



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

CRIMINAL WRIT PETITION NO.111 OF 2025

Shivam alias Shiva Dattatraya Nilkhan,
Aged 26 years, R/o Shirla Andhare
Tq. Patur, District, Akola
(In Jail)

Petitioner

-Versus-

1 State of Maharashtra
Through its Secretary,
Home Department (Special)
Mantralaya, Mumbai-440 032

2 District Magistrate, Akola.

3 Superintendent, District Prison, Akola

Respondents

Adv. R.M. Daga, for the Petitioner.

Ms. S.S. Jachak, A.P.P. for R-1 to 3.

CORAM : NITIN W. SAMBRE AND

MRS. VRUSHALI V. JOSHI, JJ.

DATE : 22/04/2025

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 came to be detained vide order dated 13.06.2024 passed by the District Magistrate, Akola in exercise of powers under 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, thereby holding that the petitioner's activities are detrimental to the maintenance of public order. The said order was approved by the Respondent no.1- State of Maharashtra on 21.06.2024, and further confirmed the same on 04.12.2024.

4) Apart from earlier ten offences considered by the detaining authority which were registered from 17/06/2016 to 18/06/2023, two recently registered offences bearing Crime No.293/2024 punishable under Sections 326, 143, 147, 149 of Indian Penal Code r/w Maharashtra Police Act and Crime No.202/2024 punishable under Sections 324, 504, 34 of the Indian Penal Code are taken into account.

5) The detention order is questioned on the ground that in C.R. no.293/2024, copy of the bail order is a photocopy which is supplied to the petitioner. In the grounds of detention, it is not mentioned that before passing the detention order, the detaining authority has gone through the same.

6) Though, there appears to be an endorsement of detaining authority on the in-camera statements of witnesses “A” and “B”, however the same is undated.

7) Learned counsel for the petitioner, Mr.Daga, would urge that, the respondent no.2 has not gone through the bail order granted to the petitioner in C.R.no.293/2024. It was submitted that as far as C.R. no. 202/2024 is concerned, it is a matter of record that the petitioner was never arrested in said crime and was released after a notice was issued under Section 41(1)(b) of the Code of Criminal Procedure, 1973. Moreover, perusal of the First Information Report of said crime shows only name Shiva and his associates as accused. General allegations are leveled in said F.I.R and even the injury sustained by victim in said F.I.R appears to be simple as per the MLC report.

8) According to him, merely relying on the report submitted by Sub-Divisional Police Officer, Balapur, with regards to the genuineness and verification of in-camera statements, it cannot be said that the subjective satisfaction arrived at by the detaining authority was genuine. The counsel for the petitioner submitted that, the bail order in C.R. no. 293/2024 was a conditional order and has considered various aspects including antecedents of the petitioner. Therefore, it was incumbent on the part of respondent no.2 to consider the said order and

material before passing the order of detention.

9) While considering the aforesaid submissions, Ms. Jachak, learned APP would urge that, on perusal of the conditions imposed by the Hon'ble District Judge, Akola, while granting bail to the petitioner in C.R. no. 293/2024 dated 01.06.2024, the petitioner has been removed from the Akola district for one year. The petitioner jumped the condition and therefore, it becomes necessary for the police authority to put proposal for the detention of the petitioner.

10) According to Ms. Jachak, the date is shown in the beginning of the detention order itself. Respondent no.2 on perusing material on record and bail orders in favour of the petitioner, passed the detention order after his subjective satisfaction. The detaining authority found that the petitioner is a dangerous person having a habit of causing hurt to the persons and property in the locality. In the present case, the order of granting bail to the detenu is detailed and has considered material aspects of the object of preventive detention.

11) Heard the learned counsel appearing for the petitioner and the learned Assistant Government Pleader for the State.

12) The detention order is passed considering two crimes and the statements of two confidential witnesses. In crime No.202 of 2024 the

offence under Section 324,504 r/w 34 of the Indian Penal Code was registered. In this case, the petitioner along with his friends assaulted the complainant and pelted stone on his head. On the oral complaint of the complainant, the crime was registered. In this case, notice under Section 41-A was issued.

13) In Second offence, Crime No. 293 of 2024 punishable under Sections 326,143,147 and 149 r/w 142 of the Mumbai Police Act was registered. The offence is committed due to old enmity between the complainant and the petitioner. The complainant was assaulted with the iron pipe and his jaw was fractured. In this case, the petitioner was arrested, bail was rejected by the Magistrate and the Sessions Court has released him on bail by imposing conditions. It appears from the record that in detention order though it is mentioned that he was on bail and the copy of bail order is supplied to the petitioner, the contents in the bail are not considered by the detaining authority. One of the condition imposed was not to enter the Akola District during the pendency of the trial and if the Court required the presence of the petitioner the permission of Court is required. Said contention is not considered by the detaining authority, while passing the detention order.

14) The learned counsel for the petitioner in support of his

argument that it is necessary to consider the contents in the bail application has relied on the judgment of this Court (Criminal Writ Petition No. 814 of 2024) wherein it is observed that upon going through the First Information Report and other material in relation to the two offences which speaks of the offences having been taken place in public view. However, there is no enough material to interfere that the same has led to the disturbance of the public order.

15) Two statements on which the detaining authority has relied as per the recent judgment of the Hon'ble Apex Court in the case of *Arjun Ratan Gaikwad Vs. The State of Maharashtra and ors arising out of SLP (Cri.) No.12516 of 2024* the Hon'ble Apex Court in paragraph No.17 of the said judgment has observed as under:-

17. "Insofar as the statement of the two unnamed witnesses are concerned, the allegations are as vague as it could be. In any case the statements which are stereotype even if taken on its face value would show that the threat given to the said witnesses is between the appellant and the said witnesses. The statements also do not show that the said witnesses were threatened by the appellant in the presence of the villages which would create a perception in the mind of the villagers that the appellant herein is a threat to the public order".

16) On perusal of the statement it appears that it is not verified by the detaining authority or even by the Sub Divisional Officer, therefore, there is no subjective satisfaction to the extent of truthfulness of the statement. As the public order is not disturbed due to the offence which are considered for passing the detention order and the statements are not sufficient and there is no subjective satisfaction, we are of the view that the order passed by the detaining authority is required to be quashed and set aside. Hence, we pass the following order.

17) The Writ Petition is allowed in terms of its prayer clause (a). The petitioner be set at liberty forthwith, if not required in any other crime.

18) Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J) (NITIN W. SAMBRE, J)