



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

CRIMINAL WRIT PETITION NO.1023 OF 2024

1. Sabdar Ali Akram @Ashraf Ali **Petitioner**
Aged about 31 years, Occ- Labour
R/o Katol, Nagpur

1. Saif @ Saifu s/o Akram@ Ashraf Ali **Detenu**
(Presently at Kolhapur Central Prison)

-Versus-

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

2. The Collector/District Magistrate, Nagpur **Respondents**

Mr.. Mir Nagman Ali Mir Jafar Ali, Advocate for the Petitioner.
Mr. H.D. Marathe, A.P.P. for R/1 and 2

CORAM : NITIN W. SAMBRE AND

MRS. VRUSHALI V. JOSHI, JJ.

DATE : 15/04/2025.

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

1) Heard.

2) **Rule.** Rule made returnable forthwith. By consent of the learned Counsel for the parties, the Criminal Writ Petition is heard finally.

3) The petitioner Sabdar Ali Akram @Ashraf Ali, who is the brother of detenu Saif @ Saifu S/o Akram@ Ashraf Ali, has preferred this petition questioning the preventive detention order passed against the detenu on 26th June, 2024, by Respondent no.2 - The Collector/District Magistrate, Nagpur, and confirmed by Respondent no.1 on 7th November, 2024 under Section 12(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"). The petitioner has been detained as a "Dangerous Person".

4) The detention order is based on one Crime i.e., C.R. no. 300/2024 registered with Katol Police Station on 08.04.2024 for the offences punishable under Sections 307, 392, 452, 143, 147, 149, 504, 506 of the Indian Penal Code read with Sections 3(1)(r), 3(2)(5), 3(2)(5a) of the Atrocities Act, 2015, and two in-camera statements of witnesses "A" and "B".

5) In Crime no.300/2024, the complainant, one Rupnath

Dhoke, aged 61 years was hit with iron rod on his head and on shoulder by the detenu and his associates. The petitioner ransacked his firecracker shop and threw away the goods. It happened after son of the complainant was beaten up by detenu. He then fled to the shop of Shamsunder Dhoke, elder brother of the complainant he was also assaulted and robbed of Rs. 4000/- by the detenu. Moreover, the elder son of complainant, Gaurav was also followed by the detenu and his accomplices, Fattah Akram Ali, Haider Ali, Sukhbir Singh Gill, Shailender Suresh Singh Bais and two Iranian women who entered the complainant's shop and house with iron rods with an intention to kill and thereby threatened to kill them.

6) When the complainant and witnesses submitted their caste certificates, it was confirmed that they belong to Scheduled Caste. Therefore, the provisions of the Atrocities Act were attracted in the said crime.

7) In-camera statement of anonymous witness "A" reveal that, he was beaten up with wooden stick, fist blows, kicked on chest and assaulted. The detenu also threatened the crowd gathered at the spot with abusive language.

8) In the second incident, the petitioner after buying fish

from the shop of witness was hit by a stranger due to which the fish fell on the ground. As a result of which, the detenu punched the said stranger on his nose which caused bleeding, abused him, then took out knife from the waist and attempted to inflict a blow on abdomen of the unknown person. However, he evaded the blow and ran from the market. The petitioner threatened the customers with knife who stood in front of him on the street.

9) A number of grounds have been raised in the present petition whereby the detention order has been assailed, however, the learned counsel appearing for the petitioner has pressed onto certain grounds as under:

(a) That perusal of Crime no 300/2024 as well as in-camera statements of witness “A” and “B” would show that, events narrated do not lead to a conclusion that there was any disturbance of public order and therefore impugned order passed on the basis of such material is required to be quashed and set aside.

(b) That there is no independent verification of contents of in-camera statements by visiting the spot and therefore, in absence of proper verification, in-camera statements could not be relied for passing the detention order.

10) Learned advocate for the petitioner, Mr. Ali, submitted that the only endorsement “verified and seen” put on the in-camera

statements is without any date which nowhere points out to the fact that detaining authority was satisfied about the truthfulness of the statements. He further submitted that the alleged incident in Crime no. 300/2024 relates to an individual and has nothing to do with breach of public order.

11) The learned advocate argued that last offence registered against the detenu was on 08.04.2024 and detention order came to be passed on 26.09.2024, snapping the live link to pass the detention order.

12) On the other hand, learned A.P.P. Mr. Marathe, appearing for the Respondents/State submitted that the Respondent no.2 has rightly performed his duty of ascertaining the truthfulness of the in-camera statements after discussing with Sub-Divisional Police Officer, Katol, who had verified the statements and an express mention to that effect is reflected at ground no.8 appended to the impugned detention order. He further submitted that the satisfaction expressed in ground nos.6 to 8 of the impugned order clearly speaks about the illegal and criminal acts of the detenu which caused disturbance to the public order and therefore the detaining

authority was subjectively satisfied that the detenu was required to be detained.

13) It is to be noted from the impugned detention order that the sole incident is considered along with two statements. The crime which is considered against the petitioner is under Sections 307, 392, 452, 143, 147, 149, 504, 506 of Indian Penal Code read with Sections 3(1)(r), 3(2)(5), 3(2)(5a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act, 2015). The ground which was raised by the petitioner is that no public order is affected as per the crime which is considered by the detaining authority for passing the detention order. The petitioner has relied on the judgment of this Court in support of his argument that the offence committed in the said crime is against an individual and it does not make out a case for breach of public order. He has relied on the judgment in the cases of *(1) Bharat Kisan Mekale Vs. Commissioner of Police and others reported in 2021 DGLS (Bom.)1243* and *(2) Nilesh Bansilal Gaywal @ Ghaywal Vs. State of Maharashtra and ors. reported in 2021 DGLS (Bom.)952*.

14) On perusal of the nature of the crime which is considered,

the detenu has assaulted the son of the complainant. The son of the complainant was not known to the detenu. It is not the case that out of enmity the detenu has assaulted the son of the complainant. The detenu along with his friends came on motor cycle and due to a dash they fell down and the detenu along with his friends beat the son of the complainant. When he entered the shop, the detenu beat the complainant, and also threw the goods in the shop. Thereafter, he went to the shop of the brother of the complainant and also destroyed the goods and assaulted him. It clearly reflects that the detenu had created terror in the said market area by entering in the shops and destroying it and beating the persons with deadly weapons. The offence punishable under Section 307 of the Indian Penal Code is registered. It is not necessary to consider number of offences, one offence is also sufficient for passing the detention order if it disturbs the public order.

15) Statements of two witnesses also show that the petitioner had created terror in the market area. As per the statement of witness A, a vehicle carrying vegetables was passing by the lane, where, the vegetable shop of the detenu was situated and he stopped the said vehicle, assaulted the person, and asked as to why he has entered the

lane with the said vehicle and thereby created terror in the said area. On perusal of the said statement, it appears that the statement was recorded on 24/08/2024 and it was verified by the Superintendent of Police on 23/09/2024 and it was seen by the detaining authority.

16) Witness B has also stated that he is fish seller and the detenu has taken the fish from his shop. When he asked for Rs.400/-, detenu gave Rs. 200/- and abused him when the complainant asked for remaining Rs.200/- while quarreling with the complainant, one person who was going from there, he dashed the detenu and the fish fell down on the street. The detenu became angry and he assaulted the said person with fists and blows. He took out the knife and ran behind him and created terror in the said market area.

17) In both the statements, it appears that the detenu had created terror in public place. It was not against an individual, therefore, there is no substance in the submission made by the petitioner that the offence which is considered is against an individual. It definitely creates terror and it affects the public order and not law and order situation.

18) The ground of delay is also mentioned by the petitioner stating that there is a delay in the commission of last crime and passing of the order of detention, the last crime was committed in the month of April and the order was passed in September. Therefore, there is delay in passing the detention order. Though, the crime is of the month of April, the time starts to run from the date of the statement of the witnesses, verification of it and verification by the detaining authority. On perusal of the statement of Witness A, it appears that the statement was recorded on 24/08/2024. The Superintendent of Police verified it on 23/09/2024 before passing the order and thereafter it is seen by the authority. Though, there is no date mentioned, under the signature of the detaining authority, it clearly shows that the Superintendent of Police had signed it on 23/09/2024, and therefore there is no delay in passing the detention order. Therefore, the judgment on which the petitioner has relied on is not helpful to him. The subjective satisfaction has been arrived at on the basis of two statements and one crime, we do not find this is a fit case, where we should exercise our Constitutional power to set aside the detention order. We may also refer to the opinion of the Advisory Board,

which shows that the detenu was heard through video conferencing and the detention order has been confirmed taking into consideration the opinion of the Advisory Board as contemplated under law and therefore, we pass the following order.

19) The Criminal Writ Petition is dismissed.

20) Rule stands discharged.

(MRS.VRUSHALI V. JOSHI, J)

(NITIN W. SAMBRE, J)