



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

CRIMINAL WRIT PETITION NO.656/2024

Yogesh @ Bagga @ Badka
S/o Vijaykumar Shahu,
aged 23 Yrs., Occ. Property Dealer,
R/o Sangharsh Nagar, Galli No.8,
Near Sunil Agrawal House,
Wathoda, Nagpur.

... Petitioner

- Versus -

1. The State of Maharashtra,
Through its Secretary, Home
Department, Mantralaya, Mumbai.

2. Commissioner of Police, Nagpur.

... Respondents

Mr. Mir Rizwan Ali, Advocate for the petitioner.
Mr. A.B. Badar, A.P.P. for respondent Nos.1 and 2.

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

DATE OF CLOSING THE JUDGMENT: 14.1.2025.

DATE OF PRONOUNCING THE JUDGMENT: 4.2.2025.

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

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

2. The petitioner-detenu takes exception to the order
dated 18.4.2024 bearing No.DET/MPDA/PCB/
ZONE-IV/18/2024 passed by the Commissioner of Police,

Nagpur-respondent No.2 preventively detaining him 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 (M.P.D.A. Act).

3. A proposal was initiated by Wathoda Police Station, Nagpur on 18.03.2024 to detain the petitioner as the activities of the detenu rendered him a dangerous person. It transpired that he habitually committed serious offences like voluntarily causing hurt by dangerous weapon and intentionally insulting to provoke breach of peace. Following two fresh offences were registered against the detenu:-

- (i) Crime No.604/2023 at Wathoda Police Station for the offences punishable under Sections 324 and 504 of the Indian Penal Code and
- (ii) Crime No.501/2023 at Nandanvan Police Station for the offences punishable under Sections 307 and 504 of the I.P.C.

On account of the reign of terror created by the detenu, persons were not coming forward to lodge complaints against the detenu fearing their own safety. Senior Police Inspector, Police Station, Wathoda, Nagpur recorded in-camera statements of two confidential witnesses. The confidential statements revealed that the detenu was engaging in activities which were prejudicial to the maintenance of public order.

4. Mr. Ali, learned Advocate appearing for the petitioner has assailed the impugned order on the premise that it betrays a clear application of mind. Some of the grounds raised by the learned advocate for the petitioner are as under:-

(a) With respect to Crime No.604/2023 in para No.9.1.2. of the detention order it is stated that when the complainant was going to a grocery store, the petitioner approached him and asked why is he looking at him and started abusing him. The detenu then suddenly took out knife from his pocket and stabbed the complainant on belly and abdomen. However, the complainant

has stated in the F.I.R. that the petitioner had assaulted him by wooden-log.

(b) There is a delay of 177 days in passing the detention order and last offence i.e. Crime No.501/2023 registered at Nandanwan Police Station was on 22.10.2023. Therefore, the impugned order is liable to be set aside in absence of live link between the last offence committed and the date of passing the detention order. It is submitted that bail was granted in both the crimes to the petitioner.

(c) The petitioner has not been supplied with the medical examination report of victim in Crime No.604/2023. Medical examination report is a crucial document to determine whether injuries were inflicted on complainant by means of weapon by the petitioner. Further in Crime No.501/2023 all witnesses except the victim are hearsay witnesses.

5. Affidavit-in-reply has been filed on behalf of respondent No.2.

6. Mr. Badar, learned A.P.P. appearing for the respondents/ State has contested the contention of the detenu that it was stated in the F.I.R that petitioner had assaulted the complainant by wooden-log. Instead, it was stated that “he took out a knife from his pocket and hit on the right side of navel/bellybutton of abdomen and left the spot.” From a bare reading of the F.I.R. and complaint dated 21.10.2023 at page Nos.95 and 105 respectively of the petition, it is evident that the facts which are narrated in F.I.R. are similar to the grounds of detention stated in para 9.1.2.

It is further submitted by the learned A.P.P. that both the crimes are related to bodily injury which comprised of stabbing by knife and inflicting injuries to the victims. When crowd of on looking persons gathered at the place of incidence, the petitioner brandished knife towards them and threatened them due to which they ran away from the spot.

7. It is further submitted by the learned A.P.P. that both the in-camera statements show that the detenu has indulged in committing illegal criminal activities and *modus operandi* of the

detenu is to abuse, threaten, assault and to extort money from the peace-loving people on the point of dangerous weapon. Further it is stated that both the in-camera statements are duly seen and verified by the Assistant Commissioner of Police, Sakardara Division and their truthfulness is ascertained further by the Deputy Commissioner of Police, Zone-4, Nagpur.

8. All the relevant material was submitted to the detaining authority and after evaluation of the same, the detaining authority has arrived at the subjective satisfaction and the order of detention of the petitioner was passed.

The respondents have relied upon the judgment of this Court in the case of Arjun Balkrishna Sonawane Vs. State of Maharashtra reported in **2016 (6) Mh.L.J. (Cri) 316** wherein it is held that mere delay in passing detention order is not sufficient to hold that the authority must not have been satisfied about necessity of passing the detention order.

Further, to support his contention the reliance is placed on the judgment in case of Smt. Phulwari Jagdambaprasad Pathak

Vs. Shri R.H. Mendoca & Ors. reported in **2000 (8) SC 209** of the Hon'ble Apex Court wherein it is held that in-camera statements of witnesses can be utilised for the purpose of arriving at the subjective satisfaction by the detaining authority for passing the order of detention. Considering the material against the petitioner, it is prayed to dismiss the petition.

9. On perusal of the impugned order it appears that two crimes are considered for passing the detention order. Crime No.604/2023 is registered at Wathoda Police Station, Nagpur for the offence punishable under Sections 324 and 504 of the Indian Penal Code and Crime No.501/2023 is registered at Nandanwan Police Station, Nagpur for offence punishable under Sections 307 and 504 of the I.P.C. In both the offences knife is used by the petitioner as a weapon and both the offences are pending before the trial Court.

10. The ground which the petitioner has raised is that in first offence though the complainant has stated that knife is used, however, in F.I.R. it is mentioned that wooden-log is used.

Another ground of challenge is that the medical report is neither placed on record nor supplied to the petitioner. Therefore, the petitioner is deprived of an opportunity to make representation before the detaining authority. The learned Advocate for the petitioner has relied on the judgment in Writ Petition No.2336/2021 (Bharat Kisan Mekale V/s. The Commissioner of Police, Solapur and others) wherein it is held that there can be no duality of opinion on the point that the failure of sponsoring authority to place relevant material, which bears upon formation of subjective satisfaction by the detaining authority, detracts from the validity of the detention order in two ways. On one hand, the subjective satisfaction is vitiated on account of non-consideration of relevant material which could weigh with the detaining authority in arriving at the conclusion one way or the other. On the other hand, in the absence of such material, having been duly furnished to the detenu, the latter is deprived of an opportunity to make an effective representation and the constitutional safeguard contained in Article 22 (5) is rendered nugatory.

However, the Court must look at the substance of the matter and determine whether the failure to furnish copy of a particular document either vitiated the subjective satisfaction or jeopardized the right to make an effective representation.

11. In both the above crimes the petitioner had committed bodily offences. On perusal of the F.I.R. it reveals that the complainant had lodged the F.I.R. and mentioned the knife and not the wooden-log which falsifies the claim of the petitioner.

12. The Hon'ble Apex Court in Kamarunnissa V/s. Union of India and another reported in **AIR 1991 SC 1640** in para 14 has observed as under:-

“If, merely an incidental reference is made to some part' of the investigation concerning a coaccused in the grounds of detention which has no relevance to the case set up against the detenu it is difficult to understand how the detenu could contend that they were denied the right to make an effective representation. It is not sufficient to say that the detenus were not supplied the copies of the documents in time on demand but it must further be shown that the non-supply has impaired the detenu's right to make an effective and purposeful representation. Demand of any or every document, however irrelevant

it may be for the concerned detenu, merely on the ground that there is a reference thereto in the grounds of detention, cannot vitiate an otherwise legal detention order. No hard and fast rule can be laid down in this behalf but what is essential is that the detenu must show that the failure to supply the documents before the meeting of the Advisory Board had impaired or prejudiced his right, however slight or insignificant it may be. In the present case, except stating that the documents were not supplied before the meeting of the Advisory Board, there is no pleading that it had resulted in the impairment of his right nor could counsel for the petitioners point out any such prejudice. We are, therefore, of the opinion that the view taken by the Bombay High Court in this behalf is unassailable.”

13. Therefore, the ground of not supplying the medical report is not sustainable as per the law laid down by the Hon’ble Apex Court in Kamarunnissa (supra).

14. Another ground which the petitioner has raised is about delay in passing the detention order. The offences which are considered while passing the detention order are committed in October 2023. The statement of witness “A” is recorded on 12.3.2024. It was verified on 20.3.2024 and the detaining authority has verified it on 18.4.2024. The statement of witness

“B” is recorded on 16.3.2024 and verified on 21.3.2024 and it is verified by the detaining authority on 18.4.2024. As the order is passed on 18.4.2024 there is no delay in passing the detention order as the delay is to be calculated from the date of recording of statements and its verification. Therefore, there is no question of consideration of ground of delay in passing the detention order.

15. The petitioner has also relied on the judgment of this Court in case of Jay @ Nunya Rajesh Bhosale V/s. The Commissioner of Police, Pune & Ors. reported in **2015 ALL MR (Cri) 4437** in support of his contention that as the medical report is not filed, Crime No.604/2023 punishable under Sections 324 and 504 cannot be considered and, therefore, only on the basis of one crime i.e. Crime No.501/2023 the detention order cannot be passed.

16. Though the learned Advocate for the petitioner has relied on the judgment in Jay @ Nunya Rajesh Bhosale (supra), we are of the opinion that the medical report is not necessary and the ground of non-supply of medical report is not sustainable. It

is to be noted that both the crimes i.e. Crime Nos.604/2023 and 501/2023 are considered while passing the order. In both the offences the petitioner has used a knife. The incidents occurred in public place. In Crime No.604/2023 the complainant was not known to the petitioner. It was against an individual. Another crime i.e. Crime No.501/2023 is also committed in a public place.

17. On perusal of statements it reveals that the petitioner had used knife and gave threats to the public. When the public gathered there, he brandished knife, upon seeing the same, the public ran away as they were scared by the behaviour of the petitioner. Considering the facts of both the crimes i.e. Crime Nos.604/2023 and 501/2023 which are considered for passing the detention order and if a person is roaming with a knife and always threatening the public, then *prima facie* we can consider that it would affect the 'public order' and not only 'law and order situation'.

18. The statement of witnesses "A" and "B" would show that the incidents had taken place in a public place and the said

witnesses were threatened with an assault by the petitioner in public place. Therefore, these incidents would show that it is the 'public order' that was disturbed.

19. If we consider the statements of witnesses, those were recorded and verified and the verification has been categorically stated by the detaining authority that itself is a sufficient compliance. Here, it has to be noted that the offences on the basis of which the detention order is passed are under Sections 324 and 504 and Sections 307 and 504 of the I.P.C. At the cost of repetition, we would like to note the fact that the petitioner has used a knife while committing the crimes in public place and the offences are of serious nature.

20. In case of Sheikh Hussain @ Shahrukh Shaikh Fatru V/s. State of Maharashtra reported in **2023 DGLS (Bombay) 1318** this Court has held in similar facts and situation, wherein it has observed that a detaining authority must record its subjective satisfaction that the statements of witnesses were genuine and that it had interacted with Assistant Commissioner of Police to verify

such statements. Here such subjective satisfaction had been arrived at. As the subjective satisfaction has been arrived at on the basis of two offences i.e. Crime Nos.604/2023 and 501/2023 as well as two in-camera statements of witnesses “A” and “B”, we do not find this to be a fit case where we should exercise our constitutional powers to set aside the detention order.

21. The detention order has been confirmed taking into consideration the opinion of the Advisory Board as contemplated under law. Therefore, we pass the following order:-

Criminal writ petition is dismissed.

Rule stands discharged.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)