



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

CRIMINAL WRIT PETITION NO.406/2024

Sachin Mukund Balkhande
Aged about 30 years, Occ- Labour,
R/o Shankar Nagar, Akot File, Akola ... Petitioner

- Versus -

1. State of Maharashtra,
Through its Secretary, Home
Department (Special) Mantralaya,
Mumbai.
2. District Magistrate/Collector, Akola. ... Respondents

Mr. Mir Nagman Ali, Advocate for the petitioner.
Mr. S.S. Doifode, A.P.P. for respondent Nos.1 and 2.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 28.1.2025.
DATE OF PRONOUNCING THE JUDGMENT: 11.2.2025.

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

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

2. By way of present petition the petitioner prays to quash and set aside the detention order dated 30.3.2024 passed by respondent No.2 under Section 3(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 (for short “M.P.D.A. Act”).

3. Perusal of the impugned detention order would depict that a reference is made to as many as nine crimes registered against the petitioner. Although specific reference is made to one crime i.e. Crime No.662/2023 in the impugned order reference is also made to one preventive action, two externment proceedings and a previous detention order dated 4.9.2021 which was set aside by this Court in Criminal Writ Petition No.820/2021.

4. The above-mentioned crime i.e. Crime No.662/2023 punishable under Sections 307, 326, 324, 323, 201, 143, 147,

148, 149, 504 and 506 of the Indian Penal Code r/w 3(1)(r)(s), 3(2)(v) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 4 and 25 of the Arms Act was registered on 4.12.2023 at Police Station Khadan. The detenu was arrested on 21.2.2024 in the said offence and the matter is *sub judice* before the concerned Court. The crime is related to castigation of the complainant, beating his brother to cause injury and attacking the neighbours of the complainant with knives as there were ten to fifteen companions involved in the incident as well. It is pertinent to note that the name of the petitioner is not there in the First Information Report in the said crime.

5. In-camera statement of witness “A” asserts that since the confidential witness runs a hotel, his son was beaten with fist and slaps by the companions of the detenu and the detenu put a knife on the stomach of the witness and threatened to stab him. On the similar line, anonymous witness “B” was stopped by the detenu

and his companions while returning from work at around 10:00 P.M. The witness was threatened as he was accused of being an informant of the police by the detenu and thus he put knife on waist of witness to threaten him, he also kicked him on the chest, back, stomach and also threw knife towards the gathered public.

6. Learned Advocate for the petitioner argued that stale offences have been taken into account having no nexus with the passing of the detention order. It is submitted that as far as crimes mentioned at Sr. No1 to 8 in para No.3 of the detention order are concerned, neither bail applications nor bail orders have been placed before the detaining authority. It is further stated by the learned advocate for the petitioner that it is informed to the detaining authority that petitioner was externed vide order dated 18.2.2019 but the same was quashed and set aside which has not been placed before the detaining authority. It is further submitted that detenu was already in custody in Crime No. 662/2023 and merely because bail application was preferred

which was subsequently rejected does not mean that there was a high chance of detenu being released on bail.

7. *Per contra*, learned A.P.P. opposed the petition and submitted that the detaining authority has gone through the record, seen and signed the in-camera statements after finding them to be truthful and arrived at subjective satisfaction having found reliable material against the detenu. There is application of mind at every level i.e at recording of statement, verification of them and at the stage of passing detention order and thus the impugned order is not vitiated. The record reveals that the detenu has the tendency to repeat illegal activities which are prejudicial to the maintenance of public order warranting his detention. The subjective satisfaction of the detaining authority is based on reliable material placed before it.

8. Learned A.P.P. supplied emphasis on the aspect that in so far as the contention of prior custody of the petitioner and need to

pass the detention order is concerned, it is submitted that the detaining authority was aware about the custody of the petitioner in crime No.662/2023 and the chances of his release on bail and the future apprehension of indulging again into the crimes prejudicial to the maintenance of public order looking into his criminal history and tendency to commit crime, cannot be denied. Thus, there is existence of compelling necessity for the detention of the petitioner despite his custody. Hence prayed to dismiss the petition.

9. Heard learned Advocate for the petitioner and learned A.P.P. for respondent Nos.1 and 2 and have gone through the record.

10. Crime No.662/2023 is considered while passing the detention order which is punishable under Sections 307, 326, 324, 323, 201, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code r/w Sections 3(1)(r)(s), 3(2)(v) and 3(2)(va) of the

Atrocities Act 1989 and Sections 4 and 25 of the Arms Act was registered on 4.12.2023 at Police Station, Khadan. At the time of passing the detention order the petitioner was in jail in this crime and was not released on bail. The chargesheet in this crime is filed. This crime is committed at a public place. A fight broke out between the petitioner and his friends while they were celebrating birthday of one of them. It was during the fight when public gathered to see what had happened, the complainant tried to make them understand, in turn, the complainant was assaulted with weapon by them due to which the crime came to be registered. Though it took place in the public place it appears that mandatory requirements of passing the detention order are not followed. Though the petitioner was in jail the detention order was passed and it is not mentioned in the detention order by the detaining authority as to why the detention order was passed even when the petitioner was already in custody.

11. Learned Advocate for the petitioner has relied on the judgment of the Hon'ble Apex Court in the case of Dharmendra

Suganchand Chelawat V/s. Union of India reported in 1990

DGLS (SC) 67 particularly para 19 which reads as follows:-

“19. The decisions referred to above lead to the conclusion that an order for detention can be validly passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

12. It appears from the detention order that while passing the detention order the detaining authority has mentioned earlier eight crimes in the detention order and has relied on one offence i.e. Crime No.662/2023, the bail in this crime was rejected and

no specific reasons are given while passing the detention order to keep the petitioner under detention.

13. The petitioner has relied on para 13 of the judgement in Writ Petition No.834/2023 (Khailesh Pancham Salame V/s. State of Maharashtra and another) to which one of us was party (Mrs. Vrushali V. Joshi, J.) reads as follows:-

“13. The third ground agitated by the counsel appearing for the petitioner is that before passing the impugned order of detention, the detaining authority perused all the material, which was placed before him in other grounds that the material shown in paragraph Nos.3 and 5 which according to the learned counsel appearing for the petitioner is extraneous material which vitiates the subjective satisfaction of the detaining authority.”

14. Two confidential statements on which the detaining authority has relied upon are not even seen by the authority before the date of passing of the detention order. On perusal of the original confidential statements of the witnesses, it appears that the authority has seen it only on the date of passing the detention order which creates a doubt about arriving at the

subjective satisfaction by the detaining authority and about the truthfulness of the statements of witnesses.

15. It is observed by the Hon'ble Apex Court in paras 13 and 14 of the judgment in case of Deepak Dattu Suryawanshi V/s. Commissioner of Police and others reported in 2017 ALL M.R.

(CR) 416 which read as follows:-

"13 "It is therefore, not only the right of the court, but also its duty as well, to examine what are the basic facts and materials which actually and in fact weighed with the detaining authority in reaching the requisite satisfaction. The judicial scrutiny cannot be foreclosed by a mere statement of the detaining authority that it has taken into account only certain basic facts and materials and though other basic facts and materials were before it, it has not allowed them to influence its satisfaction. The Court is entitled to examine the correctness of this statement and determine for itself whether there were any other basic facts of materials, apart from those admitted by it, which could have reasonably influenced the decision of the detaining authority and for that purpose, the Court can certainly require the detaining authority to produce and make available to the Court the entire record of the case which was before it. That is the least the Court can do to ensure observance of the requirements of law by the detaining authority."

14. In the light of discussion in foregoing paragraphs and as held by the Supreme Court in the case of Dharamdas Shamlal Agarwal vs. The Police Commissioner and another, supra, that once the requisite subjective satisfaction of the detaining authority is vitiated due to non-placing the acquittal order of detenu before the detaining authority, the detention order renders invalid. In our considered opinion, in the present case for more than one reason including non-placing of the order of acquittal of detenu i.e. Petitioner in Criminal Appeal No.71 of 2004 (Mr. Deepak Dattu Suryawanshi vs. The State of Maharashtra) decided on 15th February 2011, and also on other two grounds, the requisite subjective satisfaction of the detaining authority stands vitiated, rendering the detention order invalid. Accordingly the Petition must succeed and we pass the following order”

16. Another ground raised by the petitioner is that though the petitioner was earlier detained and released by this Court the said order was not placed before the detaining authority while passing the detention order. On perusal of the detention order it appears that a reference has been made to the earlier detention order, although it was mentioned that the petitioner was released upon completion of the detention but it is not correct. This Court had set aside the said detention order in Criminal Writ Petition

No.820/2021 the copy of which is not placed on record. There is no subjective satisfaction arrived at by the detaining authority while considering the statements of witnesses. The entire relevant material for passing the detention order is not placed before the detaining authority and when the order was passed the petitioner was already in jail, all these facts vitiates the detention order passed by the detaining authority on 30.3.2024.

17. For the aforesaid reasons, the petition is allowed.

The petitioner be released forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)