



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

Criminal Writ Petition No.903 of 2024

Sheikh Kasam S/o Sheikh Sheikhji,

Aged about 28 years,

Occupation – Labour,

R/o Chand Khan Plot, Washim Road,

Old City, Akola, Tq. and District Akola.

... **Petitioner**

(In Jail)

Versus

1. State of Maharashtra,

through Section Officer of the

Home Department (Special),

Second Floor, Main Building,

Mantralaya, Mumbai.

2. Collector & District Magistrate,

Akola, Office of the Collector and

District Magistrate, District Akola.

... **Respondents**

Shri S.V. Sirpurkar, Counsel for Petitioner.

Shri A.B. Badar, Additional Public Prosecutor for Respondents.

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

DATE OF RESERVING THE JUDGMENT : FEBRUARY 21, 2025

DATE OF PRONOUNCING THE JUDGMENT : APRIL 01, 2025

JUDGMENT (PER NITIN W. SAMBRE, J.) :

1. Admit. Shri A.B. Badar, learned Additional Public Prosecutor, waives notice of hearing. The criminal writ petition is being disposed of finally.

2. Heard Shri S.V. Sirpurkar, learned counsel for the petitioner, and Shri A.B. Badar, learned Additional Public Prosecutor for the respondents.

3. The challenge in the present criminal writ petition is to the order of detention dated July 08, 2024 passed by the respondent No.1- Government of Maharashtra, Department of Home, Mantralaya, Mumbai, so also the order dated June 28, 2024 passed by the respondent No.2- District Magistrate, Akola, whereby the petitioner is ordered to be detained under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Prates, Sand Smugglers and Persons engaged in Black-marketing of Essential Commodities Act, 1981 (for short, 'MPDA Act'), styling as a 'dangerous person'.

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

The petitioner has a history of six criminal cases from 2016 to 2024 and two preventive actions in 2019 and 2020. The petitioner was also externed under Section 55 of the Maharashtra Police Act, 1951 for a period of two years vide order dated November 02, 2023. On an earlier occasion, vide order dated November 30, 2021, the petitioner was detained under Section 3(1) of MPDA Act.

In this background, since the petitioner's activities are styled as detrimental to the maintenance of public order, the detention order came to be passed by relying on Crime No.265 of 2024 punishable under Section 324 read with Section 34 of the Indian Penal Code, Sections 4 and

25 of the Arms Act and Section 142 of the Maharashtra Police Act registered on May 05, 2024, and the in-camera statements of Witness-A and Witness-B.

5. While questioning the detention order, Shri Sirpurkar, learned counsel for the petitioner, would claim that the petitioner is falsely implicated in Crime No.265 of 2024. He is released on bail by the Judicial Magistrate First Class, Court No.6, Akola vide order dated May 28, 2024 and the conditions imposed are not taken into account. The learned counsel would claim that the two in-camera statements of Witness-A and Witness-B are artificially generated so as to demonstrate the violent criminal activities of the petitioner. According to him, a violation of Article 22(5) of the Constitution of India has to be inferred, as the bunch of papers are handed over to the petitioner, however the in-camera statement of Witness-B was never served on him. According to him, even if the allegations in Crime No.265 of 2024 are taken into account, the said allegations do not lead to an inference of the acts of the petitioner being prejudicial to the maintenance of public order. He would further claim that there is a delay of two months in the execution of the detention order passed on June 28, 2024, as the said order was served on the petitioner on August 21, 2024. According to him, there is also a delay of three months in passing the order of detention, as the offence was registered on May 05, 2024.

6. So as to substantiate the aforesaid contentions, through a pursis dated March 12, 2025, the learned counsel for the petitioner has placed on record the judgment of the Apex Court in the matter of **Joyi Kitty Joseph Vs. Union of India and others**, rendered in the Special Leave Petition (Crl.) No.16893 of 2024, decided on March 06, 2025. He would try to substantiate his contention as regards the disturbance of 'law and order' and 'public order'. According to him, the law of preventive detention is to be construed strictly.

7. As against above, Shri Badar, learned Additional Public Prosecutor for the respondents, has urged that the petitioner while undergoing the externment order has illegally entered the city and committed the offence, as could be inferred from the date of externment and the date of commission of offence. According to him, the petitioner has committed an isolated offence in open, which led to disturbance of the public order and as such the Authority has rightly recorded its subjective satisfaction. A further contention is that the in-camera statements of Witness-A and Witness-B speak of the intention of the petitioner to threaten the public and disturb the smooth order of the Society and as such this Court should dismiss the petition preferred by the petitioner.

8. We have considered the rival submissions.

9. The impugned detention order considers only one offence and two in-camera statements of Witness-A and Witness-B. The only offence, which is relied on for the purpose of passing the detention order, is Crime No.265

of 2024, wherein the allegations are of use of weapon, viz. iron pipe. It is claimed that the petitioner committed such offence though he was externed vide order dated November 02, 2023 passed by the Superintendent of Police, Akola.

10. We have perused not only the F.I.R. but also the statements of witnesses in the chargesheet, which are annexed with the detention order. By no stretch of imagination, the conduct of the petitioner narrated therein, even if taken to be correct for the purpose of testing the legality of the detention order, can be termed as amounting to the disturbance of public order. The incident narrated therein speaks of the differences between the group of complainant and that of the present petitioner and it is nowhere demonstrated that the violent conduct of the petitioner has resulted into the people residing in the said area or whosoever were present getting frightened and leaving the place. As such, it has to be inferred that the isolated offence considered against the petitioner cannot be said to cause the disturbance of public order. That being so, based on the aforesaid material, the Detaining Authority has accordingly recorded its subjective satisfaction.

11. We are required to be sensitive to the law laid down by the Apex Court in the matter of *Rameshwar Lal Patwari Vs. The State of Bihar*, reported in *AIR 1968 SC 1303*, that this Court is not sitting in appeal while questioning the legality of the order of preventive detention and this Court is required to leave the issue of subjective satisfaction untouched once

there is a consideration. However, we are equally required to be sensitive as to whether there is an application of mind or not and as such we have proceeded to record the aforesaid finding. We are of the view that the ordinary criminal law of land is sufficient to deal with the situation in which the offence is committed by the petitioner. Apart from above, we are equally required to be sensitive to the law laid down by the Apex Court in the matter of *Ameena Begum Vs. State of Telangana and others*, reported in *(2023) 9 SCC 587*, wherein the Apex Court has dealt with the issue of difference between the 'public order' and 'law and order'. The law of preventive detention cannot be exercised merely to curb the acts of the person involved in the criminal prosecution, as the ordinary criminal law will be sufficient enough to take within its ambit the conduct of the said person.

12. In this backdrop, we are of the view that the impugned detention order dated detention July 08, 2024 passed by the respondent No.1- Government of Maharashtra, Department of Home, Mantralaya, Mumbai, so also the order dated June 28, 2024 passed by the respondent No.2- District Magistrate, Akola, cannot be said to be sustainable in law.

13. That being so, the present criminal writ petition stands allowed in terms of prayer clause (i).

14. We direct that the petitioner be set at liberty forthwith, if not required in any other crime.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

LANJEWAR