



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

CRIMINAL WRIT PETITION NO. 571 OF 2024

Sheikh Shahrukh Sheikh Mehboob,
Aged about 28 years,
Occupation : Labourer,
R/o. Khwaja Nagar, Sontakke Plot,
Old City Akola, Dist. Akola.

... **PETITIONER**

...**VERSUS**...

1. State of Maharashtra,
Through Home Department (Special),
2nd Floor, Main Building, Mantralaya,
Mumbai - 32.
2. District Magistrate, District - Akola.
3. Superintendent of Police, Akola.
4. Police Station Officer,
Police Station, Old City, Akola,
District – Akola.

... **RESPONDENTS**

Mr. M. N. Ali, Advocate for the Petitioner.
Mr. S. S. Doifode, A.P.P. for Respondents/State.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 27.02.2025
JUDGMENT PRONOUNCED ON : 06.03.2025.

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 preferred this petition questioning the preventive detention order passed against him on 03.04.2024 by respondent No.2 - District Magistrate, Akola. The said detention order has been passed

in exercise of powers under Section 3(2) 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 Act”). It was further confirmed by the respondent No.1 on 31.05.2024.

3. The said detention order is based on two crimes, i.e., Crime No.193/2024 and Crime No.195/2024 of Old City Police Station, Akola and two in-camera statements. The former crime is registered under Sections 326, 427, 147, 148, 149, 504, 506 of the Indian Penal Code read with Sections 4 and 25 of the Arms Act, dated 18.03.2024, while the latter is registered under Sections 452, 427, 504, 506, 34 of the Indian Penal Code read with Sections 4 and 25 of the Arms Act, dated 19.03.2024.

4. The petitioner was also externed for a span of six months out of the limits of Akola City. It is pertinent to note that, out of the two bail applications, one in Crime No.193/2024 has been rejected by the Court of the Judicial Magistrate First Class (Court No.4), Akola vide order dated 20.03.2024.

5. Though number of grounds have been raised in this petition, Mr. Ali, learned Counsel has pressed on two certain grounds, which are as under :

(a) The detaining authority had not taken into consideration the bail order which was passed on 22.03.2024 in Crime No.195/2024.

(b) The in-camera statements were recorded on 26th and 27th March, 2024, verified by Sub-Divisional Police Officer, City Division, Akola on 30.03.2024, however the proposal for detention was sent on a prior date to respondent No.2 - District Magistrate, Akola on 28.03.2024.

6. The learned Counsel for the petitioner, Mr. Ali submitted that, the detention officer had filed the copy of bail application in Crime No.195/2024, wherein there is non-consideration of bail order. He further argued that, there could be a possibility that the in-camera statements would have been tampered, as on 30.03.2024 they were opened from the sealed envelope.

7. The learned Counsel for the petitioner further submitted that, the respondents passed and approved the order of detention without verifying the status of the cases registered against the petitioner. As such the order which has been passed in mechanical manner deserves to be quashed and set aside.

8. The learned Additional Public Prosecutor Mr. Doifode relied upon the affidavit-in-reply supporting the order of detention.

Mr. Doifode submitted that, the detaining authority had considered the bail application in Crime No.195/2023 and the bail

application in Crime No.193/2024 was rejected. He further stated that, the action taken against the detenu under Sections 107, 116(3) of the Code of Criminal Procedure and Externment order under Section 56 of the Maharashtra Police Act, 1951, proved to be ineffective in preventing the petitioner from indulging in criminal and dangerous activities.

9. The learned Additional Public Prosecutor contended that the detaining authority has been subjectively satisfied with the acts of the petitioner as prejudicial to the maintenance of public order, there is no requirement of conviction or to sustain any punishment regarding the crime registered against the petitioner. That, all the said crimes registered against him and as per charge sheet and case papers, there is sufficient material against the petitioner about his involvement and participation in the crimes taken into account for passing the order of detention.

10. The learned A.P.P. further submitted that, the residents in jurisdiction of Police Station, Akot, District - Akola, have mentioned about the terror and apprehension in the anonymous complaints made by them in the Police Station, Akot. He further added that the crimes which have been registered of-late, fall under Sections 326 of Chapter XVI of Indian Penal Code, 1860, and Section 2, 427 of Chapter XVII of the Indian Penal Code, 1860, and Sections 4, 25 of the Chapter V of Arms Act, 1959.

11. Heard the learned Counsel for the petitioner and the learned A.P.P. for the respondents.

12. On 17.02.2025 while hearing the arguments of both the parties, we have observed in paragraph No.2 as under :

“2. Prima facie, upon going through the FIR and other material in relation to the two offences, which speaks of the offences having been taken place in public view, however, there is not enough material to infer that the same has led to the disturbance of public order.”

We have already directed the learned Additional Public Prosecutor to show us whether the in-camera statement is sufficient to pass the detention order.

13. The two crimes which are considered by the detaining authority are Crime Nos.193/2024 and 195/2024. The first crime was registered on 18.03.2024 and the other crime was registered on 19.03.2024 on the very next day. The Crime No.193/2024 is registered for the offences punishable under Sections 326, 427, 147, 148, 149, 504, 506 of the Indian Penal Code read with Section 4 and 25 of the Arms Act. In this crime, the petitioner along with other co-accused assaulted the complainant as he has given a statement against the son of the co-accused. Another offence is also about similar allegations and the petitioner along with other persons assaulted the complainant suspecting that he is the informant of police and has informed their names and gave threats to him. In both the offences,

though a sword is used and the group of persons assaulted the complainant, at first it is required to consider whether it affects the public at large or it affects public peace.

14. While considering whether it is situation of breach of public order or law and order, the Hon'ble Apex Court in the case of ***Ameena Begum Vs. The State of Telangana & Ors [Arising out of SLP (Criminal) No.8510/2023]*** has held in para Nos.31, 32 and 34 which read as under :

“31. It is trite that breach of law in all cases does not lead to public disorder. In a catena of judgments, this Court has in clear terms noted the difference between "law and order" and "public order.”

*32. We may refer to the decision of the Constitution Bench of this Court in **Ram Manohar Lohia vs. State of Bihar [(1966) 1 SCR 709]**, where the difference between “law and order” and “public order” was lucidly expressed by Hon’ble M. Hidayatullah, J. (as the Chief Justice then was) in the following words:*

*“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.

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."

15. In the case at hand, assault is committed but it is against an individual and it cannot be treated as in public view. Though it occurred in a public place, it does not disturb the public order.

16. The question which now remains for consideration is whether the detention order can be passed on the basis of the said two witness statements. The statements proved that witness "A" has stated that the petitioner had purchased some articles from the store of the witness and when he asked for money, the petitioner refused it and abused him in filthy language and showed the knife and threatened to kill him and his family members. The people who were present in his shop ran away by seeing the scene created by the petitioner. As he was afraid of the petitioner, he has not lodged any complaint and has given the statement only on the assurance that his name would not be disclosed.

17. Witness “B” has also given the similar statement. The witness runs a Dhaba. The petitioner came to his Dhaba with 4 to 5 of his friends and after taking dinner, he went away from there without paying the bill. When the witness asked for money, the petitioner again created a scene and threatened by showing the knife. It appears from the record that, the statement of witness “A” is recorded on 26.03.2024 and the statement of witness “B” is recorded on 27.03.2024. The proposal was sent on 28.03.2024 and the verification of the statements is dated 30.03.2024 i.e. after sending the proposal, the verification is done, which creates doubt about the verification of the statements. The authority has seen it on 03.04.2024 i.e. on the date of passing the order, which creates doubt about consideration of the statements and the subjective satisfaction about the truthfulness of the said statements. Therefore, on the basis of the said statements, the detention order cannot be passed.

18. In support of his argument, that public order is disturbed as per the statements and crimes considered for passing the detention order, the learned Additional Public Prosecutor has relied on the following judgments :

- 1] *Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Ors.* [(1999) 5 SCC 613].
- 2] *Hasan Khan Ibne Haider Khan Vs. R. H. Mendonea & Ors.* [2000 ALL MR (Cri) 1079].
- 3] *Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonea & Ors.* [2000 ALL MR (Cri) 1503].
- 4] *Atahar Khan Amir Khan Vs. State of Maharashtra & Anr.* [2023 ALL MR (Cri) 2141].
- 5] *Ranjana Ganesh Shripatre Vs. State of Maharashtra and Ors.* [2011 (6) AIR Bom R 551].

- 6] *Zebunnisa Abdul Majid Vs. M. N. Singh and Ors. [2001 (3) Mh.L.J. 365].*
- 7] *Shahrukh Yunus Khan Vs. State of Maharashtra and Ors. [2016 ALL MR (Cri) 3187].*
- 8] *Raju Vitthalrao Bhadre Vs. State of Maharashtra and Anr. [2000 ALL MR (Cri) 1801].*
- 9] *Rupesh Ram Thakur Vs. Shri S. Chakravarty and Ors. [2005 ALL MR (Cri) 1132].*
- 10] *Vijay Dattaram Nakashe Vs. Shri A. N. Roy and Ors. [2005 ALL MR (Cri) 604].*

19. In the case of *Zebunnisa Abdul Majid Vs. M. N. Singh and Ors. [2001 (3) Mh.L.J. 365]*, this Court has held in paragraph No.14 and 19 as under :

“14. In Smt. Phulmart's case (supra) while dealing with the question as to whether in-camera statements can be utilised by the detaining authority for passing the detention order, the Supreme Court observed that it is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of every case.”

“19.....Supreme Court had made it clear that the materials relied upon by the detaining authority should be true and have a reasonable nexus with the purpose for which the order is based. Necessary corollary, therefore, is that the detaining authority must be satisfied about the truthfulness of the statements made in the in-camera statements.”

20. After careful perusal of the crimes, which are considered by the detaining authority, we are of the view that it is against the individual and it does not create any disturbance of the public order. In one of the crimes the petitioner was released on bail but said bail order is not considered. The statements are about extortion of the money, however, the subjective satisfaction about the truthfulness of the statements is in question, the detention order stands vitiated. Hence, we pass the following order :

21. The detention order dated 03.04.2024 passed by the respondent No.2 and the confirmation order dated 31.05.2024 passed by the respondent No.1 is hereby quashed and set aside.

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

23. Rule is made absolute in aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)