



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

CRIMINAL WRIT PETITION NO.848 OF 2024

Harshal Rakesh Brahmne, Aged 24 years,
Occup. Labour r/o Datey Lay-Out,
Indrprastha Nagpur.

Petitioner

-Versus-

1. State of Maharashtra,
Through its Secretary, Department of
Home, Mantralaya, Mumbai- 32
2. State of Maharashtra, through Police
Commissioner, Nagpur City, District Nagpur.
3. State of Maharashtra through Police Station
Officer, Police Station, Sonegaon, Nagpur
City.

Respondents

Mr. Pratik Jayant Mehta, Advocate for the Petitioner.
Mr. A.B.Badar, A.P.P. for State.

**CORAM : NITIN W. SAMBRE AND
MRS. VRUSHALI V. JOSHI, JJ.
DATE : 06/03/2025.**

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

1) 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) The petitioner is raising challenge to the impugned order dated 09/07/2024 bearing No. D.O.No.DET/MPDA/Zone-I/PC/32/2024 passed by respondent No.2, Commissioner of Police, Nagpur City, Tah. and District Nagpur, 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, ('MPDA Act' for short), thereby ordering his detention as a dangerous person.

4) Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor for the State/respondents.

5) Learned Advocate appearing for the petitioner challenges the impugned order, which appears to have been confirmed by the State Government by an order dated 30/08/2024 on the ground that the impugned order which has been passed by the detaining authority is based on non-application of mind and without adhering to the statutory procedure. The grounds of detention appear to have been based on three offences namely,

Crime No.508 of 2023 committed on 25/12/2023 for the offence punishable under Sections 307, 326, 341, 294, 506-B, 143, 144, 147, 148, 149 of the Indian Penal Code. The Second Crime is 158 of 2024 committed on 10/10/2023 for the offence punishable under Sections 4/25 of Arms Act r/w Section 135 of the Maharashtra Police Act and the third offence is Crime No.77 of 2024 dated 27/02/2024 for the offences punishable under Sections 143, 144, 147, 148, 149, 365, 504, 506-B of the Indian Penal Code r/w Section 4/25 of Arms Act, Section 3 and 7 of the Criminal Law Amendment Act, so also, Section 135 of the Maharashtra Police Act.

6) The detaining authority has also considered in-camera statements of two witnesses. It is submitted that the detaining authority had not considered that in the two offences, which are still under investigation, the petitioner has been released on bail and the bail order appears to have been produced before the detaining authority. In one offence, notice has been served under Section 41-A of the Code of Criminal Procedure. The contents of the case would show that there was law and order situation and

public order was not disturbed which required the detention of the petitioner. It is the contention of the petitioner that he was not given an opportunity to make proper representation. Translation of documents was not given to the petitioner. Further, there was no proper verification of in-camera statements by the detaining authority and they only state that they are 'seen' and 'verified', but there is no remark that the verification has been properly done. There is a delay in passing the order from the date of last crime and even the incident considered in the statement of the witnesses. Therefore, there was no live-link and belated order has been passed. Therefore the detention order is illegal and deserves to be quashed and set aside.

7) Per contra, learned Additional Public Prosecutor submits that a well reasoned order has been passed while authorizing the order of the detention. The petitioner was involved in all three offences. All the three offences are pending before the Court. If we consider the facts in crime No.508 of 2023, the offence under Section 307 is registered. In the said offence, the complainant and his friends went to Agent Jack Bar and Restaurant,

situated at V.R.Mall, Medical Chowk, Nagpur. After having dinner, the complainant and his friends came out in front of V.R.Mall at about 2.10 a.m, at that time, two unknown persons aged about 28-30 years started abusing Ashish Hazare, a friend of the complainant without any reason. At that time, the unknown persons had consumed alcohol. The complainant's friend Anand Shah gave an understanding to the said unknown person. After that, both of them started beating the complainant and his friends and thereafter, the complainant and his friends left in Ashish Hazare's car towards the direction of Railway Quarter in front of Manish Bakery. At that time, they forcibly stopped them and about 6-7 persons came in a Swift Dzire Car and 2-3 motorcycles, and one of them had an iron sword in one hand, which he raised to kill the complainant. All of them tried to commit murder. The complaint was lodged.

8) In another offence, Crime No. 158 of 2024, the police were searching the petitioner in Crime No.77 of 2024, as he was absconding and they came to know his whereabouts near SBI bank, in Uday Nagar Chowk, they went there and arrested him. At that

time, petitioner was having knife with him and therefore, the offence was registered against him.

9) Crime No.77 of 2024 is also for the offence punishable under Section 365, 323 and other sections of the Indian Penal Code. In this case, the petitioner took the complainant from his Cafe and assaulted him for talking to his friend Pranali, and also threatened him to not to talk with her again. All these offences are committed in a public place and in all the offences deadly weapons are used. If a person is roaming with a sword in his hand in public and using it in the crime, *prima facie*, we can consider that it would raise public order and not only law and order situation.

10) The statements of witnesses A and B would show that the incidents have taken place in public and the said witnesses were threatened by the petitioner therefore, these incidents and the facts would certainly show that it is the public order that was disturbed. The learned counsel appearing for the petitioner has stated that the statements of witnesses do not show breach of public order. If we consider the statement of those witnesses, they were recorded and

verified. Verification has been categorically stated by the detaining authority i.e. sufficient compliance.

11) The learned counsel appearing for the petitioner has relied on the judgment passed by this Court in ***Writ Petition No. 73 of 2022 decided on 21/10/2022 (Smt. Bismillah and ors. Vs. The State of Maharashtra and ors.)*** in support of his argument that no subjective satisfaction was arrived by the detaining authority before passing the detention order. The truthfulness and correctness of the incident stated by the witnesses also their unwillingness to come forward because of the fear of the petitioner, the impugned order do not comply with the dictum of the judgment.

12) The learned counsel appearing for the petitioner in support of his argument for delay in passing the impugned order and no live-link with the offence considered in the grounds of the detention has relied upon the judgment passed by this Court in ***Civil Writ Petition (ST) No.14420 of 2024 (Shubhangi Balkrishna Lonare Vs. The State of Maharashtra and ors.)***, decided on ***21/10/20222 and Writ Petition No. 873 of 2012 (Shaikh Husain***

@ Shahrukh Shaikh Patru Vs. The State of Maharashtra and anr.
Decided on 21/04/2023.

13) The bail order passed by the respective Courts in the offences is not considered properly. The petitioner further relied on *Writ Petition No. 1162 of 2023 (Sidhant @ Sidhdharth Sanjay Marathe..Vs.. Commissioner of Police,Pune City and ors.* decided on *25/07/2023* in support of his argument that statements of in camera witnesses A and B were not provided to the petitioner along with grounds of detention which is in violation of fundamental right under Article 22 of the Constitution of India.

14) The offences which are considered, while passing the detention order are the offences under Section 307, 323, 365 and 4 and 25 of the Arms Act. In all the three offences, deadly weapons are used. At the cost of repetition, we would like to note the fact that the petitioner was roaming in public by holding sword in his hand. It is observed in the case of *Shaikh Shahrukh. Vs. State of Maharashtra 2023 DJLS Bombay 1318*, that a detaining authority must record his subjective satisfaction that the statements of witnesses were genuine and that ht has interacted with Assistant

Commissioner of Police to verify such a statement. Here, said subjective satisfaction has been arrived at.

15) The learned APP has relied on the judgment in the case of *Salauddin Imamuddin Ansari and anr. The State of Maharashtra reported in 2020 ALL MR(Cri.) 1641*, wherein it is observed by this Court relying on the judgment of *K.Varadharaj Vs. State of T.N. and anr.* reported in *(2006) 6 SCC 735*, wherein it is observed that it was not mandatory for the detaining authority to take into consideration the bail application filed by the detenu and any order passed thereon by the Criminal Court, such requirement would depend upon the facts of each case. In that case, it is held by the Hon'ble Supreme Court that it is clear that placing the application for bail and the order made thereof are not always mandatory and such requirement would depend upon the facts of each case. In the case in hand, in both the matters, wherein, the petitioner was released on bail, the bail orders are considered. Therefore, considering the judgment passed by this Court, it appears that the detaining authority was aware of the fact that the

detenu was on bail. He had considered the instances i.e crimes committed by the detenu, while passing the detention order.

16) As aforesaid, the subjective satisfaction has been arrived at on the basis of the three offences as well as two in-camera statements. We do not find that this is a case where we should exercise our Constitutional power to set aside the detention order. We may also refer to the opinion that has been given by the advisory board and the said opinion is made available to us which shows that the petitioner was heard through video conferencing. The detention order has been confirmed by considering the opinion of the advisory board as contemplated under law and therefore, we pass the following order.

17) The Criminal Writ Petition is dismissed.

18) Rule stands discharged.

(MRS.VRUSHALI V. JOSHI, J)

(NITIN W. SAMBRE, J)