



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

CRIMINAL WRIT PETITION NO. 374 OF 2024

Shivank S/o Pravinsingh Thakur,
Aged 27 years, Occupation – Labour,
R/o. Bose Nagar, Tumsar, Tah. Tumsar,
District – Bhandara.

... **PETITIONER**

...VERSUS...

1. State of Maharashtra,
Through its Secretary,
Department of Home (Special),
Mantralaya, Mumbai.
2. The Collector & District Magistrate,
Bhandara, District – Bhandara.
3. The Police Station Officer, Police Station,
Tumsar, District – Bhandara.

... **RESPONDENTS**

Mr. Krishna S. Motwani, Advocate for the Petitioner.
Ms S.S. Jachak, A.P.P. for Respondent Nos.1 to 3/State.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 14.01.2025
JUDGMENT PRONOUNCED ON : 04.02.2025

JUDGMENT (PER : MRS. VRUSHALI V. JOSHI, J.):-

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.
2. The petitioner has challenged the detention order dated 14.03.2024, passed under Section 3(2) 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 (hereinafter referred to as “MPDA Act”) by the Collector, Bhandara, and the same was further confirmed on 08.05.2024 by the Respondent No.1.

3. The petitioner claims that five offences have been considered while passing the detention order.

The stance of the Respondent No.2 is that two offences have been committed by the detenu in the last six months and that the recent Crime No.918/2023, registered on 26.12.2023 has been majorly relied upon in the order of detention.

The abovementioned single offence has been registered under Sections 307, 353, 143, 147, 148, 149 of the Indian Penal Code read with Section 3 and 25 of the Arms Act and Section 135 of the Maharashtra Prohibition Act, 1951.

It is alleged in the said crime that, the accused in M.C.O.C.A. case was brought to Bhandara for investigation. It is further alleged that, the petitioner along with other members of gang obstructed the work of prosecution by trying to intimidate the complainant, who is a Police Inspector at Police Station, Tumsar, by pointing a fire arm towards P.I.

In the anonymous statements of witnesses “A” and “B”, it is stated that, the petitioner threatened persons from Ambedkar Ward, Tumsar, by abusing and running behind them with a knife with an intention to kill them.

4. The learned Counsel for the petitioner has argued that bail order is not considered and the same is not even put before the detaining authority.

The learned Counsel for the petitioner further submitted that, mere recording of statements of witnesses is not sufficient. The detaining authority is satisfied about the truthfulness of in-camera statements only on the basis of proposal of Police Station Officer, Tumsar. There is no statement of independent witnesses apart from police witness. There is nothing to prove that the detenu was spreading terror with gun.

It is submitted by the learned Counsel for the petitioner that, the authority has also considered stale offences registered against the petitioner in the past. Hence, it cannot be ascertained to what extent it has affected the subjective satisfaction of the detaining authority.

He further states that, the statements of in-camera witnesses have not been verified by the detaining authority and the perusal of the

same would reflect that the same are related to individual incidents and it does not have any nexus with maintenance of public order.

5. In response to the submissions of the petitioner, learned A.P.P. vehemently opposed the petition on behalf of the respondents. He submitted that, the respondent No.2 has forwarded all detention case papers and records to the State Government. The respondent No.2 has carefully gone through the material placed before him. The answering respondent has specifically mentioned all grounds of detention and copy of said grounds have already been received by the detenu wherein the list of past offences, preventive action, externment order and one recent offence, i.e. Crime No.918/2023 have been specifically mentioned. During the investigation of the above crimes, it was clearly revealed that the petitioner has no regard to law and has even dared to commit an offence against a public servant. Hence, it is revealed that the detenu is a danger and falls within the definition of a 'Dangerous Person' as per the said Act.

He further submitted that, the detenu has created terror in the localities and areas within the jurisdiction of Police Station Bhandara and Tumsar, District Bhandara. The people in the said localities are experiencing a sense of insecurity and are carrying out their daily businesses under a constant threat of fear.

6. In view of the tendencies and inclinations reflected in the offence committed by the detenu as stated above, the respondent No.2 is satisfied that in the event of detenu being a notorious criminal, he is likely to indulge in activities prejudicial to the maintenance of public order in future and it was necessary to detain the petitioner under Section 3(1) of the said Act.

7. By considering one offence against the petitioner and the statements of two confidential witnesses, the detention order is passed by the detaining authority i.e. respondent No.2. On perusal of detention order, it appears that though one offence is considered, the earlier five offences are discussed while passing the detention order. The ground of the petitioner is that the stale offences are considered for passing the detention order. It is discussed in detail in judgment of the Hon'ble Apex Court in the case of ***Ameena Begum Vs. State of Telangana & Ors.*** reported in **2023 (9) SCC 587** about considering the stale offences while passing the detention order. In ***Ammeena Begum*** (*supra*), the Hon'ble Apex Court has placed reliance on the judgment of ***Sama Aruna Vs. State of Telangana*** reported in **(2018) 12 SCC 150**, wherein it is held as under :

“16. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or

prepare to engage in such activities in the immediate future can be taken into account.”

In holding that the order of detention therein was grounded on stale grounds, the Court held that:

“The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it.”

*“18. This was further affirmed by this Court in **Khaja Bilal Ahmed vs. State of Telangana** reported in (2020) 13 SCC 632, where the detention order dated 2nd November, 2018 issued under the Act had delved into the history of cases involving the appellant-detenu from the years 2007 - 2016, despite the subjective satisfaction of the Officer not being based on such cases. In quashing such an order, Hon’ble Dr. D.Y. Chandrachud, J. (as the Chief Justice then was) observed:*

*“23. *** 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.”

8. In view of the above said observations made by the Hon’ble Apex Court, the detaining authority has considered the earlier offences while passing the detention order, the order got vitiated.

9. The next ground is that the bail order is not placed on record. While passing the detention order, the bail order is not considered by the detaining authority. In ***Elizabeth Ranibhai Prabhudas Gaikwad Vs. State of Maharashtra [Criminal Writ Petition No.677/2020]***, wherein it is observed by this Court that, if the authority does not take into consideration the orders of bail granted to the proposed detenu, it may lead to an anomalous situation whereby one authority of law i.e. Criminal Court thinks it fit to enlarge such a person on bail in criminal offences registered against him and the other authority of law considered it necessary that such person is detained in custody because of his criminal activities exhibited by pendency of criminal cases against him. The law does not expect any mismatch between the orders passed by the two law enforcing authorities and

therefore, it is necessary that when one authority has released a person on bail, the other authority seeking to detain him again for the same criminal activities, considered the impact of the bail order and reaches to an appropriate conclusion in the matter. The reliance is placed on the case of ***Abdul Sattar Ibrahim Manik Vs, Union of India*** reported in ***(1992) 1 SCC 1*** wherein it is observed as under :

“In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the Detaining Authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu.”

10. The order passed by the detaining authority do not consider in any manner the bail orders passed in the crimes considered by the detaining authority, the impugned order cannot be said to be valid in the eye of law.

11. On perusal of the statements of two confidential witnesses, it appears that identical statements of witnesses are placed on record. The original is not produced by the learned A.P.P. to verify whether the statements are verified by the detaining authority. The statements are not verified by the detaining authority as the stale crimes are considered by the detaining authority and also the bail order is not considered, the order passed by the detaining authority is required to be set aside.

12. For the aforesaid reason, the petition deserves to be allowed and it is accordingly, allowed.

13. We hereby quash and set aside the detention order dated 14.03.2024 passed by the respondent No.2.

14. The petitioner be set at liberty forthwith, if not required in any other crime.

15. Rule is made absolute in aforesaid terms.

16. Pending application(s), if any, stand(s) disposed of accordingly.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)