



Judgment

wp327.25

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

CRIMINAL WRIT PETITION No. 327 OF 2025.

Akshay Digambar Gaikwad,
Aged about 25 years,
resident of Indira Nagar, Umarkhed,
Tahsil Umarkhed, District Yavatmal. ... **PETITIONER.**

VERSUS

1.The State of Maharashtra,
through Principal Secretary
(Appeals and Security) Home
Department, Mantralaya,
Mumbai-32.

2.The District Magistrate,
Yavatmal, Tahsil and District
Yavatmal. ... **RESPONDENTS.**

Mr. A.A. Zade, Advocate for the Petitioner.
Mr. S.S. Doifode, A.P.P. for Respondents.

CORAM : ANIL L. PANSARE AND
M. M. NERLIKAR, JJ.

Rgd.

CLOSED FOR JUDGMENT ON : 04.08.2025.
JUDGMENT PRONOUNCED ON : 08.08.2025.

JUDGMENT (Per M.M. Nerlikar, J) :

Heard. Rule. Rule is made returnable forthwith. Shri S.S. Doifode, learned A.P.P. waives service for Respondents. With consent of the learned Counsel for the parties, the Writ Petition is taken up for final hearing.

2. By this Writ Petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has raised a challenge to the order of detention passed under Section 3[2] of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981 (MPDA) by the respondent no.2 dated 18.11.2024. He has also raised challenge to the order of approval dated 29.11.2024 passed by the respondent no.1. The learned Counsel appearing for the petitioner submits that after approval of the order by the respondent no.1, again on 09.01.2025, the respondent no.1 was pleased to confirm the order

passed by the respondent no.2 after receiving the opinion of the Advisory Board, and therefore, he seeks leave to amend so as to challenge the order dated 09.01.2025. We grant leave to amend to that effect. Necessary amendment be carried out forthwith.

3. The learned Counsel for the petitioner has mainly attacked the order of detention on three grounds by submitting that if these three grounds are considered, then the order of detention may not sustain. The same are as under :

- (i) The first ground raised is, that there was no live link between the order of detention and the last crime committed by the petitioner. He submits that the last crime committed by the petitioner is dated 09.08.2024, and the detention order was passed on 18.11.2024, therefore, there is huge gap between the last crime committed and the order of detention. He submits that in order to fill the lacunae, in-camera statements are shown to have been recorded.
- (ii) The second ground, which he has taken out is that though the petitioner was in custody and later released on bail, the

bail order was not placed before the Detaining Authority. This vital fact has not been considered by the Detaining Authority.

- (iii) The third ground is that the order impugned is based on one offence on which the Detaining Authority has placed reliance, cannot form the basis of order of detention for the reason that the alleged act in the said first information report is not detrimental to maintenance of public order. Further he submits that the offence at the most can be said to be individual in nature, which cannot disturb the public order, however, it may at the most disturb law and order. He further submits that the learned trial Court has granted bail to the petitioner in the said offence, and therefore, it does not have any impact on the society at large, and thus the Detaining Authority has not subjectively satisfied himself and erroneously declared the petitioner as dangerous person defined under Section 2[b-1] of the MPDA Act.

The learned Counsel for the petitioner has strongly

pressed the third ground, i.e. disturbance of public order. The learned Counsel submits that the activities of the petitioner cannot be said to be as disturbance to the public order. The learned Counsel in this regard has taken us through the material on which the Detaining Authority has relied i.e. Crime No.534/2024 registered on 09.08.2024 for the offence punishable under Sections 76, 115[2], 351[1], 351[2], 3[5] and 296 of the Bhartiya Nyaya Sanhita, 2023 (BNS) and Section 142 of the Maharashtra Police Act. He submits that the said offence cannot be said to be causing disturbance to the public order. At the most it can be said that it has disturbed the law and order. To buttress his submission, he relied on the judgments of Hon'ble Supreme Court in cases of **(1) Mallada K. Sri Ram .vrs. The State of Telangana and others (Criminal Appeal No.561/2022 decided on 04.04.2022** and **(2)Arjun Ratan Gaikwad .vrs. The State of Maharashtra and others (Criminal Appeal arising out of SLP (Cri) No.12516/2024, decided on 11.12.2024).**

4. On the other hand, the learned A.P.P. by filing an affidavit in reply, submitted that the respondent no.2 Detaining

Authority while passing the detention order of the petitioner has properly considered the recent criminal offence committed by the petitioner, i.e. Crime No.534/2024 registered on 09.08.2024 for the offence punishable under Sections 76, 115[2], 351[1], 351[2], 3[5] and 296 of the Bhartiya Nyaya Sanhita, 2023 (BNS) and Section 142 of the Maharashtra Police Act. He further submits that the Detaining Authority after considering the above criminal offence, has subjectively satisfied himself that the criminal activities of the petitioner are extremely prejudicial to the maintenance of public order, and it is necessary to order his detention. He further submitted that so far as the live link is concerned, the date of order of detention is 18.11.2024, however, the last crime committed by the petitioner is dated 09.08.2024 i.e. within 6 months from the date of last committed crime, and therefore, live link is not snapped. He further submits that thereafter in-camera statements recorded on 07.11.2024 and 10.11.2024 respectively. He further submits that said in-camera statements are duly verified and incident narrated in those statements are found to be true and correct. Not only that, those statements are perused by the Detaining Authority, and thereafter

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order of detention is passed. The learned A.P.P. submits that on three grounds detention order was passed i.e. the last crime committed by the petitioner and two in-camera statements. The learned A.P.P. further submits that every act of the petitioner mentioned in the first information report and two in-camera statements constitute a separate ground for detention. It is not only one ground on which the petitioner was detained. He further submits that the recent offence registered against him definitely affect the disturbance of public order. It is submitted that the activities of the petitioner is prejudicial to the maintenance of public order. He further submits that two in-camera statements recorded, are verified by the competent Authority, and therefore there is no force in the arguments of the learned Counsel for the petitioner that the activities of the petitioner do not disturbs the public order. It is further submitted by the learned A.P.P. that the bail order was passed after the order of detention, and therefore, there was no question to place the same before the Detaining Authority. Only application was moved by the petitioner for grant of bail, when the order of detention was passed. He draws attention to the order of

Rgd.

detention wherein there is a reference to that effect, that the accused has filed an application for bail and has apprehension that he will be released on bail. This itself goes to show that the Detaining Authority subjectively satisfied himself and thereafter the detention order is passed. He further submits that all the mandatory provisions under the MPDA are strictly followed, and there is no lacunae as regards the procedural aspect is concerned. He submits that even the Advisory Board has considered the representation moved by the petitioner, and was of the opinion that there is sufficient ground to detain the petitioner. Accordingly, the State Government also confirmed the order of detention, after considering the opinion given by the Advisory Board.

5. At the outset, the learned Counsel for the petitioner submitted that he is not pressing earlier two grounds i.e. the first ground relating to live link, and second - that when the detention order was passed, the detenue was in custody. Since both these grounds are not pressed, we are not considering the same.

6. We have considered the rival submissions of both the

Counsel. The third ground on which much emphasis is placed by the learned Counsel for the petitioner, we are dealing with the same.

7. Before considering the facts, it would be useful to consider the provisions of the MPDA Act. Section 2[b-1] defines ‘Dangerous Person’, which reads as under :

“2(b-1) “dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.”

It is necessary to consider next important provision i.e. Section 2[a], which deals with the definition of ‘acting in any manner prejudicial to the maintenance of “public order”’. It takes in its ambit slumlord, bootlegger, drug offenders, dangerous persons etc. Section 2[a][iv], reads as under :

*“2 In this Act, unless the context otherwise requires,—
(a) “acting in any manner prejudicial to the*

maintenance of public order” means—

- (i)*
- (ii)*
- (iii)*
- (iv) in the case of a dangerous person, when he is engaged, or is making preparation for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.”*

8. Requirement of this sub-section is that the activities of the person to be detained must affect public order. Therefore, keeping in mind, it will have to be examined whether the Detaining Authority had material before him to detain the petitioner with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order.

9. So far as Crime No.534/2024 registered for the offence punishable under Sections 76, 115[2], 351[1], 351[2], 3[5] and 296 of the Bhartiya Nyaya Sanhita, 2023 (BNS) and Section 142 of the Maharashtra Police Act, is concerned, it is alleged in the first information report that on 08.08.2024 at about 8.30 p.m. while the

complainant's brother Punjaji was buying goods at a grocery shop, son of the complainant namely – Sai Datta Waghmare was present there. Complainant's brother Punjaji asked Datta not to play gajjipatte or else he will call the police. The present petitioner – Akshay was present there and he took the same upon him and slapped brother of complainant, so also abused him in filthy language. Komal, daughter of the complainant informed the complainant that her uncle was beaten by the present petitioner Akshay and his three friends. Thereafter, the complainant Pushpa and her husband along with others reached the shop and tried to convince Akshay, however, his brother Sachin and his two friends Ajay and Akash suddenly started assaulting the complainant and others. It is further alleged that Akshay pulled hair of complainant Pushpa and tried to outrage her modesty. He has also threatened to kill her. The two in-camera statements "A" and "B" which were recorded and relied upon to consider the disturbance of public order, the gist of which reads as under :

"A"

“.....च्या सुमारास मी करीत हजर असतांना
अक्षय दिगांबर गायकवाड रा. इंदिरानगर हा त्यांचे दोन

साथीदार मुलासह आला व मांहाला की, मला दारू पाहिजे तेंव्हा मी त्यांना म्हटले तेंव्हा त्याने भडवे, हरामखोर तेरे को मालूम नही क्या मै कौन हुं, मै यहाँ का दादा हु तेरे को..... है तो हमारेको दारू लाके ही देना पड़ेगा. तेंव्हा मी त्यांना करायचे आहे माझ्याकडे वेळ नाही. असे म्हटले असता अक्षय गायकवाड हा त्यांचे साथीदारांसह चाकू हातात घेवून माझ्या अंगावर येवून माझी कॉलर पकडून पोटाला चाकून लावून साले खुपसाही डालुंगा असे म्हणत मला ढकलत असतांना व मी त्यांना शांत राहण्या बाबत विनवणी केल्याने अक्षयने साले तू बाहर मिल तेरे को बताता हू असे म्हणत तो त्याचे साथीदारांसह तेथून निघून गेला. अक्षय दिगंबर गायकवाड हा नेहमी शहरात त्याचे साथीदारांसह हत्यार घेउन फिरून दहशत निर्माण करतो. तो गुंड प्रवृत्तीच्या असल्याने व माझा हॉटेलचा व्यायसाय असल्याने मी त्यास घाबरून तो माझे जीवाचे काहीतरी बरे वाईट करील म्हणून मी त्याचे विरुद्ध पोलीस स्टेशनला तक्रार केली नाही. त्यांच्या पासून सरंक्षण करावे व माझे बयान गुप्त ठेवण्यात यावे. मला साक्ष कमी बोलविण्यात येवू नये.”

“B”

“..... निश्चीत तारीख आठवत नाही मी माझे यांना इंदिरानगर उमरखेड येथे भेटण्या करीत जात असतांना इंदिरानगर मधील जवळ अक्षय दिगंबर गायकवाड रा. इंदिरानगर उमरखेड हा त्याचे इतर २ साथीरांसह उभा होता. त्यांनी विचारले कि, तू यहांपे बार-बार कायको आता है, तेव्हा मी त्यांनाजात आहे. तेंव्हा त्याने मला म्हण्टले के, साले तेरे को मालूम नही क्या ओ मेरेहै. तेव्हा मी त्यांना म्हण्टले की तेमित्र असल्याने मी त्यांना भेटायला येतो. तेंव्हा अक्षय गायकवाड हा त्याचे साथीदारांसह रागाने माझ्या जवळ

येवून माझी कलर धरून गळ्याला चाकू लावून साले तू मेरे को पहचानता नही क्या, मैं यहाँ का दादा हूँ दुबारा मेरे एरिया मे दिखा तो तेरा गेमही कर डलुंगा, अशी धमकी दिली. तेव्हा मी त्यांना घाबरून मी पुन्हा इकडे येणार नही. मला एकदा जावु दया अशी हाथ जोडून त्यांना विनंती करत असतांना तेवड्यात तेथे इतर लोक जमा होवु लागल्याने अक्षय हा त्याचे साठी दार माझ्या पासून दूर गेले. त्याचा फायदा घेवून अक्षय गायकवाड यांनी त्याचे साथीदारांसह त्याचा राग मनात धरून मला सुद्धा अक्षय गायकवाड याने त्याच्या मोहल्ल्यात न येण्या बाबत गळ्याला चाकून लावून धमकी दिली. तेव्हा मी घाबरलेला असल्याने व तो माझी जिवाचे काहीतरी बरे वाईट करील त्यामुळे मी त्याचे विरुद्ध पोलीस स्टेशनला तक्रार केली नही. तो नेंहमी मोहल्ल्यात व शहरात त्याचे साथीदारांसह हत्यार घेवून फिरत असतो. व शहरात व परिसरात दहशत निर्माण करून हाथियारच्या जोरावर लूटमार करतो. त्यांच्या पासून माझे संरक्षण करावे व माझे बयान गुप्त ठेवण्यात यावे. मला साक्ष कमी बोलविण्यात येवू नये.”

10. It would also be useful to refer to the law laid down by the Hon’ble Supreme Court in the following cases :

In case of Mallada K. Sri Ram [supra], the Hon’ble Supreme Court has observed as under :

“12. The distinction between a disturbance to law and order and a disturbance to public order has been clearly settled by a Constitution Bench in

Ram Manohar Lohia v. State of Bihar . The Court has held that every disorder does not meet the threshold of a disturbance to public order, unless it affects the community at large. The Constitution Bench held:

“51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression “public order” take in every kind of disorders or only some of them? The answer to this serves to distinguish “public order” from “law and order” because the latter undoubtedly takes in all of them. 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. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52. 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. By using the expression “maintenance of law and order” the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.” (emphasis supplied)

13. In *Banka Sneha Sheela v. State of Telangana*, a two-judge Bench of this Court examined a similar factual situation of an alleged offence of cheating gullible persons as a ground for preventive detention under the Telangana Act of 1986. The Court held that while such an apprehension may be a ground for considering the cancellation of bail to an accused, it cannot meet the standards prescribed for preventive detention unless there is a demonstrable threat to the maintenance of public order. The Court held:

“9. ...learned counsel appearing on behalf of the petitioner has raised three points before us. First and foremost, he said there is no proximate or live connection between the acts complained of and the date of the detention order, as the last act that was complained of, which is discernible from the first 3 FIRs (FIRs dated 12-12-2019, 12-12-2019 and 14-12-2019), was in December 2019 whereas the detention order was passed 9 months later on 28-9-2020. He then argued, without conceding, that at best only a “law and order” problem if at all would arise on the facts of these cases and not a “public order” problem, and referred

to certain judgments of this Court to buttress the same. He also argued that the detention order was totally perverse in that it was passed only because anticipatory bail/bail applications were granted. The correct course of action would have been for the State to move to cancel the bail that has been granted if any further untoward incident were to take place.

12. While it cannot seriously be disputed that the detenu may be a “white collar offender” as defined under Section 2(x) of the Telangana Prevention of Dangerous Activities Act, yet a preventive detention order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order. “Public order” is defined in the Explanation to Section 2(a) of the Telangana Prevention of Dangerous Activities Act to be a harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave widespread danger to life or public health.

15. There can be no doubt that what is alleged in the five FIRs pertain to the realm of “law and order” in that various acts of cheating are ascribed to the detenu which are punishable under the three sections of the Penal Code set out in the five FIRs. A close reading of the detention order would

make it clear that the reason for the said order is not any apprehension of widespread public harm, danger or alarm but is only because the detenu was successful in obtaining anticipatory bail/bail from the courts in each of the five FIRs. If a person is granted anticipatory bail/bail wrongly, there are well-known remedies in the ordinary law to take care of the situation. The State can always appeal against the bail order granted and/or apply for cancellation of bail. The mere successful obtaining of anticipatory bail/bail orders being the real ground for detaining the detenu, there can be no doubt that the harm, danger or alarm or feeling of insecurity among the general public spoken of in Section 2(a) of the Telangana Prevention of Dangerous Activities Act is makebelieve and totally absent in the facts of the present case.

32. On the facts of this case, as has been pointed out by us, it is clear that at the highest, a possible apprehension of breach of law and order can be said to be made out if it is apprehended that the detenu, if set free, will continue to cheat gullible persons. This may be a good ground to appeal against the bail orders granted and/or to cancel bail but certainly cannot provide the springboard to move under a preventive detention statute. We, therefore, quash the detention order on this ground....”

14. In *Sama Aruna v. State of Telangana*⁷, a two-judge Bench of this Court examined a case where stale materials were relied upon by the Detaining Authority under the Telangana Act of 1986. The order of detention pertained to incidents which had occurred between nine and fourteen years earlier in relation to offences involving a criminal conspiracy, cheating, kidnapping and extortion. This Court held that a preventive detention order that is passed without examining a live and proximate link between the event and the detention is tantamount to punishment without trial. The Court held:

“17. We are, therefore, satisfied that the aforesaid detention order was passed on grounds which are stale and which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. 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].”

11. Further in case of Arjun Ratan Gaikwad [supra], recently the Hon’ble Supreme Court has observed as under :

“12. The distinction between a public order and law and order has been succinctly discussed by Hidayatullah, J. (as His Lordship then was) in the case of Ram Manohar Lohia v. State of Bihar and Another:

“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."

13. It could thus be seen that a Constitution Bench of this Court in unequivocal terms held that every breach of peace does not lead to public disorder. It has been held that when a person can be dealt with in exercise of powers to maintain the law and order, unless the acts of the proposed detainee are the ones which have the tendency of disturbing the public order a resort to preventive detention which is a harsh measure would not be

permissible.

14. Recently, a Bench of this Court has referred to various judgments of this Court while following the law laid down by 8 this Court in the case of *Ram Manohar Lohia (supra)*, it will be appropriate to reproduce the following paragraph from the judgment of this Court in the case of *Ameena Begum v. State of Telangana and Others*.

“38. 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, C.J. in *Arun Ghosh v. State of W.B.* [*Arun Ghosh v. State of W.B.*, (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , is this : (SCC p. 100, para 3)

“3. ... Does it [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?”

39. In *Arun Ghosh* case [*Arun Ghosh v. State of W.B.*, (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , 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. (Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC p. 101, para 5)”

40. *In the process of quashing the impugned order, the Hidayatullah, C.J. while referring to the decision in Ram Manohar Lohia [Ram Manohar Lohia v. State of Bihar, 1965 SCC OnLine SC 9 : (1966) 1 SCR 709] also ruled : (Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC pp. 99-100, para 3) “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 effect 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 effect 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.”

41. In *Kuso Sah v. State of Bihar* [*Kuso Sah v. State of Bihar*, (1974) 1 SCC 185 : 1974 SCC (Cri) 84] , Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that : (SCC pp. 186-87, paras 4 & 6)

“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.”

(emphasis supplied)

15. As to whether a case would amount to threat to the public order or as to whether it would be

such which can be dealt with by the ordinary machinery in exercise of its powers of maintaining law and order would depend upon the facts and circumstances of each case. For example, if somebody commits a brutal murder within the four corners of a house, it will not be amounting to a threat to the public order. As against this, if a person in a public space where a number of people are present creates a ruckus by his behaviour and continues with such activities, in a manner to create a terror in the minds of the public at large, it would amount to a threat to public order. Though, in a given case there may not be even a physical attack.

16. In the present case, all the six cases are with regard to selling of illicit liquor. Though six cases are registered, the 11 Excise Authority did not find it necessary to arrest the appellant even on a single occasion. It would have been a different matter, had the appellant been arrested, thereafter released on bail and then again the appellant continued with his activities. However, that is not the case here.

17. Insofar as statements of the two unnamed witnesses are concerned, the allegations are as vague as it could be. In any case the statements which were stereotype even if taken on its face value would show that the threat given to the said witnesses is between the appellant and the said witnesses. The statements also do not show that the said witnesses were threatened by the

appellant in the presence of the villagers which would create a perception in the mind of the villagers that the appellant herein is a threat to the public order.”

12. Thus, in view of above, one thing is clear that the disturbance to public order means that the activity of a person must have an impact on public at large or general public, evoking feelings of fear, panic, or insecurity. In case of **Arun Ghosh .vrs. State of West Bengal – (1970) 1 SCC 98**, the Hon’ble Supreme Court has given an example in order to understand disturbance of public order, that if somebody commits a brutal murder within the four corners of the house, it will not amount to threat to the public order. As against this, if a person in a public place, where number of persons are present creates a ruckus by his behaviour and continues with such activities, in a manner to create a terror in the minds of the public at large, it would amount to a threat to public order. However, in a given case, even if we consider the first information report, registered against the petitioner, the act of the petitioner cannot be said to be an act of disturbing public order. At the most the act of the petitioner can be said to be disturbance to law and order.

Though the incident had taken place in a public place, still the contents of the first information report are individual in nature. There is no panic or insecurity or any impact on the society at large. Not only that, it can be said that there is no terror or ruckus created by the act of the petitioner. Further even if we deal with the in-camera statements, which are recorded by the Authority, the contents of those statements are in the nature of committing an offence in the individual capacity. Even those two incidents which were narrated by “A” and “B” depicts that they do not have any impact on the society at large, and therefore, considering the entire record, it can be said that the Detaining Authority have failed to consider the fact that the activities of petitioner are individual in nature, and the activities are not prejudicial to the public order and therefore, subjective satisfaction arrived is against the mandate of law as discussed above.

13. It is worthwhile to note that, merely reproducing the contents of the statements “A” and “B”, cannot show subjective satisfaction contemplated in law. The subjective satisfaction has to

be about unwillingness of such persons to come forward and to give statement against the petitioner. There is no whisper about the same in the impugned order. Therefore, the impugned order which is based on such in-camera statements is therefore, bad in law. It also creates doubt about the verification of statement for the reason that the proposal shown to have forwarded on 13.11.2024, to the S.D.P.O. Yavatmal for verification from Umerkhed, which is more than 100 kms, and on the same day the S.D.P.O. Yavatmal verified the statements of both the witnesses by going on the spot. With such a rocket speed the verification was done, is undigestable. Therefore, mere completing formality of verification is in direct teeth of process of verification. The verification is most important part of the process of detention law and it is not an empty formality. In real sense, verification shall be done and therefore, reliance cannot be placed on such verified statements which creates doubt. Therefore, from above, all the subjective satisfaction vitiates. We do not find that the activities of the petitioner would disturb the public order, and therefore, the petitioner cannot be termed as a dangerous person. In that view of the matter the petition succeeds and it is

allowed, hence, we pass the following order.

ORDER

- (i) Criminal Writ Petition is allowed.
- (ii) The order of detention passed by the respondent no.2 dated 18.11.2024, so also the order of approval dated 29.11.2024 by the respondent no.1, and further confirmation order, after opinion of the Advisory Board by the respondent no.1 dated 09.01.2025, are hereby quash and set aside.
- (iii) We direct that the petitioner be released forthwith, if not required in any other offence.
- (iv) Rule is made absolute in aforesaid terms.
- (v) Pending Misc. Applications, if any, also stands disposed of.

JUDGE

JUDGE