
(2021) 09 BOM CK 0004

Bombay High Court

Case No: Writ Petition No. 2336 Of 2021

Bharat Kisan Mekale

APPELLANT

Vs

Commissioner Of
Police, Solapur And
Others

RESPONDENT

Date of Decision: Sept. 3, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 22(5)
- Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drug Ofenders, Dangerous Persons, Video Pirates, Sand Smugglers And Persons Engaged In Black-Marketing Of Essential Commodities Act, 1981 - Section 3, 3(2)
- Indian Penal Code, 1860 - Section 34, 341, 384, 385, 420, 427, 465, 468, 471, 506
- Conservation Of Foreign Exchange And Prevention Of Smuggling Activities Act, 1974 - Section 3(1), 3(1)(iii)

Hon'ble Judges: S. S. Shinde, J; N. J. Jamadar, J

Bench: Division Bench

Final Decision: Allowed

Judgement

N. J. Jamadar, J

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels, heard fnally.

2. The petitioner-detenuetakes exception to the order dated 12.05.2021 passed by the Commissioner of Police, Solapur-Respondent No.1 preventively

detaining the detenuet in exercise of powers under Section 3(2) 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

(MPDA Act).

3. Shorn of unnecessary details, the background facts leading to this Petition can be stated as under:

a) A proposal was initiated to detain the detainee under the provisions of Section 3 of the MPDA Act, as the activities of the detainee rendered him a

dangerous person. It transpired that, the detainee and his associates roamed around in the areas falling within the jurisdiction of Salgar Vasti, Faujdar

Chawadi, Jail Road and Jodbhavi Peth Police Stations, Solapur and habitually committed serious offences like assault, extortion, robberies and

land/property grabbing armed with deadly weapons like sword and knife etc. The activities of the detainee allegedly caused alarm and insecurity

amongst the general public.

b) Despite preventive action having been initiated against the detainee under the provisions of the Code of Criminal Procedure, 1973, there was no

element of deterrence and the detainee continued to indulge in activities prejudicial to the maintenance of public order. Two fresh offences were

registered against the detainee; (1) C.R. No. 29/2021 at Salgar Vasti Police Station for the offences punishable under Sections 341, 384, 385, 506, 427

read with 34 of the Indian Penal Code (Penal Code) and (2) C.R. No. 57/2021 on 07.04.2021, also at Salgar Vasti Police Station, for the offences

punishable under Sections 420, 465, 468, 471 read with 34 of the Penal Code.

c) On account of reign of terror created by the detainee, persons were not coming forward to lodge complaints against the detainee fearing safety of

their life and property. The sponsoring authority recorded statements of two witnesses in camera. The confidential statements revealed that the

detainee was persistently indulging in activities subversive of public order. Respondent No.1, thus, recorded a subjective satisfaction that the detainee

was a dangerous person and in order to prevent him from acting in a manner which was prejudicial to the maintenance of public order, in future, it was

necessary to detain the detainee. Thus, the impugned order of detention under Section 3(2) of the MPDA Act was passed and the grounds of

detention were served on the detainee on 12.05.2021.

4. The detainee has assailed the impugned order on the premise that it betrays a clear non-application of mind and tramples upon the personal liberty of

the detainee in a most casual and cavalier manner. To this end, multifold grounds are raised in the petition. During the course of arguments, however,

Ms. Jayshree Tripathi, learned Counsel for the petitioner-detainee restricted the challenge to the ground Nos.(b), (c) & (d), namely,

(i) discrepancy and variance in the English and Marathi version as regards the narration of the facts in the grounds of detention pertaining to C.R.

Nos. 29/21 and 57/21, which rendered the right to make an effective representation illusory,

(ii) failure to furnish vital documents again prejudicially affecting the right to make representation, and

(iii) the subjective satisfaction of the detaining authority that the activities of the detainee were subversive of public order being completely vitiated.

5. Affidavits-in-reply have been fled by respondent No.1 and on behalf of respondent No.2. The respondents have contested the claim of the detainee

that the variance in the English and Marathi version in the narration of facts affected the right of the detainee to make an effective representation. Since

the detainee is fully conversant with Marathi script, no prejudice has been caused to the detainee on account of inadvertent reproduction of the

narration of facts in ground No.5.2. The ground of non-supply of vital documents is stated to be factually incorrect and legally unsustainable. The

respondents have contended that the activities in which the detainee indulged in, disturbed the public order and, thus, the challenge on the said count

does not deserve countenance.

6. In the light of the aforesaid facts and pleadings, we have heard Ms. Jayshree Tripathi, learned Counsel for the petitioner and Mrs. Mhatre, learned

APP for the State at considerable length. With the assistance of learned Counsel for the parties, we have also perused the material on record

including the original record tendered by respondent Nos.1 and 2 for the perusal of the Court.

7. In the backdrop of three-fold challenge mounted on behalf of detainee, we deem it appropriate to deal with grounds of non furnishing of vital

documents and variance in the translation initially, and, thereafter, advert to the substantive ground that the activities of the petitioner were not at all

prejudicial to the maintenance of public order and, therefore, the invocation of the extraordinary power under Section 3 of the MPDA Act was

unjustified.

8. The challenge to the impugned order on the count of non furnishing of vital documents, (ground (c)) revolved around the alleged failure of the

sponsoring authority to place before the detaining authority copy of FIR in C.R.No. 57/21 and the consequent failure to furnish its copy to the detainee.

Ms. Tripathi invited attention of the Court to the documents which were allegedly placed before the detaining authority, and furnished to the detainee

along with detention order. Emphasis was laid on the fact that the copy of the proforma FIR in C. R. No. 57/21 was neither placed before the

detaining authority nor furnished to the detainee. Copy of the FIR in the predicate crime i.e. C. R. No. 57/21, according to Ms. Tripathi, constituted a

most vital document and, in the absence thereof, not only the subjective satisfaction of the detaining authority got vitiated but the right of the detainee to

make an effective representation was jeopardized.

9. In order to lend support to the aforesaid submission, Ms. Tripathi placed a very strong reliance on the Judgment of the Supreme Court in the case of

Ashadevi Vs. K. Shivraj, AIR 1979 SC 447. In the said case, arising out of Section 3(1)(iii) of the Conservation of Foreign Exchange and Prevention

of Smuggling Activities Act, 1974, the Supreme Court observed thus:

“It is well settled that the subjective satisfaction requisite on the part of the detaining authority, the formation of which is a condition precedent to

the passing of the detention order will got vitiated if material or vital facts which would have a bearing on the issue and would influence the mind of the

detaining authority one way or the other are ignored or not considered by the detaining authority before issuing the detention order.

10. Ms. Tripathi also banked upon the Judgment of the Supreme Court in the case of Kamla Kanyalal Khushalani Vs. State of Maharashtra & Anr.,

(1981) 1 SCC 748 wherein necessity of placing relevant record before the detaining authority so as to arrive at a subjective satisfaction, and furnishing

copies of the material which was placed before the detaining authority to the detainee were emphasized. The Supreme Court observed as under:

“It is a matter of great concern and deep dismay that despite repeated warnings by this Court, the detaining authorities do not care to comply with

the spirit and tenor of the constitutional safeguards contained in Article 22(5) of the Constitution. It is manifest that when the detaining authority

applies its mind to the documents and materials which form the basis of the detention, the same are indeed placed before it and there could be no

difficulty in getting photostat copies of the documents and materials, referred to in the order of detention, prepared and attaching the same along with

the grounds of detention, if the detaining authority is really serious in passing a valid order of detention. Unfortunately, the constitutional safeguards are

not complied with, resulting in the orders of detention being set aside by the court, even though on merits they might have been justified in suitable

cases.

11. There can be no duality of opinion on the point that the failure of sponsoring authority to place relevant material, which bears upon formation of

subjective satisfaction by the detaining authority, detracts from the validity of the detention order in two ways. On the one hand, the subjective

satisfaction is vitiated on account of non- consideration of relevant material which could weigh with the detaining authority in arriving at the conclusion

one way or the other. On the other hand, in the absence of such material, having been duly furnished to the detainee, the latter is deprived of an

opportunity to make an effective representation and the constitutional safeguard contained in Article 22 (5) is rendered nugatory. However, the Court must look at the substance of the matter and determine whether the failure to furnish copy of a particular document either vitiated the subjective satisfaction or jeopardized right to make an effective representation.

12. In the case at hand, we find that the copy of the statement of the first informant Nitin Gangaram Bhosale in C.R. No. 57/21 was duly placed before

the detaining authority and furnished to the detainee (page 98 of the petition). The thrust of the grievance on behalf of the detainee was that printed

proforma of the first page of the said FIR was not placed before the detaining authority. We find considerable force in the submission of Mrs. Mhatre

that non-furnishing of first page of proforma FIR neither affected the formation of the opinion by the detaining authority nor it caused any prejudice to

the detainee. It is imperative to note that the copy of FIR (at page 98) contains, in the margin, all the details like crime registration number, name of the

police station, date and time of registration of the FIR, the offences for which it came to be registered and the officer to whom it came to be entrusted

for investigation. In this view of the matter, we are afraid to accede to the submission on behalf of the petitioner that failure to furnish copy of the

proforma FIR impairs the impugned order.

13. The challenge to the impugned order based on discrepancy in the English and Marathi version of the narration of the facts in respect of C.R. No.

57/21, in paragraph 5.2 of the grounds of detention, appears factually well grounded. From the perusal of narration of facts under ground Nos. 5.1 and

5.2 in respect of C.R. Nos. 29/21 and 57/21, respectively, it becomes evident that the narration of facts under ground No. 5.2 (for C. R. No.

57/21) is verbatim reproduction of narration of facts under ground No. 5.1 in respect of C. R. No. 29/21. Conversely, the grounds of detention

are conspicuously silent about the facts pertaining to C.R.No. 57/21 registered with Salgar Vasti Police Station, Solapur.

14. Respondent No.1 attempted to wriggle out of the situation by asserting in the affidavit-in-reply as under:

“It is submitted that the order of detention has been issued originally in Marathi. It is translated in English for official use. While

translating in English, the version of the Ground 5.1 has been inadvertently reproduced in the Ground 5.2 in translated English version. It is submitted

that the copies of the order of detentions i.e. original version in Marathi with supporting material thereof i.e. FIR, statements of witnesses and other

documents and its translated version in English, were furnished to the detenu, at the time of execution of the order of detention. I, therefore, submit

that meaning and substance of the grounds of detention have been communicated to the detenu. However, the corrected version of para 5.2 was

furnished to the detenu on 21.05.2021 through email as well through special messenger on 26.5.2021 in jail. The detenu is a permanent resident of

Maharashtra and has taken education upto 10th standard in Marathi. It is therefore submitted that the inadvertent reproduction of narration of ground

5.1 in ground 5.2 of the grounds of detention in translated version in English will not impair the detenu in making meaningful and purposeful

representation before appropriate authority since the detenu has been supplied with the grounds of detention and its compilation in a language known

to him i.e. in Marathi and the same has been explained to the detenu in Marathi by the executing authority, detenu made acknowledgement to that

effect. Thus, there is no substance in the say of the Petitioner in this para.”

15. Evidently, it is indisputable that the narration of facts under ground 5.2 is the very same as under ground 5.1. It was sought to be explained on the

premise of inadvertent reproduction. The consequences were sought to be averted by contending that the detenu being fully conversant with Marathi

script and having been provided with the copy of the FIR in C. R. No. 57/21, it cannot be said that the right to make an effective representation was

affected.

16. We are not impressed by the submissions on behalf of the respondents. It is not a case of mere variance in the English and vernacular version in

the grounds of detention. In fact, in respect of two predicate offences, the narration of facts is one and the same (pertaining to C. R. No. 29/21). It

implies that there was a complete omission to incorporate in the grounds of detention the narration of facts pertaining to C. R. No. 57/21, in the English

version. Neither the discrepancy can be explained away by asserting that there was an inadvertent reproduction, nor the lapse can be down played on

the premise that the detainee, being well-versed in Marathi, was not prejudiced in making the representation. The issue, which is at the heart of the

matter, is whether upon perusal of the grounds of detention in English and Marathi the detainee was left in a state of confusion. In the facts of the

case, we are of the view that the lapse was such that detainee was left in a state of bewilderment in appreciating the exact material which weighed

with the detaining authority and used against him.

17. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of Vijay Kumar Dharna Alias Koka Vs. Union

of India & Ors. (1990) 1 SCC 606 wherein, in the context of the discrepancy in the English and vernacular version of the grounds of detention, the

Supreme Court enunciated the legal position as under:

“4. In the Gurmukhi version of the detention order it was stated that the detention order had become necessary with a view to preventing him

from smuggling goods and from abetting the smuggling of goods. It is, therefore, clear that according to the Gurmukhi version the detainee was

taken in detention under clauses (i) and (ii) of Section 3(1) of the Act. However, when we turn to the grounds of detention the detaining authority

records his satisfaction as under:

“I am satisfied it is necessary to detain you under COFEPOSA Act, 1974 with a view to preventing you from concealing, transporting smuggled

goods as well as dealing in smuggled goods.”

This satisfaction clearly reflects the grounds contained in clauses (iii) and (iv) of Section 3(1) of the Act. The above satisfaction does not speak of

smuggling of goods or abetting the smuggling of goods which are the grounds found in the Gurmukhi version of the detention order. There is, therefore,

considerable force in the contention urged by the learned counsel for the appellant that on account of this variance the detenu was not able to

effectively represent his case before the concerned authorities. In fact according to him the appellant was confused whether he should represent

against his detention for smuggling of goods and/ or abetting the smuggling of goods or for engaging in transporting and concealing smuggled goods

and/or dealing in smuggled goods. Besides the English version of the detention order was only for abetting the smuggling of goods. The satisfaction

recorded in the Gurmukhi version of the grounds for detention is not consistent with the purpose for detention found in the detention order. It left the

detenu confused whether he should represent against the grounds in the detention order or the satisfaction recorded in the grounds of detention. We

are, therefore, of the opinion that because of this variance the detenu was unable to make an effective representation against his detention and was

thereby denied his right under Article 22(5) of the Constitution. *Āĉâ, -â€*

(emphasis supplied)

18. A useful reference can also be made to a Division Bench judgment of this Court in the case of *Shri Noor Mohamed Khan Vs. Shri M. N. Singh &*

Ors. 2001 ALL MR (Cri) 1988, wherein the test to be applied in appreciating the challenge based on variance in the English and vernacular versions

was expounded as under:

Āĉâ, -Ā“7. We have reflected over Mr. Thakur *Āĉâ, -â,,*’s submission and are constrained to observe that we do not find any merit in it. It is well-settled that in

a preventive detention matter the question of prejudice is extraneous. While dealing with the question of infirmity in the translation, the time-honoured

norm, which this Court takes into account, is whether on account of the infirmity therein the detenu could have been misled or confused in exercising

his fundamental right of making an effective representation, guaranteed by Article 22(5) of the Constitution of India, and if in a given case the answer

is in the affirmative, the detention order would have to be quashed and if in the negative, it would be sustained. We have already, in paragraph 5, given

our reasons as to why the detenu could have been misled in the instant case.Ã¢â¬â¸

(emphasis supplied)

19. In view of the aforesaid exposition of the legal position, we advert to the facts of the case. It would be audacious to hold that, despite such glaring

infringement in the English and Marathi version of the grounds of detention, the detenu was not misled and confused in making an effective representation

against the detention order. Thus, we are persuaded to agree with the submission on behalf of the petitioner on this count.

20. This propels us to the substantive ground urged on behalf of the petitioner that the crimes relied upon by the sponsoring authority, by no stretch of

imagination, be said to be prejudicial to the maintenance of public order. As indicated above, the detaining authority professed to base the subjective

satisfaction on two crimes i.e. C. R. Nos. 29/21 and 57/21 registered at Salgar Vasti Police Station and two in-camera statements of the alleged

victims. It may be apposite to immediately notice the narration of facts pertaining to C. R. Nos. 29/21 and 57/21 so as to properly appreciate the

submission on behalf of the petitioner that no element of, Ã¢â¬â¸“disturbance to public orderÃ¢â¬â¸ was involved, even remotely.

FACTS IN C. R. NO. 29/2021

21. Indictment against the petitioner is that the petitioner and Chandrakant Mekale allegedly prevented Shinde Developers Pvt. Ltd., who had the

contract to remove the laterite soil from the land bearing Block No. 82/1/A of Sachin Lalasaheb Jadhav. The detenu and his associates allegedly

restrained the vehicles of Shinde Developers carrying laterite soil from passing through petitionerÃ¢â¬â¸s land. The petitioner was also allegedly

coercing the holder of the said land Sachin Jadhav to sell the said agricultural land at a throwaway price. Despite the grievance being lodged with the

Sub-divisional Officer and the later instructing the Tahasildar, North Solapur to take appropriate action to remove the obstruction at the instance of the

petitioner in carrying the laterite soil, the petitioner and his associates continued to cause obstruction in the said work. Hence, Mr. Prakash Narsing

Batgeri, the Liaisoning Officer of Shinde Developers lodged report at Salgar Vasti Police Station for the offences punishable under Sections 341, 384,

385, 506, 427 read with Section 34 of the Penal Code on 02.03.2021.

FACTS IN C. R. NO. 57/2021

22. The first informant Nitin Bhosale reported to police that the agricultural land admeasuring 1 Hectore out of Gat No. 100/B/1 situated at

Dongaon, Taluka North Solapur was allotted to his father under Rehabilitation Scheme. Since the first informant's father and the first informant

were based in Mumbai, the land was given for cultivation to adjoining holder Lalasaheb Jadhav. As Lalasaheb Jadhav could not pay attention, the land

remained fallow. It transpired that in the year 2011, the petitioner and Chandrakant Mekale got mutated their names to the record of rights of the said

land by fabricating documents. During the course of further inquiry, the first informant learned that, a distant cousin of the first informant Mohan Sopan

Bhosale was forced to execute an irrevocable power of attorney, though he had no right, title and interest in the said land in favour of Chandrakant

Mekale. After the fraud was unearthed, the first informant lodged report alleging that the registered irrevocable power of attorney dated 09.03.2010 in

favour of Chandrakant Mekale, to the execution of which the petitioner was a witness, was a false and forged document and, thereby, the petitioner

and Chandrakant Mekale usurped the said land, leading to C. R. No. 57/21 for the offences punishable under Sections 420, 465, 468, 471 read with 34

of the Penal Code.

23. From the aforesaid narration of the facts in respect of C. R. Nos. 29/21 and 57/21, it becomes abundantly clear that the offences alleged against

the petitioner, arose out of peculiar facts. The dispute in C. R. No. 29/21 appears to have its genesis on the insistence of the developer to transport the

laterite soil from the field adjoining to the land of the petitioner. It is true that the holder of the land, wherefrom the laterite soil was being excavated

and transported, allegedly stated that the petitioner and his brother Chandrakant were insisting for sale of the said agricultural land to them, yet the

principal allegation in the said FIR was that of causing obstruction to the excavation and transportation of laterite soil. It defies apprehension as to how

those activities can be said to disturb the even tempo of life of ordinary citizens.

24. The allegations in C. R. No. 57/21 stand on an even weaker foundation, for the purpose of the invocation of preventive detention power (on the

strength thereof). Undoubtedly, the FIR was registered on 07.04.2021. It is equally true that the FIR alleges forgery and fabrication of documents in

the year 2010. The informant alleged that, on 09.03.2010 a fabricated irrevocable power of attorney was got registered in the name of Chandrakant

Mekale, to which the petitioner was a witness. It can hardly be gainsaid that the alleged offences were committed in the year 2010. Pertinently, the first

informant does not attribute any act or omission qua the petitioner, which triggered the lodging of the said report.

25. We thus find considerable substance in the submission of Ms. Tripathi that none of the two crimes, relied upon by the detaining authority, justify an

inference that the activities attributed to the petitioner therein have had propensity to disturb the public order. The reliance placed by Ms. Tripathi on

the Judgment of the Supreme Court in the case of Mustakmiya Jabbarmiya Shaikh Vs. M. M. Mehta, Commissioner of Police & Ors., (1995) 3 SCC

237, appears well founded. In the said case, in the context of provisions contained in Section 3 of the MPDA Act, the Supreme Court illuminatingly

postulated the conditions which are required to be satisfied to pass a valid detention order under Section 3 of the MPDA Act and the distinction

between "law and order" and "public order" in the following words:

"9. It, therefore, becomes necessary to determine whether besides the person being a "dangerous person" his alleged activities fall

within the ambit of the expression “public order”. A distinction has to be drawn between law and order and maintenance of public order because

most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person

which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may

be stated that in order to bring the activities of a person within the expression of “acting in any manner prejudicial to the maintenance of public

order”, the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law

to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and

its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity

amounts only to a breach of “law and order” or it amounts to “public order”. If the activity falls within the category of disturbance of

“public order” then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his

activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of

Arun Ghosh V. State of W.B. (1970) 1 SCC 98 this Court had an occasion to deal with the distinction between law and order and public order.

Hidayatullah, C.J. (as he then was), speaking for the Court observed that public order would 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

tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amount

only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and

public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of

the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but

in its potentiality it may be very different. Again in the case of *Piyush Kantilal Mehta v. Commissioner of Police*, 1989 Supp (1) SCC 322 this Court

took the view that in order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there

has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public

upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The

commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the

land.

26. Adverting to the facts of the said case, wherein the petitioner-detenu therein had allegedly assaulted the victims in public view, the Supreme

Court held that those incidents were directed against single individuals having no adverse effects prejudicial to the maintenance of public order,

disturbing the even tempo of life or the peace and tranquillity of the locality. Such casual and isolated incidents can hardly have any implications which

may affect even tempo of life or jeopardize the public order and incite the people to make further breaches of law and order which may result in

subversion of the public order.

27. The situation which, thus, emerges is that the predicate offences, on the strength of which the proceeding for preventive detention was initiated, do

not indicate even remotely that the activities attributed to the petitioner were of such a nature that they instilled a sense of insecurity amongst general

public and disturbed their even tempo of life. On the contrary, the offences appear to have arisen out of the disputes over the ownership and access to

agricultural lands. Moreover, since in the case of C. R. No. 57/21, the offence was allegedly committed in the year 2010, the live link between the said

act and the impugned action can hardly be pressed into service much less established.

28. We are conscious of the fact that the detaining authority has also placed reliance upon the confidential statements of two witnesses. The tenor of

confidential statements is that the petitioner deals in the business of illegal money lending at an exorbitant rate and also extorts money by giving threat

of harm to persons and property on the basis of muscle power supplied by a hirelings,
who belong to his wrestling club (Talim). Witness Añâ-ĖœAñâ-â,,¢

allegedly stated that the petitioner and his associates in order to extort a sum of Rs.10,000/- came to his shop and on his refusal to part with money, he

was assaulted by the petitioner by means of knife and the associates of the petitioner ransacked his shop. People gathered. The petitioner charged on

those persons armed with knife and his associates started pelting stones on those persons and adjacent shops and houses. People ran helter-skelter.

The petitioner took away the entire cash from the cash counter and threatened to eliminate the witness if extortion money (Hapta) was not paid on

time.

29. Witness A, B, C allegedly stated that despite repaying the entire loan amount along with interest at an exorbitant rate, the petitioner was

demanding the witness to hand over the vacant possession of his house premises. The petitioner and his associates came to his house and caused

damage to household articles. When people gathered, the petitioner charged upon them and his associates pelted stones and, thus, those persons

started running helter-skelter. The witness was spared only upon giving assurance that he would not report the matter to the police.

30. The learned APP, on the strength of the aforesaid statements made an endeavour to draw home the point that the aforesaid acts of the petitioner

squarely fall within the ambit of the expression "prejudicial to maintenance of public order". It is trite that a confidential statement can very well

be taken into account by the detaining authority to arrive at a subjective satisfaction that, the activities of the proposed detainee are prejudicial to the

maintenance of public order. However, the fact that predicate offences, on the strength of which the action was initiated, do not indicate element of

subversion of public order, cannot be lost sight. Predicate offences constitute the objective material to determine the potential and propensity of the acts

and conduct attributed to a detainee. When the material on record indicates that the narration of facts in respect of crime is extremely

fragile, so as to draw an inference of conduct prejudicial to maintenance of public order, it would be rather hazardous to sustain the order of detention

on the strength of in-camera statements alone.

31. The conspectus of aforesaid consideration is that the material on record indicates that the subjective satisfaction arrived at by the detaining

authority suffers from the vice of not properly appreciating nature of the criminal activities attributed to the petitioner in C. R. Nos.29/21 and 57/21. At

best, those offences fall in the realm of law and order problem, which can be legitimately dealt with by ordinary penal laws. In the circumstances, the

extraordinary action of preventive detention, which infringes the most prized and cherished right to personal liberty, appears to be wholly uncalled for

and unsustainable. We are, thus, persuaded to allow the petition.

32. Hence, the following order:

ORDER

(i) The petition stands allowed.

(ii) The impugned order of detention dated 12.05.2021 passed by respondent No.1 under Section 3 of the MPDA Act stands quashed and set aside.

(iii) The petitioner be set at liberty forthwith, if not required to be detained in any other case.

(iv) Rule made absolute in the aforesaid terms.