



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

CRIMINAL WRIT PETITION NO. 695 OF 2024

Mohammad Arbaz @ Sanu s/o.
Mohammad Israil @ Manja Ansari,
Aged about 30 years, Occ. Pvt. Work,
R/o. Near Kamalbaba Dargah, Mominpura,
Police Station, Tahsil, Nagpur City, Nagpur.
(Presently Central Prison, Nagpur).

... **PETITIONER**

...VERSUS...

1. State of Maharashtra
Through Government of Maharashtra,
Home Department (Special),
Second Floor, Main Building, Mantralaya,
Madam Cama Road, Hutatma Rajguru
Chowk, Mumbai – 400032.
2. Commissioner of Police,
Nagpur City, Nagpur.
3. Superintendent of Central Prison,
Nagpur.

... **RESPONDENTS**

Mr. A. K. Bhangde, Advocate for the Petitioner.
Mr. A. B. Badar, A.P.P. for Respondents/State.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 01.04.2025
JUDGMENT PRONOUNCED ON : 22.04.2025

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. This petition takes exception to the order bearing D.O.No.DET/MPDA/Zone-III/PCB/35/2024 dated 11.07.2024 passed by

respondent No.2 - Commissioner of Police, Nagpur City ordering detention of the detenu under the provisions 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 also the order bearing No. MPDA-0724/CR-491/Spl-3B dated 19.07.2024 passed by the respondent No.1 i.e. Home Department (Special) confirming the order of detention passed against the detenu/petitioner.

3. The petitioner has challenged the order of detention on the ground that in the previous detention order in identical situation, this Court has set aside the said detention order on 17.01.2024. Earlier, he was detained from 2017 to 2022, he has challenged the fourth detention, the said detention order has been set aside. It is alleged that the same crime chart is used for passing the detention order. It is the contention of the petitioner that, the fundamental rights are infringed by the detaining authority. On the basis of the earlier crimes as well as on the basis of the same offences which are registered against him, the detention order is passed, which would amount to double jeopardy. The petitioner has relied on the judgment of this Court in the case of *Chotu Vs. The Commissioner of Police* reported in *2021 ALL Mr 3430*.

4. Secondly, the statement of the confidential witnesses are not reliable as the Superior Officer has not given any specific endorsement that the witness is not willing to give evidence before the Court of law due to fear.

5. Third ground is that no public order is disturbed. In two offences, the notice was issued under Section 41A(1) of the Code of Criminal Procedure. In first offence, he was arrested and released on bail. In the said offence, the complainant is the same and the allegations are same, whereas in the earlier detention order, the same allegations are considered and the said detention order is set aside. The petitioner has relied on the judgment of the Hon'ble Apex Court in the cases of ***Rekha Vs. State of Tamil Nadu*** reported in ***2011 ALL MR (Cri) 2014 (S.C.)***, ***Rakesh Mohan Gadekar Vs. State of Maharashtra and Anr.*** reported in ***2021 ALL MR (Cri) 1028***, ***Khaja Bilal Ahmed Vs. State of Telangana and Ors.*** reported in ***2020 (13) SCC 632***.

6. The learned A.P.P. relying on the order passed by the detaining authority, has stated that considering the earlier detentions and though the order was set aside, he has not stopped his criminal activities and therefore, the detaining authority has rightly passed the detention order.

7. Heard both the learned Counsel.

8. On perusal of the detention order, it appears that this is the fifth detention of the petitioner. The earlier three detention orders were not challenged by the petitioner and from 2017 to 2022, he was in jail. Thereafter, on 30.01.2023, he was again detained and the said detention order was set aside.

9. The detention order is passed considering the three recent offences, Crime No.131/2024 is registered for the offences punishable under Sections 385, 387, 294, 506-B of the Indian Penal Code which was committed on 02.03.2024 i.e. immediately after his release from the earlier detention. In the said crime, the complainant was the President of the Young Muslim Football Club. He is an elderly person. The petitioner went to him and asked him to give Rs.10,000/- per month to continue on the post of President of the Football Club. At that time, the petitioner mentioned about his earlier detention which was because of the complainant and due to which he was arrested and detained. The petitioner threatened the complainant that he will take revenge of it and he abused the complainant. Thereafter, the complainant has lodged the complaint. The petitioner was arrested and released on bail and while passing the detention order, the bail order is considered. Though people gathered around upon hearing loud and abusive language, nobody came forward because of the terror of the petitioner. It shows that the petitioner has created terror in the mind of people in the said area.

10. Another offence is Crime No.233/2024 punishable under Sections 4, 25 of the Arms Act and Section 135 of the Maharashtra Police Act, 1951. In this case, the petitioner was found roaming with deadly weapon in his hand. After receiving information, the petitioner was arrested at Dawai Market, Gandhibagh with iron knife, the petitioner was creating terror in the said market area. As the offence is not punishable for more than 7 years, notice was issued under Section 41A(1) of the Criminal Procedure Code.

11. Crime No.263/2024 has been registered under Section 160 of the Indian Penal Code on 22.04.2024. The police received information that there is a fight occurring at public place behind Kalam Baba Dargah, Haji Hotel at Mominpura. Two persons were shouting and fighting among themselves on the road. The police went there and detained both of them with the help of staff, one person escaped and he was the petitioner. Again the crime was registered and notice was issued under Section 41A(1) of the Criminal Procedure Code.

12. On perusal of these offences, it appears that, immediately after releasing from the earlier detentions, the petitioner has started his criminal activities. In first offence, though the complainant is same, it is not against the individual. He has given threats to the complainant about staying on the post of President of the Football Club. It is at public place, which definitely affects the public order. The petitioner was found

roaming with knife in a market area and creating terror in the said area. The terror created by the petitioner has not only disturbed the law and order situation but it amounts to disturbance of public order. Third offence is also at a public place. All the offences are committed by the petitioner one after another.

13. The learned Counsel for the petitioner has taken the shelter of the earlier order passed by this Court stating that similar allegations are made and the crime is registered. The question of double jeopardy will not attract in this case as after his release from detention order, he has again committed similar offence, it is not the case that the same offence is considered. It appears that list of the earlier offences is given but the said offences are not considered for passing the detention order. Therefore, there is no substance in the contentions of the petitioner that the detention order is passed on the basis of the offences which were already considered in the earlier detention order. The requirement of detaining the petitioner is proved from his activities immediately after his release from Jail.

14. The next ground is about the statements of the confidential witnesses. On perusal of the original statements, it appears that the petitioner has extorted money from a passer-by and thereby has created terror. The witnesses have not lodged the complaint because they were afraid of the petitioner. On perusal of the statements, it appears that, the

statements were verified by the Senior Police Inspector, thereafter it was verified by the Additional Commissioner of Police on 10.05.2024. On 13.05.2024, the Deputy Commissioner of Police again verified and specifically stated that nobody is ready to give the statement against the petitioner and then it was verified by the detaining authority on 11.07.2024. Both these statements are about extortion and creating terror. As such, there is a proper verification. The contents of the said statements also prove that the petitioner has created terror in the said area. As aforesaid, the subjective satisfaction has been arrived at on the basis of two statements as well as three offences. The public order is disturbed because of the criminal activities of the petitioner. We do not find this to be a fit case where we should exercise our Constitutional powers to set aside the detention order.

15. Hence, the petition stands dismissed. The Rule is discharged.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)