



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

CRIMINAL WRIT PETITION NO.684 OF 2024

Toukir Qureshi alias Chintu

S/o Nehmat Qureshi,

Age about 22 years, Occ.- Labour,

R/o Quarter No.MPA/288/AB,

Ajani Railway Quarter,

In front of Water Tank, Ajani, Nagpur,

(At present in Nagpur Central Prison)

... **Petitioner**

Versus

1. Commissioner of Police,

Nagpur City, Nagpur.

2. State of Maharashtra,

Through Under Secretary,

Home Department (Special),

Mantralaya, Mumbai.

... **Respondents**

Shri Saurabh Singha, holding for Shri R.K. Tiwari, Counsel for
Petitioner.

Shri M.K. Pathan, Additional Public Prosecutor for Respondents.

CORAM : ALOK ARADHE, CJ. & NITIN W. SAMBRE, J.

DATE : 25th FEBRUARY, 2025

ORAL ORDER (PER : CHIEF JUSTICE) :

1. In this writ petition, the petitioner has assailed the validity
of the order dated 21st March, 2024 and the order
dated 28th March, 2024 passed by the Commissioner of Police as well

as the State Government under Section 3 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, hereinafter referred to as 'the MPDA Act'). In order to appreciate the challenge of the petitioner to the said orders, relevant facts need mention, which are stated infra.

2. The petitioner is resident of Ajni, Nagpur. Between the period from 2019 till 2023, following seven criminal cases were registered against the petitioner in different Police Stations of Nagpur City involving offences, such as dacoity, attempt to murder, criminal intimidation and possession of illegal weapons.

Sr.No.	P. Stn. & Cr. No.	Under Section	Date of Offence	C.C. No. & Date	Remarks
1	<u>Beltarodi</u> <u>60/2019</u>	364, 307, 143, 147, 148, 149, 341, 506 I.P.C. r/w 135 Maharashtra Police Act	15/03/2019	<u>240/2019</u> <u>06/06/2019</u>	Court Pending
2	<u>Ajni</u> 401/2019	307, 143, 144, 147, 148, 149 I.P.C.. r/w 4/25 Arms Act, 135 Maharashtra Police Act.	26/08/2019	<u>197/2020</u> 26/06/2020	Court Pending

3	<u>Ajni</u> N.C.R. No.92/2020	323, 504, 506 I.P.C.	14/01/2020	—	—
4	<u>Ajni</u> 468/2020	143, 147, 148, 149, 294, 336, 427, 506-B IPC.	12/09/2020	<u>3994/2020</u> 28/12/2020	Court Pending
5	<u>Sonegaon</u> 102/2021	394, 325, 294, 448, 452, 427, 34 I.P.C.	02/07/2021	<u>4380/2021</u> 09/11/2021	Court Pending
6	<u>Ajni</u> 415/2021	399, 402 I.P.C. r/w 4/25 Arms Act, 135, 142 Maharashtra Police Act.	13/08/2021	<u>4118/2021</u> 13/12/2021	Court Pending
7	<u>Ajni</u> 99/2023	394, 294, 504, 506, 34 I.P.C.	18/02/2023	<u>218/2024</u> 15/01/2024	Court Pending

In order to prevent the petitioner from engaging in criminal activities, the police on 11th December, 2020 initiated preventive action under Sections 107 and 116(3) of the Code of Criminal Procedure which deals with habitual offenders.

3. An F.I.R., viz. Crime No.337 of 2023, was lodged against the petitioner on 21st August, 2023 for an offence under Section 395 of the Indian Penal Code. The petitioner along with his associates allegedly committed a violent robbery at Best Super Bazar, Congress Nagar, Nagpur. The accused threatened the complainant as well as the public with a knife causing severe panic and endangering public safety. The petitioner was arrested on 25th August, 2023 in connection with the aforesaid crime number.

4. The petitioner on 26th September, 2023 was granted bail and was released from the custody. Again, another criminal case, viz. Crime No.719 of 2023, for offences under Section 4/25 of the Arms Act was registered against the petitioner on 26th October, 2023 and he was arrested on the same day. The petitioner was granted bail by the Court in connection with the aforesaid Crime No.719 of 2023.

5. The Commissioner of Police on 21st March, 2024 passed an order of detention against the petitioner under Section 3 of the MPDA Act. The grounds of detention along with the list of documents and copies of statements were supplied to the petitioner. The State Government on 28th March, 2024 confirmed the order of detention. Hence, this petition.

6. Shri Saurabh Singha, learned counsel for the petitioner, submitted that the Detaining Authority did not consider the order dated 26th September, 2023 by which the petitioner was released on bail and did not satisfy itself as to why despite reasons given by the competent court to grant bail to the detenu, it is still necessary to exercise the power of detention. It is further submitted that there is no live link between the order of detention and the offences allegedly committed by the petitioner. It is further submitted that the activities

of the petitioner do not amount to threat to public order and therefore the order of detention is bad in law. In support of this submission, reliance has been placed on the Division Bench decision of this Court dated 2nd August, 2022 in Criminal Writ Petition No.10 of 2022 (*Hrithik S/o Sudhir Borkar Vs. State of Maharashtra and another*).

7. On the other hand, Shri M.K. Pathan, learned Additional Public Prosecutor for the respondents, while inviting attention to the order of detention submitted that the contention that the order dated 26th September, 2023 granting bail to the petitioner has not been considered by the Detaining Authority, is factually incorrect. It is further submitted that the petitioner is a weapon-wielding, dangerous offender indulging in criminal activities that foster terror in the Society. It is further submitted that since 2019, the petitioner has been continuously engaging himself in commission of violent activities. It is also pointed out that the activities of the petitioner were prejudicial to the maintenance of public order and therefore the Detaining Authority after duly taking into consideration the crimes registered against the petitioner arrived at the satisfaction that the order of detention needs to be passed against the petitioner. It is argued that the subjective satisfaction has been recorded by the

Detaining Authority by assigning valid and cogent reasons and in case the detenue is released, he has the propensity and potentiality to engage in the offences again, which will endanger the public order. In support of the aforesaid submissions, reliance has been placed on the following judgments :

- (i) *Golam Hussain alias Gama v. Commissioner of Police, Calcutta and others* [(1974) 4 SCC 530].
- (ii) *Arjun Balkrishna Sonavane v. State of Maharashtra*, 2016 (6) Mh.L.J. (Cri.) 316.
- (iii) *Bhushan Vijay Rane v. State of Maharashtra*, 2017 ALL MR (Cri) 2066.
- (iv) *Pravin alias Bhayya Pratap Shinde v. Commissioner of Police, Pune*, 2020(3) ABR (Cri) 733.
- (v) *Pravin Ganpat Kakad v. Commissioner of Police and others*, 2021 ALL MR (Cri) 1475.

8. We have considered the rival submissions made on both sides and have perused the record. It is well settled law that preventive detention is not punitive but a precautionary measure. Its object is not to punish a person, but to prevent him from doing any illegal activity which may be prejudicial to the maintenance of public order. The power of preventive detention is invoked as an anticipatory measure and same does not relate to an offence in respect of which

criminal proceedings are pending to punish a person for an offence committed by him. It is well settled legal proposition that action of the authority in detaining a person being only precautionary, the matter necessarily has to be left to the discretion of the authority. However, since the preventive detention essentially deals with curtailment of personal liberty, therefore procedural safeguard laid down by the Statute has to be strictly complied with. [See : **UOI Vs. PAUL MANICKAM**, AIR 2003 SC 4622, and **GIMIK PIOTR Vs. STATE OF TAMIL NADU**, (2010) 1 SCC 609].

9. In the instant case, the petitioner was indulging in the activities which were prejudicial to public order in addition to the aforesaid seven criminal cases, again on 21st August, 2023 and 26th January, 2023, offence under Section 395 of the Indian Penal Code and under Section 4/25 of the Arms Act read with Section 135 of the Maharashtra Police Act, were registered against the petitioner. The Detaining Authority took into account the pendency of the aforesaid criminal cases as well as in-camera statements of two witnesses and came to the conclusion that the petitioner has created terror in the minds of the public in the vicinity and created disturbance of public order. The Detaining Authority has further recorded a finding that the petitioner is a weapon-wielding offender, who has indulged in

the activities, which are prejudicial to the maintenance of public order. The Detaining Authority taking into account the likelihood of the petitioner reverting to similar activities, which were prejudicial to maintenance of public order, came to a conclusion that the activities of the petitioner are prejudicial to the maintenance of public order. Therefore, an order of detention under Section 3(1) of the MPDA Act was passed.

10. The contention on behalf of the petitioner that the Detaining Authority did not advert to the order dated 26th September, 2023 granting bail to the petitioner is factually incorrect, as the Detaining Authority has considered the order granting bail to the petitioner in Para 10.1.4 of the order of detention. From the order of the Detaining Authority, it is evident that the Detaining Authority has recorded a statement that the petitioner who is a free man has the tendency and propensity to indulge in activities which are prejudicial to the maintenance of public order in future. Therefore, the contention that the activities of the petitioner do not amount to threat to public order is incorrect and the procedural safeguard laid down under the MPDA Act has been followed meticulously. The contention that there is no live and proximate link between the grounds of detention alleged by the Detaining Authority and the

purpose of detention is equally misconceived. The petitioner in the month of August 2023 has twice indulged in violent robbery and has threatened the public with knife causing severe panic and has endangered the public safety. Therefore, the contention that there is no live and proximate link between the grounds of detention and the purpose of detention is misconceived.

11. In view of the aforesaid analysis, the order of detention, which has been confirmed by the State Government, does not suffer from any infirmity warranting interference by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

12. In the result, the writ petition fails and is dismissed.

(NITIN W. SAMBRE, J.)

(CHIEF JUSTICE)