
(2023) 01 BOM CK 0013

Bombay High Court (Nagpur Bench)

Case No: Criminal Writ Petition No.360 Of 2022

Sachin Gajananrao
Telgote

APPELLANT

Vs

State Of Maharashtra
And Others

RESPONDENT

Date of Decision: Jan. 4, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 21
- Code Of Civil Procedure, 1908 - Section 110
- Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drugoffenders, Dangerous Persons And Video Pirates Act, 1981 - Section 3, 3(2)
- Indian Penal Code, 1860 - Section 34, 341, 354, 354(d), 384, 504, 506
- Arms Act, 1959 - Section 2(C), 3, 3(4), 4, 25
- Protection Of Children From Sexual Offences Act, 2012 - Section 11, 12

Citation: (2023) 01 BOM CK 0013

Hon'ble Judges: Rohit B.Deo, J; Urmila Joshi-Phalke, J

Bench: Division Bench

Advocate: U.J.Deshpande, S.S.Doifode

Final Decision: Allowed/Disposed Of

Judgement

Urmila Joshi-Phalke, J

1. Heard learned counsel Shri U.J.Deshpande for the petitioner and learned Additional Public Prosecutor Shri S.S.Doifode for respondents/State.

Rule. Rule made returnable forthwith and heard finally.

2. On 8.4.2022, Police Inspector of Akot City Police Station submitted a proposal to respondent No.2 - the Collector and District Magistrate, Akola,

contending that the petitioner/detenu is a dangerous person for the society. It is alleged that the detenu along with his associates was roaming around

the area within the jurisdiction of Akot Police Station and habitually committed serious offences like assaults, extortions, robberies, lands/property

grabbing armed with deadly weapon like knife. It is further alleged that the activities of the petitioner/detenu caused alarm and insecurity amongst the

general public and, therefore, preventive proceedings under Section 110 of the Code of Criminal Procedure were also initiated against the

petitioner/detenu. It is alleged that as the law of the land is found to be insufficient and ineffective to deter the petitioner/detenu from indulging in

criminal activities prejudicial to the maintenance of the public order, preventive proceedings under 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 (the MPD Act) were taken after recording two in-camera statements of witnesses. The Authority stated that the

petitioner/ detenu is a bootlegger and his acts caused danger to the society.

3. After receiving the proposal along with necessary documents, and after considering the same, on 13.4.2022 respondent No.2 passed order of

detention under Section 3(1) and 3(2) of the MPD Act and the petitioner/detenu was detained. Respondent No.2 assigned various grounds of

detention mentioning that though a prevention action was taken against the petitioner/detenu, his activities are continue, and, therefore, his detention is

required in view of the provisions of the said Act. The order of detention was sent to respondent No.1 for its approval.

4. After receiving the order of detention by respondent No.2 for approval, respondent No.1 was pleased to approve and confirm the same after

considering opinion and report given by the Advisory Board and further directed to detain the petitioner/detenu for a period of twelve months from the

date of detention.

5. Facts of the case in a nutshell are as under:

The petitioner/detenu was arrested and detained on 13.4.2022 as per the order passed by respondent No.2. The order of detention was passed on the

basis that five offences are registered against the petitioner/detenu and the investigating agency came to conclusion that the petitioner/detenu is a

dangerous person and his activities are prejudicial to the society. He is habitual bootlegger and dreaded criminal striking terror in the mind of peace

loving and law abiding citizens residing in the localities of Akot City Police Station and adjoining areas by the criminal activities of the petitioner/detenu.

It is further recorded that the action taken against the petitioner/detenu under the regular law is found to be insufficient and ineffective to deter him

from indulging in criminal activities prejudicial to the maintenance of public order. The public is under constant shadow of the petitioner/detenu and his

associates' fear. It is further recorded that respondent No.2 is subjectively satisfied that the petitioner/detenu is a bootlegger. The petitioner/detenu is a

dreaded criminal and detention order has been passed. The said detention order is under challenge before this Court in this writ petition.

6. The petitioner/detenu enumerated various grounds, but the main ground of the petitioner/detenu is that respondent No.2 without verifying the

statements only endorsed as "seen" on in-camera statements. Without subjective satisfaction, the present detention order is passed by exercising

the powers. It is further contention of the petitioner/detenu that respondent No.2 recorded finding without subjective satisfaction that the

petitioner/detenu was a dangerous person and in order to prevent him, detention order is required. Though the petitioner/detenu was granted to make

representation and the petitioner/detenu made a representation on 25.4.2022, but it was belatedly rejected by the Government. It is further contention

of the petitioner/detenu that in none of cases the guilt of the petitioner/detenu was proved. He is released on bail by imposing certain conditions, but

the detaining authority has not considered the said aspect. The activities of the petitioner/detenu cannot be held to be disturbing the public peace when

there is no sufficient material to show that the petitioner/detenu is a dangerous person in accordance with the provisions of the MPD Act.

7. Learned counsel Shri U.J.Deshpande for the petitioner/detenu submitted that in all five offences under the Indian Penal Code are registered against

the petitioner/detenu and there is no material to show that the petitioner/detenu is a dangerous person and his presence in the society would be

prejudicial. He submitted that even statements of witnesses "A and "B" nowhere state that the petitioner/detenu is a dangerous person and his

presence would affect the law and order situation. There is no material on record holding the petitioner/detenu to be dangerous person. He submitted

that taking into consideration the said aspects, the petitioner/detenu be released forthwith.

8. Learned counsel Shri U.J.Deshpande for the petitioner/detenu, in support of his contentions, relied upon a decision of the Honourable Apex Court in

the case of Pankaj Kumar Chakrabarty and others vs. State of West Bengal reported at 1970 AIR (Supreme Court) 97 wherein it has been held that

when the recourse to the criminal proceedings would be sufficient to deal with alleged prejudicial activities, the detention order is not needed.

He further relied upon a decision of the Honourable Apex Court in the case of Union of India vs. Yumnam Anand M.@ Bocha @ Kora @ Suraj &

anr, reported at 2007(1) SCC 190 wherein it has been held that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of

constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure

established by law. It has been further held that if there is representation against the order of preventive detention, the Government is required to

obtain comments of sponsoring authorities on the representation.

He further relied upon a decision of the Honourable Apex Court in the case of Vijay Narain Singh vs. State of Bihar, reported at 1984(3) SCC 14

wherein it has been held that 'habitual offender' and 'habitually' " statute made a provision of detention of a person who is habitually anti-social -

repeated, persistent and similar acts, but not isolated of dissimilar acts are necessary to justify an interference of habit "interval of eight years

between first act and second act " person cannot be called a habitual offender.

He further relied upon a decision of the Honourable Apex Court in the case of Shri Mustakmiya Jabbarmiya Shaikh vs. Shri M.M.Mehta,

Commissioner of Police and others, reported at 1995(3) SCC 237 wherein it has been held that the petitioner habitually indulging in criminal and anti

social activities of keeping fire-arms, beating and assaulting innocent citizens in public " charged for different offences under different sections. All

incidents connected and related against an individual person " such incidents cannot be said to be the incidents affecting public order. The writ

petition allowed and detention order quashed.

He relied upon a decision of the Honourable Apex Court in the case of Mallada K.Sri Ram vs. The State of Telangana and ors, reported at 2022(233)

AIC 32 wherein it has been held that person liberty of accused cannot be sacrificed on altar of preventive detention merely because person is

implicated in criminal proceeding.

He relied upon a decision of the Honourable Apex Court in the case of Shaik Nazneen vs. The State of Telangana and ors, reported at 2022 Livelaw

(SC) 559 wherein the Honourable Apex Court distinguished between the law and order situation and public order situation.

Lastly, he relied upon a decision of the Division Bench of this Court in Criminal Writ Petition No.820 of 2021 decided on 1.7.2022 (Ratnamala Mukund

Balkhande and ors vs. State of Maharashtra.

He prays that in view of decisions cited supra, the writ petition be allowed.

9. Per contra, learned Additional Public Prosecutor Shri S.S.Doifode for respondents/State submitted that in all five offences are registered against the

petitioner/detenu. The petitioner's criminal records show that he is a dangerous person as defined in the MPD Act. The petitioner/detenu along with

his associates has been indulging in criminal acts and committing serious offences such as wrongful restraints, extortions, illegal possession of arms,

molestations, stalkings, and abusing threats to cause death. The said offences have been registered against the petitioner/detenu in police station and

all the cases fall under Chapters XVI and XVII of the Indian Penal Code and under Chapter V of the Arms Act. The petitioner's activities have

become hazardous and prejudicial to the maintenance of public order in the area of Akot Police Station, district Akola. The petitioner's illegal and

dangerous acts have become serious threat and source of danger to the lives of law abiding and peace loving citizens of city and, therefore, the

petition deserves to be dismissed.

10. Learned Additional Public Prosecutor Shri S.S.Doifode for respondents/State, in supports his contentions, placed reliance on the decision of the

Honourable Apex Court in the case of Ram Manohar Lohia vs. State of Bihar and another, reported at (1966)1 SCR 709 wherein it has been held that

the satisfaction of the Government which justifies the order under the rule is a subjective satisfaction. A court cannot enquire whether grounds existed

which would have created that satisfaction on which alone the order could have been made in the mind of a reasonable person. It has been held that

public order"" 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. By using the expression ""maintenance of law and order"" the

District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

11. We have considered rival submissions which fall for our consideration.

12. In this case, the Detaining Authority has relied upon five instances for passing the detention order, (1) Crime No.190/2022 is registered with Akot

City Police Station for offences punishable under Sections 341, 504, and 506 of the Indian Penal Code; (2) Crime No.175/2022 is registered with Akot

City Police Station for offence punishable under Section 384 read with Section 34 of the Indian Penal Code; (3) Crime No.162/2022 is registered with

Akot City Police Station for offences punishable under Sections 341, 504, and 506 read with Section 34 of the Indian Penal Code; (4) Crime

No.141/2022 is registered with Akot City Police Station for offences punishable under Sections 4 and 25 of the Arms Act, and (5) Crime No.194/2019

is registered with Akot City Police Station for offences punishable under Sections 354 and 354(d) of the Indian Penal Code read with Sections 11 and

12 of the POCSO Act.

13. In addition to the aforesaid instances, the Detaining Authority has also relied upon two in-camera statements recorded by the Detaining Authority

and there can be no dispute about the proposition that the order of the preventive detention under the MPD Act can be made inter alia on the ground

that the proposed detenu is a threat to public order as opposed to law and order.

14. The first instance on which the impugned detention order is based is, Crime No.190/2022 registered on 17.3.2022 i.e. prior to issuing the detention

order. Crime No.175/2022 is registered on 8.3.2022, Crime No.162/2022 is registered on 4. 3.2022, and Crime No.141/2022 is registered on 25.2.2022.

A perusal of records concerning these instances show that first offence was registered on the basis of report lodged by individual Dinesh Ishwarsingh

Thakur. Crime No.175/2022 is also registered on the basis of individual Ganesh Gowardhan Haramkar. Crime No.162/2022 is registered on the basis

of report lodged by Mahesh Rameshlal Kalpekar and Crime No.141/2022 is registered on report lodged by Police Constable Vijay Babarao Solanke.

15. In order to support contentions, learned counsel Shri U.J.Deshpande for the petitioner/detenu invited our attention to order of detention dated

13.4.2022 impugned in the petition and more particularly to paragraph No.10 of the said detention order which refers to five specific offences. By

referring to oral reports leading to the registration of the said offences, it was submitted that these were not offences that could justify issuance of the

detention order against the petitioner/detenu for disturbance of public order. It was further submitted that in-camera statements recorded by the

Authority were not in harmony with the offences alleged against the petitioner/detenu and no report was lodged as regards the said alleged incident

stated by the witnesses whose in-camera statements were recorded.

16. The Honourable Apex Court in the case of Shri Mustakmiya jabbarmiya Shaikh vs. Shri M.M.Mehta, Commissioner of Police and others, cited

supra held that a reading of the preamble of the Act will make it clear that the object of provisions contained in the Act including those reproduced

above is to prevent the crime and to protect the society from anti-social elements and dangerous characters against perpetration of crime by placing

them under detention for such a duration as would disable them from resorting to undesirable criminal activities. The provisions of the Act are intended

to deal with habitual criminal dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal laws and

the moral fear of punishment for crime are not sufficient deterrents for them. Section 3 of the Act is, therefore, intended to deal with such criminals

who cannot readily be apprehended to be booked under the ordinary law and who for special reasons, cannot be convicted under the penal laws in

respect of the offences alleged to have been perpetrated by them, but this power under the Act to detain a person should be exercised with restraint

and great caution. In order to pass an order of detention under the Act against any person the detaining authority must be satisfied that he is a

'dangerous person' within the meaning of Section 2(C) of of the Act who habitually commits, or attempts to commit or abetes the commission of any

of the offences punishable under Chapter XVI or XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act as

according to sub-section (4) of Section 3 of the Act it is such 'dangerous person' who for the purpose of Section 3 shall be deemed to be a person

'acting in any manner prejudicial to the maintenance of public order' against whom an order of detention may lawfully be made. The Honourable Apex

Court further held that the Act has defined 'dangerous person' in clause (C) of Section 2 to mean a person who either by himself or as a member or

leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under the chapters XVI or

XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression 'habit' or 'habitual' has however, not

been defined under the Act, According to the Law Lexicon by P. Ramanatha Iyyar, Reprint Edition 1987 page 499 'habitually' means constant,

customary & addicted to specified habit and the term habitual criminal may be applied to any one who has been previously convicted of a crime to the

sentences and committed to prison more than twice. The word 'habitually' means 'usually' and 'generally'.

17. It is no longer integra that there is a clear distinction between the law and order and public order. The provisions of the MPD Act can be invoked

when there is a situation of public disorder likely to be created by the presence of the detenu in the society at large. The material upon which the

Detaining Authority has placed reliance must indicate that the the alleged activities of the detenu are such that ordinary law is unable to deal with such

subversive activities and there is every likelihood of disturbance of public order if the detenu is permitted to roam around free in the society.

18. The Honourable Apex Court in the case of Mrs. Harpreet Kaur Harvinder vs. State of Maharashtra and another, reported at (1992) 2 SCC 177

distinguished concept of 'public order and law order' that "from the law laid by this Court, as noticed above, it follows that it is the degree

and extent of the each of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a

breach of 'law and order' or has acted in a manner likely to cause disturbance to 'public order'. It is the potentiality of the act to disturb the even

tempo of life of the community which makes it prejudicial to the maintenance of 'public order'. Whenever an order of detention is questioned, the

courts apply these tests to find out whether the objectionable activities upon which the order of detention is grounded fall under the classification of

being prejudicial to "public order" or belong to the category of being prejudicial only to 'law and order'. An order of detention under the Act would be

valid if the activities of a detenu affect 'public order' but would not be so where the same affect only the maintenance of 'law and order'. Facts of

each case have, therefore, to be carefully scrutinized to test the validity of an order of detention.Ã¢â¬â¢

19. The Honourable Apex Court in the case of Shri Mustakmiya jabbarmiya Shaikh vs. Shri M.M.Mehta, Commissioner of Police and others, cited

supra referred to and elaborated upon the aforesaid concept of Ã¢â¬â¢public orderÃ¢â¬â¢ as opposed to Ã¢â¬â¢law and orderÃ¢â¬â¢. The relevant position of the

said judgment reads as under:

Ã¢â¬â¢9. It, therefore, becomes necessary to determine whether besides the person being a Ã¢â¬â¢dangerous personÃ¢â¬â¢ his alleged activities fall within

the ambit of the expression Ã¢â¬â¢public orderÃ¢â¬â¢. 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 Ã¢â¬â¢acting in any manner prejudicial to the maintenance of public

orderÃ¢â¬â¢, 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 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.Ã¢â¬â€œ

20. Keeping in mind the distinguishing features and decisions of the Honourable Apex Court cited supra it becomes necessary to find out whether acts

attributed to the petitioner/detenu warrant his detention by invoking provisions contained in Section 3 of the MPD Act on the spacious grounds that

those acts were prejudicial to the maintenance of the public order. The genesis of the detention order lies in the registration of five offences under the

Indian Penal Code. When the material on record in the present case is perused, the petitioner/detenu has been released on bail in all five offences, on

which learned Additional Public Prosecutor Shri S.S.Doifode for respondents/State relied upon, registered under the provisions of the Indian Penal

Code, Arms Act, and POCSO Act. After considering in-camera statements of the alleged witnesses, it reveals that witnesses have claimed that the

petitioner/detenu threatened them and acted in such a manner that they are threatened to face dire consequences. Even, if the list of offences

mentioned above registered against the petitioner/detenu and the order of detention are taken into consideration, we find that between in-camera

statements and the order of detention there is no live-link which leads to issuance of the order of detention. It cannot be said that the petitioner/detenu

deserves to be detained under the provisions of the MPD Act. There is no material on record to show that the the petitioner/detenu roaming in the

society freely would lead to public discord. A perusal of the record concerning this incident makes it clear that the same has no nexus with the issue of

public order, however relates to the issue of law and order. The above offences alleged to have committed are against individuals. The subjective

satisfaction showing that the Detaining Authority came to conclusion on the basis of some evidence which was placed before the Authority showing

the conduct of the person and the Authority has examined the same and came to conclusion that detention of the person is required. The subjective

satisfaction arrived at by the Detaining Authority does not appear to be in consonance with the position of law in the context of the public order as

against law and order. The representation made by the petitioner/detenu is also considered belatedly and rejected the same.

21. In the light of the legal position, when the material on record in the present case is perused, in paragraph No.10 of the impugned detention order,

respondent No.2 has relied upon specific offences attributable to the petitioner/detenu committed in the month of March 2022. One offence is

registered on 7.11.2019. One serious offence under Section 384 of the Indian Penal Code is registered only in one case i.e. Crime No.175/2022. Even,

with regard to the said case, the bail was granted to the petitioner/detenu. The externment proceeding was also initiated against the petitioner/detenu

which was challenged by him by filing a criminal revision before learned Judge below. By allowing allowing the said revision, the order passed by the

Sub Divisional Magistrate for externment is quashed and set aside. It is observed by the Revisional Court that no opportunity was given to the

petitioner/detenu to cross-examine the Police officers and the witnesses. It is further observed that the Sub Divisional Magistrate did not verify

whether facts alleged in the statements of witnesses are deposed by them or not. Thus, the order of externment passed against the petitioner/detenu is

also set aside as due procedure was not followed followed by the Magistrate while passing the order. Considering the impugned detention order, we

find that in-camera statements are not sufficient in the light of the fact that the said witnesses have not lodged any reports against the present

petitioner/detenu.

22. After applying the proposition of law and the law laid down by the Honourable Apex Court, we are of opinion that in the present case it cannot be

said that the petitioner/detenu deserves to be detained under the provisions of the MPD Act, because his roaming free in the society would not lead to

public disorder. The satisfaction arrived at by the Detaining Authority does not appear to be inconsonance with the position of law in the context of

public order as against the law and order. The material on record does not really indicate that the ordinary law would be insufficient to take care of the

alleged criminal activities of the petitioner/detenu and it cannot be said that the activities are such subversive nature that the extreme power available

under Section 3 of the MPD Act could have invoked for issuance of the impugned detention order. The order approving and confirming the same also

deserves to be set aside on the said grounds.

23. In view of the discussion above, we pass following order:

ORDER

(1) The criminal writ petition is allowed.

(2) The impugned detention order dated 13.4.2022 confirming and approving the detention issued against the petitioner/detenu is quashed and set aside.

(3) It is directed that the petitioner/detenu be released from the detention forthwith, if not required in any other cases.

With this, the criminal writ petition is allowed and disposed of accordingly.