



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

**CRIMINAL WRIT PETITION NO. 886 OF 2024**

Salman Shah Shamsher Shah,  
Aged 34 years, Occ.- Labour,  
R/o. Dudhe Layout, Vasant Nagar,  
Tah. - Pusad, Dist. Yavatmal.  
(In Jail)

... **PETITIONER**

...**VERSUS**...

1. The State of Maharashtra,  
Home Department (Special),  
Through its Section Officer, Second Floor,  
Main Building, Mantralaya,  
Mumbai - 40032.

2. Collector & District Magistrate, Yavatmal.

... **RESPONDENTS**

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Mr. J. D. Bastian, Advocate h/f. Mr. Prakash Naidu, Advocate for the  
Petitioner.

Mr. A. B. Badar, A.P.P. for Respondents/State.  
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**CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.**  
**JUDGMENT RESERVED ON : 26.02.2025**  
**JUDGMENT PRONOUNCED ON : 05.03.2024.**

**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 this writ petition, the petitioner has challenged the  
detention order dated 18.07.2024 passed under Section 3(1) 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, (hereinafter referred to as “MPDA Act”) by the respondent No.2 and its approval by the respondent No.1 dated 11.09.2024.

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

4. The learned Counsel for the petitioner challenges the impugned order, which appears to have been confirmed by the State Government by order dated 11.09.2024, on the ground that the impugned order passed by the Detaining Authority on 18.07.2024 is based on the non-application of mind and without adhering to the statutory procedure. The grounds of detention appear to have been based on two offences namely, Crime No.147/2024 dated 02.04.2024 for the offences punishable under Sections 452, 294, 506 of the Indian Penal Code and Crime No.197/2024 dated 14.04.2024 for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code. Both the offences are registered with Vasantnagar Police Station, Pusad. The Detaining Authority has also considered the in-camera statements of two witnesses. It is submitted that the Detaining Authority has not considered that in both the offences the charge- sheet is filed. The charge-sheet is neither considered nor it was given to the petitioner. Further, the bail orders were also not considered by the Detaining Authority as the petitioner was released on bail, but it is not mentioned in the order.

5. The learned Counsel for the petitioner has stated that there is a delay in passing the detention order as both the crimes are registered in the month of April and the order is passed in the month of July. There is a delay of near about 90 days. Further, he has stated that there was no proper verification of the in-camera statements by the Detaining Authority and it only states that it is 'seen' and 'verified', but there is no remark that the verification has been properly done.

6. Per contra, the learned Additional Public Prosecutor submitted that a well reasoned order has been passed while authorizing detention of the petitioner. The petitioner was involved in both the offences. Even preventive action was taken against him from time to time, but he has not curtailed his activities.

7. If we consider the facts in Crime No.147/2024, it appears that it is against an individual, out of their personal enmity. The complaint was lodged by the complainant as the petitioner entered the house of the complainant at night and abused her in filthy language, and therefore, she has lodged the complaint. In another offence, the petitioner along with other co-accused has assaulted the complainant when he was making preparations for Ambedkar Jayanti. One of the friends of the petitioner stopped him with the knife and on the complaint lodged by the complainant, the crime is registered against him.

8. According to the learned Additional Government Pleader, it occurred in public place. Therefore, prayed to dismiss the petition.

9. 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 both the cases, the petitioner has been released on bail. On perusal of the order, it appears that there is no whisper about the bail order in both the offences. The charge-sheet is filed on record in both the cases, however, the charge-sheet is not considered by the Detaining Authority. In the first offence, the statements of three witnesses are recorded. The arrest form or the bail order is not filed along with charge-sheet. It appears that the crime is registered at a delayed stage. The incident took place on 30.03.2024 and the crime is registered on 02.04.2024. The said fact is not considered while considering the crime for passing the detention order. Another offence in which the assault was by two person, the role of the applicant is not that of stabbing the complainant as he has not stabbed with the knife. Though it is in a public place, it cannot be considered that it disturbs the public order.

10. The Hon'ble Apex Court in *Khaja Bilal Ahmed Vs. State of Telangana and Ors.* reported in *2019 DGLS (SC) 1677* and *Ameena Begum Vs. The State of Telangana & Ors [Arising out of SLP (Criminal) No.8510/2023]* has considered the case of *Dr. Ram Manohar Lohia* wherein the difference between 'law and order' and 'public order' was

lucidly expressed. It was observed that while assessing the detention order, the Court should consider what constitutes ‘public order’. The Hon’ble Apex Court has held 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.”*

*“38. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon’ble M. Hidayatullah, CJ. in Arun Ghosh vs. State of W.B, (1970) 1 SCC 98 is this: (SCC p. 100, para 3)*

*“3.....Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?”*

39. *Arun Ghosh vs. State of W.B, (1970) 1 SCC 98, the petitioning detenu was detained by an order of a District Magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read: the offending act) “does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order”. (Arun Ghosh case [(1970) 1 SCC 98, SCC p. 101 para 5])*

40. *In the process of quashing the impugned order, the Hidayatullah, C. J.while referring to the decision in Ram Manohar Lohia vs. State of Bihar, 1965 SCC Online SC 9 also ruled: (Arun Ghosh vs. State of W.B, (1970) 1 SCC 98, SCC p. 100, para 3)*

*“3.... Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. ... It is always a question of degree of the harm and its affect upon the community. ...This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.”*

42. *Section 3(1) of the Act, the Government has to arrive at a subjective satisfaction that a goonda (as in the present case) has to be detained, in order to prevent him from acting in a manner prejudicial to the maintenance of public order. Therefore, we first direct ourselves to the examination of what constitutes “public order”. Even within the provisions of the Act, the term “public order” has, stricto sensu, been defined in narrow and restricted terms. An order of detention under Section 3(1) of the Act can only be issued against a 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 insecurity among the general public or any section thereof or a grave wide-spread danger to life or public health”.*

*43. Ram Manohar Lohia, 1965 SCC OnLine SC 9 is an authority to rely upon for the proposition that if liberty of an individual can be invaded under statutory rules by the simple process of making of a certain order, he can be so deprived only if the order is in consonance with the said rule. Strict compliance with the letter of the rule, in such a case, has to be the essence of the matter since the statute has the potentiality to interfere with the personal liberty of an individual and a Court is precluded from going behind its face. Though circumstances may make it necessary for ordering a detention without trial, but it would be perfectly legitimate to require strict observance of the rules in such cases. If there is any doubt whether the rules have been strictly observed, that doubt must be resolved in favour of the detenu.”*

11. The learned Counsel for the petitioner has submitted that though two offences might have created a law and order situation but by no stretch of imagination, it can be said that the incident disturbed the public order when the offences therein were committed against an individual.

12. The Detaining Authority has also considered the two in camera statements. The in-camera statements, which are filed on record, the material part of the in-camera statements is masked. what incident took place cannot be stated as the main part of the statements is masked. Moreover, it is not verified by the Detaining Authority. The Sub Divisional Police Officer has verified it. The Detaining Authority on the statement of

witness 'A' has mentioned that he perused it and signed it. The statements were recorded on 14.05.2024 and on 16.05.2024 respectively and verified by the Sub Divisional Police Officer on 30.05.2024, the Detaining Authority has seen the statements of witnesses on 12.07.2024, on the same date the order was passed. The statement of witness 'B' is not even seen by the Detaining Authority. It is recorded on 16.05.2024 and verified on 30.05.2024 by the Sub Divisional Police Officer. Therefore, without even going through the statement, the Authority has passed the order. Moreover, the contents of the statement does not state that it affects the public order. Hence, the statements of witnesses are of no use to pass the detention order.

13. Though, the ground of delay is raised by the petitioner, the time will not start to run from the date of the last offence that was registered. For considering the delay, we will have to consider the time till last offence, then the in-camera statements, verification by the Superior Police Officer and also by the Detaining Authority. Considering the verification of the statement 'A' on 30.05.2024, there is no such delay in passing the order.

14. Though, the Advisory Board has approved 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 order by the State cannot be upheld.

15. For the aforesaid reasons, the petition deserves to be allowed and it is accordingly, allowed.

16. The detention order dated 18.07.2024 passed by the respondent No.2 and the approval order dated 11.09.2024 passed by the respondent No.1 is hereby quashed and set aside.

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

18. Rule is made absolute in aforesaid terms.

**(MRS. VRUSHALI V. JOSHI, J.)**

**(NITIN W. SAMBRE, J.)**