i.e. voluntarily causing hurt to deter public servant from performing his duty and Section 212 i.e. harbouring an offender are attributable to the other accused persons, viz:- parents and brother of the petitioner. The offence under the Arms Act is also attributable to Ranjitsingh, father of the petitioner and not to the petitioner. A perusal of F.I.R. will further demonstrate that it is not even alleged that incident had occurred in front of people at large or that it had caused any terror or fear amongst the people, who were allegedly present. The said offence at best can be said to be law and order issue and not public order issue.

7. Crime No.250/2024 came to be registered on 05.05.2024

for the offences under Section 142 of the Maharashtra Police Act and Section 4/25 of the Arms Act. The informant is Assistant Police Inspector at Police Station, Vasmat City. He states that on 05.05.2024, while conducting all out operation with other police persons, he was patrolling in different areas in Vasmat City, he received secret information that the petitioner had breached the externment order and was roaming within the city limits with a knife. He states that at around 1:30 a.m., the Police Party reached the house of the petitioner and on seeing the Police Party, he was trying to flee from house. He was then apprehended with a knife which was concealed in his shirt.

8. As regards both these offences, the first thing is to be noticed is that reasons recorded by the detaining authority as also F.I.Rs do not mention that the Central Government has issued notification in the official gazette as contemplated under Section 4 of the Arms Act prohibiting acquisition, possessing and carrying of arms with respect to Vasmat city or District Hingoli at the relevant time. Section 25 of the Arms Act provides for punishment for various offences under the said Act including breach of any of the provisions of the said Act. In the absence of any prohibitory notification as contemplated by Section 4, offence under Section 4/25 of the Arms Act does not appear to have been committed. This is a prima facie opinion expressed only for the

purpose of the present matter. In any case, we find that while applying his mind to the material provided to him for arriving at subjective satisfaction, Respondent No.2 – detaining authority ought to have verified as to whether the provisions of the Acts under which offences were registered were prima facie attracted or not. It is apparent that respondent No.2 has not done so. Non-application of mind is, therefore, writ large on the face of reasons for detention recorded by Respondent No.2.

9. As regards offence under Section 142 of the Maharashtra Police Act, the allegation against the petitioner is that an externment order was passed against him and he had visited Vasmat city from where he was externed while the said order was in operation. Breach of the order of externment is an offence under Section 142 of the said Act. We are of the considered opinion that when a situation i.e. breach of externment order has been suitably addressed by taking recourse to regular law under statutory provisions i.e. the Maharashtra Police Act, action of preventive detention was completely unwarranted.

10. Perusal of two F.I.Rs. will demonstrate that the said offences gave rise to law and order problem and not public order problem. There is marked distinction between law and order and public order.

11. Distinction between the terms “law and order” and “public order” has been explained by the Hon’ble Supreme Court in various judgments from time to time. The Hon’ble Supreme Court has in the matter of ***Ram Manohar Lohia Vs. State of Bihar*** reported ***AIR 1960 SC 633*** held that in contravention of law always affects order, however, before it can be said to affect “public order”, it must be shown that it affects the community or public at large. The Hon’ble Supreme Court has categorized offences into three parts, viz:- (i) “law and order”, (ii) “public order” and “security of the State”. In the words of the Hon’ble Supreme Court these three categories of offences are like concentric circles, largest being law and order, next being public order and smallest being security of the State. Therefore, every offence which may affect law and order will not affect public order. Just as an act might affect public order may not affect security of the State. Therefore, in every case of preventive detention, the Court must carefully examine as to whether the offence/s stated to be committed by the detainee fall/s within the category of law and order or public order. The order of preventive detention can be justified only if the offence falls under later category and not the previous one. Similar distinction has been made in the matters of ***Pushkar Mukherjee Vs. State of West Bengal*** reported in ***(1969) 1 SCC 10***, ***Shyamlal Chakraborty Vs. Commissioner of Police***,

Culcutta reported (1970) 1 SCR 762 and *State of Uttar Pradesh Vs. Sanjai Pratap Gupta* reported in (2004) 8 SCC 591. In the matters of *Ram Manohar Lohia (supra)* and *Sanjay Gupta (supra)*, the Hon'ble Supreme Court has held that an offence can be said to affect public order only if it affects the community or general public at large. It is stated that the action must be such that it disturbs even tempo of life of the community at large. The Hon'ble Supreme Court has explained by giving illustrations that act of theft, vandalism and even murder are examples of mere breach of law and order whereas acts such as communal riots, caste clashes etc., are offences affecting public order. The said principles laid down by the Hon'ble Supreme Court from time to time have been reiterated recent in the matter of *Nenavath Bujji etc Vs. State of Telangana* reported in *AIR 2024 SC 1610* and held that the distinction between law and order and public order is one of degree and extent of the reach of the act in question in the society at large. An offence can be said to affect public order adversely only if it is of such nature as to disturb the normal tempo of life of members of community at large. If the offence affects a few individuals only then it will be a law and order issue and not public order issue. Even if the offences committed in public view it can not be said that it affects public order adversely, unless it directly affect the tempo of life of general public. The Hon'ble Supreme Court while dealing with *pari materia* provisions

for the State of Telangana held that in order to term a person as “gunda” which is same as a dangerous person under MPDA, he must be in the habit of adversely affecting public order or creating public order situation. An habitual offender, who creates law and order problem will, therefore, not be an habitual offender/dangerous person for the purpose of laws relating to preventive detention.

12. Respondent No.2 has also relied on two in-camera statements. In-camera statement dated 18.05.2024 marked as “A” refers to an attempt to commit theft in house of the witness. This obviously was not an attempt to commit offence adversely affecting public order. Likewise the statement marked “B” stated to be recorded on 17.05.2024 also indicates that the petitioner had committed theft of billy goat and was carrying the same on his motorcycle and on being asked about the same, he misbehaved with the said witness and went away leaving the billy goats at the spot. Apart from these specific allegations both statements made general allegations without referring to any particular incident. Both these statements do not remotely indicate that the petitioner has caused any public order problem.

13. For the reasons aforesaid, we are of the opinion that the petition deserves to be allowed. Hence, we pass the following order:-

ORDER

- I) The Writ Petition stands allowed.
- II) The detention order dated 27.05.2024 bearing No.2024 DC-1/KAVI-255/2024/1697 passed by respondent No.2 as well as the approval order dated 05.06.2024 and the confirmation order dated 30.08.2024 passed by respondent No.1 stand quashed and set aside.
- III) Petitioner - Jogindersingh Ranjitsingh Chavan shall be released forthwith, if not required in any other offence.
- IV) Rule is made absolute in the above terms.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/