



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

CRIMINAL WRIT PETITION NO. 587 OF 2024

Shakir Khan @ Papaya Ahmed Khan,
Aged about 26 years, Occ. - Labour,
R/o. Hamza Plot, Old City, Dist. Akola.

... **PETITIONER**

...VERSUS...

1. State of Maharashtra
Through its Secretary,
Home Department (Special),
Maharashtra, Mumbai.

2. District Magistrate, 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 : 06.03.2025
JUDGMENT PRONOUNCED ON : 13.03.2025

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. By way of this petition, the petitioner is questioning the legality of the impugned detention order No.Desk-2/HA/HOME/WS-240/2024 dated 06.05.2024, passed by Respondent No.2 - District Magistrate, Akola, under 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 Act”) and approved by Respondent No.1 under Section 3(3) of the MPDA Act on 15.05.2024.

3. Recent two offences within a period of six months have been taken into consideration while passing the detention order, which are as under:

(a) Crime No. 420/2023 registered at Police Station, Old City, Akola on 10.11.2023 for the offences punishable under Sections 326, 294, 336, 506 read with Section 34 of the Indian Penal Code, and,

(b) Crime No. 238/2024 registered at Police Station, Old City, Akola, on 12.04.2024 for the offences punishable under Sections 341, 294, 323 and 506 of the Indian Penal Code.

4. In Crime No. 420/2023, the detenu abused the complainant and when his associates injured the complainant by stabbing on his ear and thumb, wife and son of the complainant ran to rescue him, thereafter, the petitioner threw stones and bricks on them. While, in the second crime, i.e., Crime No. 238/2024, the petitioner filthily abused the complainant, and slapped on his cheek giving threat that if he attempts to provide information to the police, he will be beaten up again by the petitioner.

5. Though a number of grounds have been raised by the petitioner, some of them are as under:

(a) In Crime No. 420/2023, an offence was registered against the petitioner on 10.11.2023 and the detention order came to be passed on 06.05.2024. Therefore, there is a delay in passing the said order.

(b) In Crime No. 238/2024, the petitioner was released on notice under Sec 41 of the Code of Criminal Procedure, although, the same was still considered for passing the detention order. Hence, subjective satisfaction of the detaining authority is vitiated.

(c) The in-camera statements of the confidential witnesses nowhere refer that there was unrest amongst the general public and that there was actual breach of public order. Hence, there was no proper verification of the in-camera statements which were relied upon for passing the detention order.

6. The learned Counsel for the petitioner, Mr. Ali, further submitted that both the crimes, which have been relied upon by the detaining authority, are pertaining to individual incidents which do not have any nexus with passing of the detention order. He further argued that stale offences have been taken into consideration while passing the detention order, hence, the detention is liable to be quashed and set aside.

7. Learned A.P.P. Mr. Doifode, relied upon the affidavit-in-reply for supporting the order of detention. The Learned A.P.P vehemently opposed the arguments of the petitioner. He submitted that the detaining

authority has relied upon two recent crimes i.e. Crime Nos.420/2023 dated 10.11.2023 and 238/2024 dated 12.04.2024.

Mr. Doifode, submitted that the offences committed by the detenu relate to breach of public order as the detenu has committed the said offences in a public place along with the other co-accused and threatened the victim with deadly weapons. He further submitted that, the in-camera statements of witnesses “A” and “B” clearly state that the activities of the detenu created terror in the minds of the people, due to which they ran away, which clearly shows that there has been a breach of public order.

8. From the detention order passed by the respondent No.2, it is to be noted that for the purpose of passing the detention order two offences were considered as aforesaid. It is not in dispute that in first offence, the petitioner was on bail and in another offence, the notice under Section 41(1) of the Code of Criminal Procedure was issued. The detaining authority had considered the bail order passed in first offence. The offence was pending for investigation. When those offences were considered, the detaining authority ought to have consider the facts of those cases. On going through the facts of both the cases, in first case, the petitioner assaulted the complainant by suspecting that he is the informant. Earlier, the petitioner was detained and in said offence he must have given the statement and, therefore, he has assaulted the complainant. In another

offence, it is the family dispute. The complainant has lodged the complaint as when he went to lodge the report against his son-in-law, the petitioner blocked the road and asked him why he has lodged the report against his son-in-law and not solved the family matter in house. He has given threats and slapped him. On considering the contents in the complaint it appears that both the crimes are registered against the individual. The question, therefore, then arises as to how those offences can be considered to assess the behaviour of the petitioner as detrimental to the public.

9. The petitioner has relied on the judgment in the case of ***Arjun S/o. Ratan Gaikwad Vs. The State of Maharashtra and Ors. in Criminal Appeal No.5204/2024*** (Arising out of SLP (Cri) No.12516/2024) decided on 11.12.2024 wherein the Hon'ble Apex Court has considered the case of ***Ram Manohar Lohia Vs. State of Bihar and Anr. reported in (1966) 1 SCR 709***, in which the distinction between public order and law and order has been discussed 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.

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.”

In view of the abovesaid observations, the crimes which are considered by the detaining authority, do not lead to public disorder.

10. While considering whether it is a situation of breach of public order and 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 considered the observations in para No.34 which read as under :

“34. *In Kuso Sah vs. The State of Bihar [(1974) 1 SCC 195], Hon’ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that:*

*“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. ***”

In view of the above said observations, the offences which are considered for detention do not come under the purview of public order.

11. It is not disputed that the subjective satisfaction is one of the basic requirements for passing the order of detention. The subjective satisfaction can be arrived at on the basis of the various facts involved in the matter. Each fact will have to be considered independently as well as its effect together with other evidence that has been brought on record. The subjective satisfaction about the truthfulness of the statement of the witnesses is doubtful.

12. The in-camera statements of the witnesses ‘A’ and ‘B’ though taken as it is, would certainly show that people had gathered at the spot but the detention order cannot be passed only on the basis of the in-camera statements of the witnesses. Again in the statements, the extortion of money and threats are given to both the witnesses.

13. The learned Counsel for the petitioner has also relied on the judgment of the Hon’ble Apex Court in the case of ***Khaja Bilal Ahmed Vs. State of Telangana and Ors. reported in 2019 DGLS (SG) 1677***, wherein it is observed that the District Magistrate before passing the order of detention had other material also before him. It cannot be said to what extent the

District Magistrate was influenced by the other material and not by the material which is mentioned in the grounds of detention.

14. In the case in hand, the earlier detention order and earlier offences were also placed before the detaining authority and, therefore, there is every possibility of the detaining authority in influencing by the other material while passing the order of detention.

15. The statements are verified by the Sub Divisional Police Officer and the same are only seen by the detaining authority. The statements are recorded on 15.04.2024 and 17.04.2024 and the order of the detention is passed on 15.05.2024. It is not mentioned when the statements are verified and therefore, it creates doubt about subjective satisfaction of the detaining authority about the truthfulness of statements.

16. Though the Advisory Board has proved the detention of the petitioner, yet for the aforesaid reason, we do not find that there was any material before the detaining authority to detain the petitioner. Therefore, the confirmation of the said detention order by the State Government cannot be upheld.

17. For the aforesaid reason, the petition deserves to be allowed.

18. We hereby quash and set aside the detention order dated 06.05.2024 passed by the respondent No.2 and the order of confirmation dated 15.05.2024 passed by the respondent No.1.

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

20. Rule is made absolute in aforesaid terms.

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

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)