



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

CRIMINAL WRIT PETITION NO.106/2025

Shailesh Dnyaneshwar Kedar,
Age 38 Years, Occupation Business,
R/o. Shashikant Ambekar, Ghar No.444,
W-28, C.A Road, Mozakar Wada, Itwari High
School, Itwari, Nagpur-440 002
(In Yerwada Central Prison, Pune).

... Petitioner

- Versus -

1. The State of Maharashtra,
through its Principal Secretary,
Ministry of Home Affairs,
Mantralaya, Mumbai-32.

2. The Commissioner of Police,
Nagpur.

... Respondents

Mr. Shavez Hamdard Mansoori, Advocate for the petitioner.
Mr. H.D. Marathe, A.P.P. for respondent Nos.1 and 2.

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

DATE OF RESERVING THE JUDGMENT: 4.4.2025.

DATE OF PRONOUNCING THE JUDGMENT: 23.4.2025.

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

Rule. Rule made returnable forthwith. Heard finally
with the consent of learned Advocates for the parties.

2. Through this writ petition, the petitioner, who is declared as a 'dangerous person' by respondent No.2 vide order dated 17.10.2024 which was further confirmed by respondent No.1 on 25.10.2024 under the provisions 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 (for short "M.P.D.A. Act") is seeking to quash and set aside the said order.

3. In order to detain the present petitioner, the detaining authority has placed reliance on the following two offences:-

(a) Crime No.346/2024 registered on 1.6.2024 under Sections 323, 504 and 387 read with Section 34 of the Indian Penal Code and Section 39 of the Maharashtra Money Lending (Regulation) Act.

(b) N.C. No.508/2024 registered on 29.7.2024 under Sections 115 and 352 of the Bhartiya Nyaya Sanhita.

4. Following grounds have been raised by the petitioner in order to question the legality of the detention order:-

(i) Two in-camera statements which have been relied upon by the detaining authority are vague, unverified and lack independent corroboration. Hence, such statements cannot form a basis for preventive detention.

(ii) Respondent No.1 approved the petitioner's detention on 25.10.2024, although a bare perusal of the approval order would show that no explanation has been rendered while approving the order of detention of the petitioner which shows that the authority has exercised his powers merely as an empty formality and passed the detention order.

5. The learned Advocate for the petitioner, Mr. Mansoori contends that a bare perusal of Crime No.346/2024 would reveal that the crime pertains to disturbance of 'law and order' and not 'public order' which do not call for the detention of the detenu. It is further contended that the alleged incident did

not take place in public and it did not extend beyond an individual dispute which never disrupted the public order. Hence, the subjective satisfaction arrived at by the detaining authority stands vitiated. The learned Advocate for the petitioner has placed reliance on the decision in the case of Kanu Biswas Vs. The State of West Bengal reported in (1972) 3 SCC 831 in which the Hon'ble Apex Court held that "mere disturbance of law does not necessarily lead to a disturbance of public order. Only those acts that disturb the even tempo of the life of the community as a whole, amount to a breach of public order".

6. It is further contended by the learned Advocate for the petitioner that the last crime against the detenu was registered on 01.06.2024 and the N.C. was registered on 29.07.2024, whereas the detention order came to be passed on 17.10.2024, amounting to a delay of about 138 days and 80 days respectively and that too without any explanation for the said delay. Hence, the live link between the alleged prejudicial activities of the

petitioner and the date of passing of the detention order is snapped. It is further argued that such an unexplained delay undermines the very object of the detention and severs the live and proximate link required for invoking preventive detention. Hence, this shows complete non-application of mind on the part of the detaining authority.

7. It is further argued by the learned Advocate for the petitioner that it was alleged that the petitioner continued his criminal activities despite being released on bail, which created terror in the minds of the people and disturbed the even tempo of life of the people living in that area. It is argued that if the allegations were true, then the detaining authority must have approached the competent Court for the cancellation of bail, which was not done at all.

8. The learned A.P.P. for the respondents has filed his affidavit-in-reply denying the contentions made by the petitioner

and supporting the order of detention. The learned A.P.P would contend that the activities committed by the petitioner were in a public place, with people present, which has caused terror in the minds of the people, this would mean that the detenu has caused disturbance of public order. It is further submitted that the detaining authority in no way has erred in arriving at the conclusion to detain the petitioner as he is a habitual offender against whom eight serious offences have been registered and looking to his past criminal antecedents, there is an apprehension of the disturbance of public order if his criminal activities are not curtailed. It was also submitted that mere cancellation of bail would in no way be sufficient to curb the activities of the detenu which is likely to affect the public order.

9. It is further argued that in-camera statements of confidential witnesses 'A' and 'B' were produced before the Assistant Commissioner of Police, Lakadganj Division, Nagpur, who personally interacted with the witnesses and verified the

truthfulness and genuineness of the in-camera statements. The detaining authority personally had a dialogue with the Assistant Commissioner of Police, Lakadganj Division, Nagpur and the Deputy Commissioner of Police, Zone 3, Nagpur City and had satisfied itself about the truthfulness of the statements made by the confidential witnesses.

10. On perusal of the detention order it appears that the detenu is detained as a dangerous person. The recent offence within six months i.e. Crime No.346/2024 for the offence punishable under Sections 323, 504 and 387 read with Section 34 of the Indian Penal Code along with one N.C. Report for the offence punishable under Sections 115 and 352 of the Bhartiya Nyaya Sanhita and two statements of confidential witnesses are taken into consideration by the detaining authority while passing the detention order.

11. The requirement for passing the detention order is to verify whether the offence which the petitioner has committed

has disturbed the public order. If it disturbs the law and order and not the public order, then the ordinary law is sufficient to take care of the crime committed by the detenu. On perusal of the nature of the crimes which are considered for passing the detention order i.e. Crime No.346/2024 is registered for the offence punishable under Sections 323, 504 and 387 read with Section 34 of the Indian Penal Code and Section 39 of the Maharashtra Money Lending (Regulation) Act. The complainant had borrowed the money from the petitioner though it is alleged that he has paid the amount along with interest, the petitioner beat him for repayment of the said amount and, therefore, the offence is registered. From the nature of the offence it appears that it is against an individual and it is about money lending transaction between the parties. The offence under the provisions of the Maharashtra Money Lending (Regulation) Act is also registered against the petitioner. From the contents of said crime, it appears that it does not affect the public order. The ordinary law is sufficient to take care of it. Another offence is N.C.

registered on 29.7.2024 for the offence punishable under Sections 115 and 352 of the Bhartiya Nyaya Sanhita against the petitioner on the complaint lodged by the complainant. The statements which are considered by the detaining authority relate to extortion of money from the complainants. As the crimes which are considered to pass the detention order are not sufficient to come to the conclusion that it affects the public order, only on the basis of the two confidential statements which are identical in nature and are about extortion of money from the complainants, the detention order cannot be sustained.

12. It is observed by the Hon'ble Apex Court in Ameena Begum V/s. The State of Telangana and others reported in **AIR 2023 SC 4273** paragraph Nos.32, 33, 34 and 35 has observed as under:-

"32. We may refer to the decision of the Constitution Bench of this Court in Ram Manohar Lohia vs. State of Bihar, 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."*

(underlining ours, for emphasis)

33. *For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general*

public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, CJ. in Arun Ghosh vs. State of West Bengal, is this: "Does it [read: the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?" In that case, the petitioning detenu was detained by an order of a district magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read: the offending act) "does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order". In the process of quashing the impugned order, the Chief Justice while referring to the decision in Ram Manohar Lohia (supra) also ruled:

*"3. ***Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. It is always a question of degree of the harm*

and its affect upon the community. This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

34. *In Kuso Sah vs. The State of Bihar, 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."*

(underlining ours, for emphasis)

35. *Turning our attention to section 3(1) of the Act, the Government has to arrive at a subjective satisfaction that a goonda (as in the present case) has to be detained, in order to prevent him from acting in a manner prejudicial to the maintenance of public order. Therefore, we first direct ourselves to the examination of what constitutes 'public order'. Even within the provisions of the Act, the term "public order" has, *stricto sensu*, been defined in narrow and restricted terms. An order of detention under section 3(1) of the Act can only be issued against a detenu*

to prevent him "from acting in any manner prejudicial to the maintenance of public order". "Public order" is defined in the Explanation to section 2(a) of the Act as encompassing situations that cause "harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave wide-spread danger to life or public health".

13. As per the law laid down by the Hon'ble Apex Court in *Ameena Begum* (Supra), as no public order is affected by the offences which are considered by the detaining authority, alleged to be committed by the petitioner, the order passed by the detaining authority is required to be set aside.

14. Another ground for challenging the detention order is about delay in passing the detention order. According to the learned Advocate for the petitioner last crime is committed on 29.7.2024 and the order is passed on 17.10.2024. Thus, there is delay of about 3 months. The statements are recorded in the month of September and

verified before passing the detention order, therefore, this ground of delay in passing the detention order, is not available to the petitioner.

15. In view of aforesaid observations, we pass the following order:-

The writ petition is allowed in terms of prayer clause (a).

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

Rule accordingly.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)