



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

CRIMINAL WRIT PETITION NO.569/2024

Imran Khan Rahim Khan
Aged about 29 years
Occupation Labourer
R/o Khidkipura Old City Akola,
District Akola.

... Petitioner

- Versus -

1. State of Maharashtra,
Through Home Department
(Special), 2nd Floor, Main
Building, Mantralaya,
Mumbai-32
2. District Magistrate,
District Akola.
3. Superintendent of Police,
Akola.
4. Police Station Officer,
Police Station, Old City Akola,
District Akola

... Respondents

Mr. Mir Nagman Ali, Advocate for the petitioner.
Mr. A.B. Badar, A.P.P. for respondent Nos.1 to 4.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 6.2.2025.
DATE OF PRONOUNCING THE JUDGMENT: 13.2.2025.

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

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

2. This writ petition under Article 226 of the Constitution of India challenges the correctness and validity of the detention order dated 14.3.2024 passed by respondent No.2/the District Collector, Akola detaining the petitioner in exercise of the powers conferred under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Person Engaged in Black Marketing of Essential Commodities Act, 1981 (for short “MPDA Act”) and confirmation order dated 08.5.2024 passed by respondent No.1. In pursuance of the said order, the detenu was committed from Central Jail, Akola to Central Jail, Nandurbar, Distt. Nandurbar on the very same day.

3. The alleged activities of the detenu are set out in the grounds of detention order. Respondent No.3 submitted the

proposal to the District Collector on 9.3.2024 in pursuance of the detention of petitioner. Representation was filed by detenu before the Advisory Board on 18.4.2024. Four criminal cases have been registered against the petitioner out of which two offences are relied upon for passing the detention order:-

(i) Crime No.410/2023 registered on 7.11.2023 at Police Station Old City, Akola punishable under Sections 326, 324, 427, 143, 147, 148, 149, 504 and 506 of Indian Penal Code.

(ii) Crime No.446/2023 registered on 25.11.2023 at Police Station Old City, Akola punishable under Sections 392 and 427 of the Indian Penal Code.

4. The grounds as raised in the petition by the petitioner are as under:-

(a) The proposal mainly refers to two cases in which the petitioner was falsely implicated. The second offence i.e. Crime No.446/2023 relates to a property dispute and registration of this crime is a counterblast and there was a counter F.I.R to this effect. The said crime is narrated in para 4.2 of the grounds of detention

which states that the detenu punched the glass of an autorickshaw of the complainant and sustained no injuries, as can be seen in the blank column No.7 of arrest form of this crime.

(b) The last order of bail is dated 30.11.2024 and the detention order is passed on 14.03.2024 and thereafter no crime is registered against the detenu, therefore, he has not flouted any bail orders. However, it is to be noted that from the perusal of the crime chart it can be seen that the petitioner was externed from the city limits of Akola for a period of six months on 08.12.2023 under Section 110 of the Code of Criminal Procedure, 1973.

5. Mr. Ali. learned Advocate for the petitioner would submit that the in-camera statements of witnesses “A” and “B” were recorded on 1st and 3rd of March, 2024 respectively and verified by the S.D.P.O Akola but if attachment to the proposal is seen there is only a reference of “Index”. It does not show that what were the contents of index and whether there are any sealed envelopes of the witnesses of whom statements were recorded. Further it is argued by learned Advocate for the petitioner that

the petitioner was out on bail in the above narrated offences of which reference was taken in the impugned order. It is further argued by learned Advocate for the petitioner that insofar as the offence i.e. Crime 446/2023 is concerned, the F.I.R was neither read nor the papers in pursuance to said crime were seen.

6. Mr. Badar, learned A.P.P, however, strenuously relied on the affidavit-in-reply and submitted that after the detaining authority being subjectively satisfied about the correctness, genuineness and authenticity of the confidential statements, put the endorsement as “seen” on the statements. He further submitted that the detaining authority has gone through the record and thereafter considered the recent crimes within six months and correctly observed that the crimes committed by the petitioner are sufficient to pass the detention order against the petitioner and rightly arrived at the subjective satisfaction.

Learned A.P.P. primarily relied on the fact that in the narration of incident by the in-camera witnesses they have stated that as the crowd gathered on the spot, petitioner flashed knife

towards them thereby threatening and creating terror in the minds of public. He further contended that the proposal of detention of the petitioner had the mention of in-camera statements also.

7. From the perusal of detention order passed by respondent No.2 it appears that two offences are considered as aforesaid. It is not in dispute that in both the crimes the petitioner has been released on bail. When those crimes were considered while passing the detention order, the detaining authority ought to have considered the facts of those cases. In Crime No.410/2023 offence punishable under Sections 326, 324, 427, 143, 147, 148, 149, 504 and 506 of Indian Penal Code was registered. The accused had committed this offence when the complainant was parking his auto near his house. The accused had abused him and the son of the petitioner came out and assaulted them with the iron pipe and also pelted stones. Therefore, the offence is registered. From the perusal of the complaint of the complainant it appears that the petitioner and

the complainant were staying adjacent and there was enmity between them. It is the offence against individual.

8. Learned Advocate for the petitioner has stated that there is counter F.I.R. which is not considered by the detaining authority. Though the submission is made by the petitioner, the petitioner has also not filed on record the counter F.I.R. in this regard.

9. Another offence is again about breaking the glass of the auto of complainant and taking an amount of Rs.6,600/- from the pocket of the complainant. In this offence also it appears that the complainant was known to the petitioner. There is no injury certificate regarding the petitioner though he has broken the glass of auto with his hand. It is also against an individual and no public order is affected. There is no apprehension of disturbance of public order. In-camera statements of witnesses "A" and "B" though taken as it is, they would certainly show that people had gathered at the spot but the detention order cannot be based only on the basis of statements of in-camera witnesses. We, therefore,

agree with the submissions made on behalf of the petitioner based on the judgment in case of Arjun S/o Ratan Gaikwad V/s. The State of Maharashtra and others in Criminal Appeal No. /2024 arising out of SLP (Cri) No.12516/2024 wherein the distinction between disturbance of impugned order and public order is laid down by relying upon the judgment in case of Ram Manohar Lohia V/s. State of Bihar and another reported in (1996) 1 SCR 709 and Ameena Begum V/s State of Telangana and others reported in (2023) 9 SCC 587. Those offences which are now pending before the court would have at the most raised the law and order situation but not the public order.

10. We may rely further on the decision in the case of Nenavath Bujji and others V/s. State of Telangana and others reported in 2024 SCC OnLine SC 367, particularly para 43, which reads as follows:-

“43. We summarize our conclusions as under :-

(i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,

(ii) *It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,*

(iii) *There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,*

(iv) *In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,*

(v) *While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,*

(vi) *The satisfaction cannot be inferred by mere statement in the order that “it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order”. Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material*

should be reflected in the order of detention while expressing its satisfaction,

(vii) Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,

(viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s)/grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and

(ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention. For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority."

11. Another angle in the matter is that it is not in dispute that the subjective satisfaction is one of the basic requirements for

passing an order of detention. The subjective satisfaction can be arrived at on the basis of various facts involved in the matter. Each fact will have to be considered independently together with other evidence that has been brought on record. The other two criminal cases pending against the petitioner though can be taken as background or past conduct it would not *per se establish the* live link.

12. Though the Advisory Board has approved the detention of the petitioner, yet for the aforesaid reasons, we do not find that there is any material before the detaining authority to detain the petitioner. Therefore, the confirmation of the detention order by the State cannot be upheld. For the aforesaid reasons, petition deserves to be allowed and it is accordingly allowed. The impugned order is quashed and set aside. The petitioner be set at liberty forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)