



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

CRIMINAL WRIT PETITION NO. 787/2024

(RESHMABI SHAKIR KHAN & ANOTHER **VERSUS** THE STATE OF MAHARASHTRA & ANR)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri Anzar B. Mirza, counsel for the petitioners.

Shri A.B. Badar, Additional Public Prosecutor for the respondents.

CORAM : ALOK ARADHE, C.J. AND NITIN W. SAMBRE, J.

DATE : FEBRUARY 28, 2025

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By consent, the criminal writ petition is taken up for final disposal at the admission stage. Heard the learned counsel for the parties.

2. The petitioner no.2 detenu is married to the petitioner no.1 and this joint petition is preferred questioning the order of detention dated March 26, 2024 passed by the respondent no.2 which was confirmed on May 15, 2024 by the State Government thereby ordering detention of the petitioner no.2 by styling him as a dangerous person under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons engaged in Black Marketing of Essential Commodities Act, 1981 (for short, 'the Act of 1981').

3. The facts necessary for deciding the writ petition are as under:

The case of the prosecution in the matter of ordering detention of the petitioner no.2 is based on two offences viz. Crime No.92 of 2024 registered on March 04, 2024 for the offences punishable under Sections 323, 324, 504 and 506 of the Indian Penal Code, 1860 and Crime No.114 of 2024 registered on March 15, 2024 for the offences punishable under Sections 4 and 25 of the Arms Act, 1959.

Prior to the present detention order, based on earlier eight offences for the period from May 25, 2020 to April 23, 2022, the Detaining Authority had passed orders dated May 20, 2022 and June 17, 2022 thereby detaining the petitioner no.2 for a period of one year. The said detention order was subject matter of Criminal Writ Petition No. 730 of 2022, which is pending adjudication.

4. Police Station Akot City had forwarded a proposal to the respondent no.2 for invoking the provisions of the Act of 1981 against the petitioner no.2 based on the abovereferred two offences and two in-camera statements of the confidential witnesses, viz. witness A and B. Based on the aforesaid in-camera statements of the two confidential witnesses, the Detaining Authority has formed a subjective satisfaction having regard to the activities, its effect and the gravity of the offences that the petitioner no.2 is a dangerous person as defined under Section 2(b-1) of the Act of 1981. It is further observed that the law of the land is not sufficient to curb the criminal and dangerous activities of the petitioner no.2 and as such recorded a satisfaction that the petitioner no.2 has created terror in the minds of the members of the locality. The conduct of the petitioner no.2 has resulted into disturbing the routine of the people residing in the locality thereby affecting the public order and as such order of detention was given effect to.

5. While questioning the order of detention, the counsel for the petitioner would urge that though Crime Nos.92 and 114 of 2024 were taken into account for ordering detention of the petitioner no.2, however in both these offences the petitioner no.2 was never arrested and only action under Section 41-A of the Code of Criminal Procedure,

1973 was initiated against him. It is urged that in view of the decision of the respondent no.2 of not arresting the petitioner no.2 in a cognizable offence which is non-bailable, the subjective satisfaction which was recorded stands vitiated as the respondents have considered irrelevant grounds for ordering detention. It is further urged that though the petitioner no.2 had undergone detention in the year 2022 based on earlier eight offences, the said offences and the preventive action ought not to be taken into account or referred to in the order impugned since the same were considered while ordering the earlier detention. Further contention of the counsel for the petitioners is that the statements of two confidential witnesses are stereotyped. The perusal of the statements reflects that ordinary law of the land is sufficient enough to deal with the allegations therein and as such invocation of provisions of the Act of 1981 is not justified.

In addition, it is the contention of the counsel for the petitioners that the in-camera statements which are relied on for ordering detention are identical and similar to that of the statements which are relied on for passing the earlier detention order. As such, the stereotyped in-camera statements ought not to have been taken into account by the Detaining Authority while passing the order impugned. It is therefore urged by the counsel for the petitioners that the claim that the in-camera statements were verified by the Detaining Authority before passing the order impugned cannot be accepted.

6. As against above, Shri A.B. Badar, learned Additional Public Prosecutor would urge that the detention order can be said to be legal and justifiable for the following reasons :

(a) On facts, Additional Public Prosecutor has claimed as under :

DATE	PARTICULARS
22.03.2024	Proposal sent by Police Inspector to Detaining Authority.
26.03.2024	Detention order passed by Detaining Authority.
26.03.2024	Grounds of Detention served to detenu.
28.03.2024	Case forwarded by detaining authority to State Government.
03.04.2024	Approval order passed by State Government.
03.04.2024	Case forwarded by State Government to Advisory Board.
	Opinion of Advisory Board.
15.05.2024	Confirmation order passed by State Government.

(b) According to him, even if two offences viz. Crime Nos.92 and 114 of 2024 are under investigation, material collected therein sufficiently speaks of criminal mentality of the petitioner no.2. It is urged that the perusal of the First Information Reports in both the aforesaid offences coupled with the in-camera statements establish that the Detaining Authority was justified in invoking the provisions of the Act of 1981 after recording subjective satisfaction.

(c) According to him, even if action under Section 41-A of the Code of Criminal Procedure, 1973 is taken in both these offences, that by itself will not render the detention order illegal when aggravated criminal conduct of the petitioner no.2 has led to the commission of two cognizable offences, which have led to disturbance of the public order.

(d) The Additional Public Prosecutor would further claim that even if the two offences committed by the petitioner no.2 are ignored, still two in-camera statements are sufficient enough to justify the detention of the petitioner no.2.

(e) The Additional Public Prosecutor has relied on the judgment of the Division Bench of this Court in *Rajesh Baburao Mudhale Versus M.N. Singh & Others* [2003(3) Mh.L.J. 306] so as to canvass that the provisions of Section 5A of the Act of 1981 are meant to be applied even in cases where the detention is substantiated on the basis of in-camera statements. Reliance is also placed on the Division Bench judgment of this Court in *Harshad Jivanrao Mundkar Versus State of Maharashtra & Others* [2024 ALL MR(Cri) 1556], particularly paragraphs 12 and 13 thereof. In the said case, this Court has made an observation that if the in-camera statements are recorded within a reasonable time, same can be definitely relied on by the Detaining Authority.

In this background, he would claim that the order of detention is justifiable and sought for the dismissal of the writ petition.

7. We have considered the rival claims.

8. The Apex Court in *Arjun Ratan Gaikwad Versus State of Maharashtra & Others* [2024 INSC 968] while dealing with the identical issue has observed, based on the judgments of the Apex Court in *Ram Manohar Lohia Versus State of Bihar & Another* [1965 INSC 175] and *Ameena Begum Versus State of Telangana & Others* [(2023) 9 SCC 587] that for determining whether an act amounts to disturbance to public order, the activity which is involved must be of such a nature that it has impact on the broader community and the general public,

evoking feeling of public fear, panic or insecurity. It should lead to disturbance of the current of life of the community. It is the facts and circumstances of each case which can justify whether there is a threat to the public order or whether it would be such which can be dealt with by the ordinary machinery in exercise of its powers of maintaining law and order. The Apex Court has further held that in case a person in a public space, where a number of people are present, creates a ruckus by his criminal act or behaviour and continues to create terror in the minds of public at large, same would amount to a threat to public order.

9. In *Ameena Begum* (supra), the Apex Court has held that whenever an order under preventive detention is challenged, the Courts must ask a question to itself was the ordinary law of the land sufficient to deal with the situation? In the aforesaid case, the Apex Court has further held that even in a non-bailable cognizable offence, if the accused is not arrested, then it will be impacting the decision of the Detaining Authority in the matter of recording subjective satisfaction as the Investigating Agency at the relevant time might have thought it fit not to arrest the accused having regard to the nature of allegations against him in the offences under investigation relating to law and order.

However, when it is noticed that the accused is proceeded under Section 41A of Code of Criminal Procedure, 1973, in cognizable and

non-bailable offence and the terms of notice in reference to the same is not dishonoured then the power to order detention cannot be said to be justifiable. It has been held that the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India are required to be enforced diligently and the Detaining Authority cannot enjoy unfettered, unguided and unlimited discretion in ordering detention for the maximum period.

10. In *Khaja Bilal Ahmed Versus State of Telangana & Others* [(2020) 13 SCC 632], the Apex Court has held that if pending cases are not considered for passing the order of detention but are stated by the Detaining Authority in the order, it defies logic as to why they were referred to in the order of detention. It has been further held that previous criminal antecedents can be relied on if they have a direct nexus with immediate need to detain an individual and if criminal activities of detenu could indicate his tendency or inclination to act in a manner prejudicial to maintenance of public order.

11. In view of the aforesaid position of law, which are the authoritative pronouncements by the Apex Court and the Division Bench of this Court, if we analyze the contentions put forth by the petitioner, we are required to be sensitive to the fact that of the two offences relied on by the prosecution for ordering detention of the petitioner no.2, one is punishable under Section 324 of the Indian Penal

Code. The said offence is cognizable and non-bailable in nature, still the Investigating Officer has decided to cause intimation under Section 41A of the Code of Criminal Procedure, 1973 ordering appearance of the detenu in the said offence. It is not the case of the Detaining Authority that the terms of notice issued under Section 41A of the Code of Criminal Procedure, 1973 are not complied with by the petitioner. Rather the Investigating Officer in the said crime has thought it fit not to detain the petitioner no.2 though the offence was non-bailable and caused aforesaid notice of appearance.

12. We have already reiterated the position of law in the foregoing paragraphs, particularly as to what happens when the provisions of Section 41A of the Code of Criminal Procedure, 1973 are taken recourse to and the detenu in the capacity of accused has not dishonoured the same. The law of preventive detention curtails the liberty of an individual so also his freedom guaranteed under Article 21 of the Constitution of India. As such, the Detaining Authority must be very circumspect while exercising the powers as the same cannot be used to clip the wings of the accused who is involved in the criminal prosecution. The detention proceedings cannot be used merely because under ordinary criminal law it is not possible to resist the issue of order of bail unless adverse material to that effect is available against the detenu.

13. In the case in hand, we have also noticed that though the two crimes which are relied on by the Detaining Authority while passing the order impugned were under investigation, the Investigating Officer has taken recourse to Section 41A of the Code of Criminal Procedure, 1973 and the detenu was never subjected to police or the judicial custody. In this view of the matter, in Crime Nos.92 of 2024 and 114 of 2024 it has to be held that the ordinary criminal law was sufficient enough to deal with the criminal acts of the petitioner no.2. As such the power exercised while ordering detention of the petitioner no.2 cannot be said to be justified. Even in a cognizable and non-bailable offence the provisions of Section 41A of the Code of Criminal Procedure, 1973 should not have been invoked by the Investigating Officer directing the presence of the accused. The aforesaid conduct can lead to the only inference that the Investigating Officer was satisfied that the regular criminal law including that of the procedural law is sufficient enough to take care of the criminal activity of the petitioner and the same cannot be viewed as detrimental to the maintenance of public order.

14. Apart from above, in Crime No.92 of 2024, the genesis of the offence is based on the assault by the individual who is complainant therein. No element of disturbance of public order is demonstrated or can be inferred from the allegations in the said crime. In another crime being Crime No.114 of 2024, the allegations are that the petitioner was

brandishing a sharp edged knife in the public place. Perusal of the First Information Report in the said crime and other material which was relied on for considering the said crime for ordering detention would reveal that investigation is entirely based on hearsay material. There is no eye witness to the incident of the petitioner having threatened any of the passersby or the member of the public. As such, element of disturbance of public order cannot be inferred as the incident narrated therein only refers to the disturbance of law and order.

In the detention order, the Detaining Authority though has not referred to the criminal history of the petitioner which is in relation to eight offences which are from May 25, 2022 to April 23, 2023, all these offences were already relied on for ordering detention in an earlier detention order dated May 20, 2022.

15. In addition to above two offences, in-camera statements of witness-A and B recorded on March 17, 2024 and March 18, 2024 are relied on by the Detaining Authority. Said statements were recorded by Police Inspector of Police Station Akot and verified by Assistant Police Superintendent. On perusal of the said statements, which are produced at Page 181 and 183, it cannot be inferred that the same were verified by the Detaining Authority. Even otherwise, it is a settled position of law that the detention order cannot be justified solely on the basis of in-camera statements of the confidential witnesses.

16. We have already considered the judgment of the Apex Court in *Khaja Bilal Ahmed* (supra), paragraph 23 of the said judgment reads as under :

“23. In the present case, the order of detention states that the fourteen cases were referred to demonstrate the “antecedent criminal history and conduct of the appellant”. The order of detention records that a “rowdy sheet” is being maintained at PS Rain Bazar of Hyderabad City and the appellant “could not mend his criminal way of life” and continued to indulge in similar offences after being released on bail. In the counter-affidavit filed before the High Court, the detaining authority recorded that these cases were “referred by way of his criminal background... (and) are not relied upon”. The detaining authority stated that the cases which were registered against the appellant between 2009 and 2016 “are not at all considered for passing the detention order” and were “referred by way of his criminal background only”. This averment is plainly contradictory. The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the

satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.”

17. As a sequel of the aforesaid authoritative pronouncements of the Apex Court, reference can be made to the previous antecedents if such offences have direct nexus or link of immediate need to detain an individual. Same does not appear to be the case in hand, particularly when though there is a reference made to the earlier eight offences, only two of the offences are relied on. The necessity to mention earlier eight offences for which an independent detention order is already given effect to, is not at all considered. In this backdrop, it has to be held that the order of detention cannot be said to be justified for the purpose of achieving the object of maintaining the law and order.

18. As such, the order impugned dated March 26, 2024 is hereby quashed and set aside. If not required in any other offence, the petitioner be set at liberty forthwith. The criminal writ petition stands allowed in aforesaid terms and disposed of.

(NITIN W. SAMBRE, J.)

(CHIEF JUSTICE)

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