



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

CRIMINAL WRIT PETITION NO.451 OF 2024

1. Om @ Vinay s/o. Laxman Dangoriya, **Petitioner**
aged about 25 years, Occ: Student, R/o.
Navalbaba Ward, Pusad,
Tal: Pusad, District: Yavatmal.
At present lodged in Amravati Central
Prison, Amravati.

-Versus-

1. State of Maharashtra, **Respondents**
Through Home Department (Special),
2nd Floor, Mantralaya, Mumbai – 400 032.
2. District Magistrate, District – Yavatmal.
3. Sub-Divisional Police Officer, Pusad, District
– Yavatmal.
4. Police Inspector, Police Station Pusad City,
Pusad, District: Yavatmal.

Adv. Hariom V. Dhage, counsel for the Petitioner.
Adv. S.S. Hulke, A.P.P. for R-1 to 4 for Respondents.

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

DATE : 17/01/2025

ORAL JUDGMENT (Per: Vrushali V. Joshi, J.)

Heard.

2. **Rule.** Rule made returnable forthwith. The Criminal Writ
Petition is heard finally with the consent of the learned counsel
appearing for the parties.

3. By way of this Petition, under Article 226 of the Constitution of India, the petitioner is challenging the impugned order dated 07/05/2024 passed by the Respondent no.2 in exercise of the powers conferred by Section 3(1) 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, (hereinafter referred to as “MPDA”); which is approved by the State on 16/05/2024.

4. The two offences i.e., C.R. no. 95/2024 and C.R. no. 112/2024 which are taken into account for passing the detention order were registered on 22/02/2024 and 05/03/2024 respectively. The in-camera statements of witnesses “A” and “B” too have been relied upon.

(i) C.R. no. 95/2024 is filed under Sections 324, 323, 504, 506, 34 of the Indian Penal Code at the Pusad City, Police Station.

(ii) C.R. no. 112/2024 is filed under Sections 324, 323, 504, 506, 143, 144, 147, 148 and 149 of the Indian Penal Code at the Pusad City, Police Station.

The particulars of both the crimes are as under:

(a) In C.R. no. 95/2024, the complainant, a resident of Kamptee, Nagpur, along with his friend, for the purpose of his fabrication work had gone to visit his site at the Pusad City. After the work, they went to a Chinese food handcart and placed the order. Since, their order did not arrive within fifteen minutes after they placed the order, they were about to leave when the owner of the food cart raised his voice. A fight broke out between them. The complainant resisted the beating and the boy wearing a black T-shirt hit the complainant's friend on the back of his head with a wooden stick and also threatened to kill them if they were seen at that place again. Therefore, both the accused were served with a notice under 41-A of the Code of Criminal Procedure. The petitioner is alleged to be an accomplice in the said offence. The matter is sub-judice before the concerned Court.

(ii) In C.R. no. 112/2024, the petitioner with his associates was bursting firecrackers in front of the house of the complainant. The complainant requested them to not burst the crackers as they could potentially catch fire which could be dangerous for everyone

in their home. The petitioner along with his associates took out weapons such as iron rod, wooden bat, iron pipe, stick and abused the complainant and his family members and threatened to kill them. The present matter is under investigation.

5. The grounds raised by the learned advocate of the petitioner are as under:

(a) One of the most important grounds raised is that, Respondent no.4 had falsely created criminal antecedents against the petitioner in order to get his detention order.

(b) Respondent no.4 while recording the confidential statement of witness B, failed to see that the witness had mere grudges and that the statement revealed their identity.

(c) Further, the detaining authority failed to see that on earlier occasion also Respondent no.4 had sought for externment of the petitioner from five districts for a period of two years, which the Respondent no.3 after due consideration of the material on record and considering the cases against the petitioner had rejected the proposal of the Respondent no.4 seeking externment of the petitioner.

6. The learned advocate for the petitioner, Mr. Dhage, submitted that, the petitioner was granted bail in all the cases. He further submitted that, the subjective satisfaction of the verifying authority has to be about unwillingness of such witnesses to come forward and to depose against the detenu, so also about the truthfulness of the statement. The perusal of the statements clearly establishes the identity of the witnesses and the statements are not of the anonymous witnesses but of the alleged victims having grudges against the detenu himself.

7. On the other hand, Learned A.P.P., Mr. Hulke, vehemently opposed the submissions of the petitioner by heavily relying upon the affidavit in-reply on behalf of the Respondent no.2. He submitted that, upon perusal of the grounds of the detention in para no. 8 of the order and the particulars of the crimes mentioned, it clearly shows that the petitioner had actively indulged in the said offences against public wherein, such acts of the petitioner has caused deterrence in public and has even disturbed the peace and tranquility in the society.

8. Learned A.P.P. further contended that, the dismissal of the

proposal of externment by the Sub-Divisional Magistrate, vide order dated 07/12/2023, *ipso facto* cannot be a ground to set aside the detention order as the said authority had considered the circumstances prevailing at the time of issuance of the said proposal. There is no nexus between the dismissal of the externment proposal and the detention order passed.

9. Heard the learned counsel appearing for the petitioner and the learned APP for the respondents.

10. The petitioner is detained as a dangerous person. Two crimes are considered for passing the detention order. An order of detention under Section 3(1) of the Act can be issued against the detenu to prevent him from acting in any manner prejudicial to the maintenance of public order. Public order is defined in the explanation to Section 2(a) of the Act as encompassing situations that cause “*harm, danger or alarm or a feeling of in security among the general public or any section thereof or a grave wide-spread danger to life or public health.*”

11. The breach of law in all cases does not lead to public

disorder. In number of cases, the Hon'ble Apex Court has noted the difference between "law and order" and "public order". In the judgment of *Ameena Begum Vs. The State of Maharashtra and ors.*, [SLP (Criminal) No.8510 of 2023] the Hon'ble Apex Court has referred the decision of the Constitutional Bench of the Apex Court in the case of *Ram Manohar Lohia Vs.State of Bihar*, reported in (1966) 1 SCR 709, wherein it is observed as under:

54. *** Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State".

12. In *Kuso Sah Vs. The State of Bihar*, reported in (1974)

1 SCC 195, the Hon'ble Apex Court in para No.4 and 6 has observed as under:-

4. ***The two concepts have well defined contours, it being well Established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder.***

6. *** The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised.***

13. If the offence is committed against a particular individual it falls within the ambit of “law and order” whereas when the public at large is adversely affected by the criminal activities of a person, then such conduct of the person is said to be disturbing the “public order”. The distinction between the areas of “law and order” and public order’ lies not merely in the nature or quality of the act, but in the proper degree and extent of its impact on the society. In the aforesaid cases, it has been held that the cases do not fall within the ambit of words ‘public order’ or ‘disturbance of public order’ instead, they fall within the scope of the words “law and order”, and that there was no need for the detaining authority to pass the impugned order. Therefore, the impugned order was quashed and the detenu was set at liberty.

14. The offences alleged to have been committed by the detenu, it appears that in both the offences, the acts affects the individuals. In first offence the crime under Section 324 is registered in which the role of the petitioner was not the main role. In another offence, the enmity was there with the family of the complainant and it is also the act against an individual. Such acts would not tend to affect even the flow of public life.

15. The statement of the confidential witnesses also does not reveal that it affects the public order. It is against an individual. It is only seen by the detaining authority. Considering the identical contents in both the statements and as it is only seen by the authority, the statements are also not helpful to pass the said order.

16. In view of the above said observations, the impugned order passed by the detaining authority is hereby quashed and set aside. Hence, we pass the following order.

17. The Writ Petition is allowed in terms of it's prayer clause (b). The petitioner be set at liberty forthwith, if not required in any other crime.

18. Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J) (NITIN W. SAMBRE, J)