

(2021) 06 BOM CK 0061

In the Bombay High Court

Case No : Criminal Writ Petition No.846 Of 2021

Ganesh alias Gajaraj Sainath Patil

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 29-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 22(5), 226
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 — Section 2(b1), 3, 3(1), 3(2), 8
Indian Penal Code, 1860 — Section 143, 147, 148, 149, 307, 323, 326, 341, 427, 435, 452, 504, 506

Citation : (2021) 06 BOM CK 0061

Hon'ble Judges : S.S. Shinde, J;Abhay Ahuja, J

Bench : Division Bench

Advocate : Satyavrat Joshi, Sumant Deshpande, M.H. Mhatre

Final Decision : Allowed

Judgement

Abhay Ahuja, J

1. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for Petitioner and the Respondents-State and its officials, heard finally.
2. By this Petition, filed under Article 226 of the Constitution of India, Petitioner is challenging the order of detention dated 19th January, 2021 (hereinafter called "Detention Order") issued under Section 3 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 (the "MPDA Act") by Respondent No.2-Collector & District Magistrate, Sangli (the "Detaining Authority").
3. Pursuant to the Detention Order, by a committal order dated 19th January, 2021 passed by Respondent No.2, Petitioner has been detained in the Sangli District Prison.

4. Petitioner contends that Respondent No.2 has mainly relied upon the following three grounds based on which the impugned Detention Order has been passed :-

i) an offence registered against Petitioner at the Islampur Police Station on 23rd August, 2020 vide C.R. No.636/2020,

ii) two in-camera statements dated 26th November, 2020 and 30th November, 2020 and

iii) the criminal antecedents of the detenu as contained in Paragraph 6 of the Grounds for Detention.

5. Petitioner has challenged the Detention Order on the grounds as mentioned in the Petition. However, Mr. Satyavrat Joshi, learned counsel for Petitioner presses for the following grounds as discussed hereunder.

6. The first ground that is being taken up on behalf of Petitioner is that the two in-camera statements, which have been relied upon by the Detaining Authority for passing the Detention Order, are without recording the subjective satisfaction of the Detaining Authority. The Detaining Authority has himself not personally verified the truthfulness of the two in-camera statements, so as to ascertain that witnesses are not willing to come forward to give evidence in public against Petitioner by reason of apprehension on their part as regards the safety of their person or property. He submits that the Grounds for Detention do not mention that he has ascertained the facts mentioned in the in-camera statements, either from the person recording it, i.e., from the police inspector of Islampur Police Station or from the Sub-Divisional Police Officer (S.D.P.O.), who has verified it. He submits that a mere reproduction of the contents of the in-camera statements do not show subjective satisfaction as envisaged in law. He also submits that no effort was made by the Detaining Authority to discuss the matter, either with the police inspector or the S.D.P.O. to verify the authenticity of the statements, so as to ascertain that witnesses are not willing to come forward to give evidence in public against Petitioner by reason of apprehension on their part as regards the safety of their person or property. On behalf of Petitioner, the decision of this Court in the case of Shahjahan w/o. Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra & Anr., (2016) ALL MR (Cri) 4233 is being relied upon.

7. Learned counsel's next argument is that there is a difference/variance in the Marathi as well as English versions of the Grounds for Detention, as a result of which Petitioner has not been able to make effective representation to the Home Department and, therefore, the Detention Order passed by the Detaining Authority is bad in law, illegal and deserves to be quashed and set aside.

8. He draws our attention to Paragraph 6 of the Grounds

for Detention dated 19th January, 2021 to submit that the years of the C.R. numbers mentioned in Marathi are at variance from the years mentioned in the English version of the said grounds and, hence, there is material variance in the two orders, thereby making the said order liable to be set aside. For the sake of

completeness, Paragraph 6 of the Grounds for Detention in Marathi, which is annexed at Page 23 of the Petition, is reproduced hereunder :-

Also, Paragraph 6 on Page 17 of the Petition of the English version of the Grounds for Detention is reproduced as under:-

"6. Your past history shows that you have no respect for the law and that you have a tendency to commit crimes over and over again without fear of the law.

i. Islampur Police Station, C.r.No. 208/2020 u/s 326, 325, 143, 147, 149, 504 of IPC.

ii. Islampur Police Station, C.r.No. 264/2020 u/s 435, 143, 149 of IPC.

iii. Islampur Police Station, C.r.No. 303/2020 u/s 427, 323, 504, 506, 143, 144, 149 of IPC, Bombay Police Act 135.

iv. Islampur Police Station, C.r.No. 614/2018 u/s 447, 143, 144, 147, 149, 506, 427 of IPC, Bombay Police Act 135.

v. Islampur Police Station, C.r.No. 283/2019 u/s 452, 504, 506, 34 of IPC.

vi. Islampur Police Station, C.r.No. 409/2019 u/s 307, 143, 147, 148, 149, 504, 506 of IPC.

vii. Islampur Police Station, C.r.No. 636/2019 u/s 307, 341, 323, 504, 506, 143, 147, 148, 149 of IPC.

This reveals that you are continuously engaged in criminal activities and they are very dangerous to the society. Sr.no.1 to 6 are pending before the court of law and Sr. No. 7 is pending for investigation."

9. He submits that a cursory glance at the two versions indicates the variance, which is material to the case of Petitioner in as much as due to this variance, Petitioner was unable to make effective representation to the Home Department.

10. Learned counsel for Petitioner refers to and relies upon the decision of this Court in the case of Yogesh Nandu Pujari Vs. Commissioner of Police, Thane & Ors., 2013 ALL MR (Cri) 1779 to further his contentions. He quotes Paragraphs 8, 9 and 10 of the said decision, which reads as under :-

"8. A priori, it would necessarily follow that the injury certificates Exhibit - 'F' collectively, which formed part of the compilation of documents accompanying the grounds of detention served on the detenu, were relied upon by the Detaining Authority to form his subjective satisfaction. The concomitant of this finding is that said documents are vital documents and will have to be considered as "ground" within the expansive meaning of expression "grounds of detention". This legal position, in our opinion, is no more res integra. The Apex Court in the case of Khudiram Das vs. the State of West Bengal and Ors, (1975) 2 SCC 81 had occasion to answer the same. The Apex Court has expounded the meaning of expression "grounds". It is held that it means all the basic facts and "materials

which have been taken into account" by the Detaining Authority in making the order of detention and on which, therefore, the order of detention is based. This statement of law is enunciated on the basis of the reported cases and Authorities referred to in Paragraph 6 of the reported decision.

9. In our opinion, therefore, the Petitioner is justified in contending that his right to make effective representation has been abridged within the meaning of Article 22(5) of the Constitution of India, as has been expounded by the Apex Court in catena of decisions. We do not intend to multiply the Authorities cited before us by both the sides, except to mention that in the fact situation of the present case, we have no hesitation in taking the view that the injury certificates, in the words of the Detaining Authority himself, were relied upon documents for forming subjective satisfaction that it is imperative to detain the Petitioner to prevent him from indulging in prejudicial activities in future. Accordingly, this Petition ought to succeed.

10. As aforesaid, the Petitioner has raised other point articulated in ground 'h' of the Petition. However, we do not intend to dilate on the said ground, in view of the favourable finding recorded on the first point urged by the Petitioner. Accordingly, we hold that continued detention of the Petitioner is illegal and vitiated. It is hit by the vice of Article 22(5) of the Constitution of India, of denial of right to make effective representation at the earliest opportunity."

11. He submits that as in the case of Yogesh Nandu Pujari (supra), in this case also the difference in the two versions of Paragraph 6 in the Grounds for Detention clearly suggest that all the basic facts and material have not been taken into account by the Detaining Authority in as much as the years of the C.R. numbers referred to in Paragraph 6 are basic facts, which will have to be considered within the expression "grounds" of detention and if these C.R.s are the documents on which Detaining Authority has relied upon for forming subjective satisfaction that it is imperative to detain Petitioner to prevent him from indulging in prejudicial activities in future, then there should not have been any variance in the years mentioned against the C.R.s in the English and Marathi versions. He accordingly submits that on this ground alone, the Petition ought to be quashed and set aside.

12. It is next submitted that in so far as the in-camera statements are concerned, the same do not mention the place where the alleged incident occurred. He refers to the portions of the two in-camera statements, where the place at which the alleged incident occurred, has been conspicuously kept blank. He submits that however while passing the Detention Order, the place of alleged incident is mentioned in the substance of the statement of the two in-camera statements. He takes us to the first in-camera statement dated 26th November, 2020, which is at page 312 of the Petition as well as the statement dated 30th November, 2020, which is at Page 26 of the Petition to submit as to how the place of incident has been left blank, whereas in the Detention Order the same is

very clearly set out as Islampur. The relevant portion at Page 312 of in-camera dated 26th November, 2020 is reproduced as under :-

Also the relevant portion at Page 26 of the in-camera statement dated 30th November, 2020 is reproduced as under :-

13. He submits that, therefore, material particulars necessary for making effective representation to the Home Department have not been provided thereby vitiating the Detention Order. Moreover, he submits that without the mention of the place in the in-camera statements, the Detention Order is based on extraneous material and deserves to be quashed and set aside.

Learned counsel for Petitioner submits that in the circumstances, the Petition ought to be allowed in as much as the Detention Order clearly shows a complete non-application of mind and on this ground alone the Detention Order deserves to be set aside.

14. It is further submitted that though the Grounds for Detention refer to the two in-camera statements in Paragraph 4, but the reference therein is to C.R. No.636 of 2020, registered at Islampur Police Station. Reliance by the Detaining Authority only on one solitary C.R. does not constitute a habit and, therefore, Petitioner cannot be a dangerous person under the MPDA Act.

15. Learned counsel for Petitioner further submits that there has to be a live link between the past incidents and the Detention Order, which is absent in this case. He submits that C.R. relied upon in the Grounds for Detention is of 23rd August, 2020 and the in-camera statements are of 26th November, 2020 and 30th November, 2020, whereas the detention proceedings were initiated on 7th January, 2021 and the Detention Order was issued on 19th January, 2021. Therefore, the C.R. relied upon, has been registered on 23rd August, 2020, much prior to the Detention Order dated 19th January, 2021. He submits that therefore there is no live or proximate link between C.R. No.636 of 2020 and the Detention Order on the basis of which the Detaining Authority has purportedly recorded his subjective satisfaction. He submits that on this ground alone Petition ought to be dismissed. He seeks to rely upon the decision of this Court in the case of Mrunalini Virendra Lonare Vs. Commissioner of Police and Ors. (Criminal Writ Petition No.245 of 2014) in support of his contention.

16. Learned counsel for Petitioner submits that prior to his detention, Petitioner was externed. He submits that the detention is a drastic step. He submits that the detention without trial is a serious encroachment on the fundamental right of a citizen. He submits that as held in a recent decision of the Bombay High Court in the case of Ajay Nagesh Nagmode Vs. The State of Maharashtra (Writ Petition No.1117 of 2021), if ordinary law can take care, then there is no need to invoke a special Act like MPDA Act. He therefore submits that the Detention Order ought to be set aside.

17. On the other hand, learned APP Mrs. Mhatre has rebutted the contentions

raised on behalf of Petitioner stating that none of the grounds raised on behalf of Petitioner merit any consideration. With respect to the in-camera statements, learned APP submits that firstly the Detaining Authority is not required to personally verify the in-camera statements. It is submitted that insofar as the alleged improper verification of the in-camera statements is concerned, the position of law had been recently reiterated by this Court in its judgment dated 19th March, 2020 passed in Criminal Writ Petition No. 336 of 2021 (Pravin Ganpat Kakad Vs. Commissioner of Police, Nashik City, Nashik and Others). In the said judgment, this Court had relied upon an earlier judgment of Division Bench of this Court passed in the case of Santosh Kashinath Kamble Vs. State of Maharashtra and Ors. (judgment and order dated 3/4 March 2016 in Criminal Writ Petition No. 4510 of 2015). It was laid down categorically in these judgments that no specific format of verification was provided under the law and that as long as a Senior Officer had verified the in-camera statements and truthfulness of the same was believed by the Detaining Authority, no fault could be found with such in-camera statements. It is the subjective satisfaction of the Detaining Authority. Also, it is not necessary for such authority to discuss the issue with subordinates. However, the Detaining Authority has seen the in-camera statements, as can be seen from Paragraph 4 of the Grounds for Detention, has personally satisfied himself. She submits that there is a subjective satisfaction which has been arrived at by application of mind.

18. As far as the ground of variance in the Marathi and English versions of the Grounds for Detention (Page 23 and Page 17) are concerned, learned APP firstly submits that all the years of the C.R.s are correctly mentioned in the original Marathi version and nowhere it is stated in Petitioner's statement that he was not familiar with Marathi; infact, Petitioner also had a working knowledge of English. She submits that the alleged variance is simply a typographical error and has no bearing on Petitioner's right to effective representation. She submits that therefore the decision in the case of Yogesh Nandu Pujari (supra) would not have any application to Petitioner's case as the said error does not and cannot affect Petitioner's ability to make effective representation to the Home Department.

19. Learned APP further submits that in any event the Detaining Authority has not relied upon the past history and Paragraph 6 of the Grounds for Detention as can be seen from Paragraph 1 thereof, which states that the grounds are mentioned in Paragraph 4(b)(i) and 4(b)(ii). Paragraph 1 of the Grounds for Detention is quoted as under :-

"1. In pursuance of section '8' 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 (Amendment 1996, 2009, 2015, 2017 and 2018) read with Article 22(5) of the Constitution of India, I hereby communicate to you the grounds as mentioned in paragraph No.4 below on which a detention order has been made by me on this day against you under sub section (1) of section 3 of

the said Act. Copies of the documents placed before me are enclosed, except the names and identifying particulars of the witnesses/victims in connection with the grounds mentioned in paragraph No.4(b)(i) and 4(b)(ii) below, which cannot be furnished to you in the public interest and for which I claim privilege."

She submits that therefore this ground deserves to be rejected.

20. Further she submits that it is true that the place of the incident was blanked out in the statements provided to the detenu to protect the witnesses. Moreover, she submits that the originals of the two in-camera statements clearly mention the place and, therefore, it cannot be said that there is non-application of mind by the Detaining Authority or that the Detention Order is based on extraneous material. She submits that all the necessary particulars have been provided to Petitioner for making effective representation and, therefore, Petitioner is raising a frivolous grounds.

21. Learned APP submits that C.R. No.636 of 2020 does have a live link with the Detention Order particularly because of the two in-camera statements of November, 2020. She urges that Petitioner is a dangerous person as can be seen from the C.R., the in-camera statements and the criminal antecedents in Paragraph 6 of the Detention Order and a threat to public order and therefore the Detention Order ought to be sustained.

22. Learned APP further submits that even otherwise Petitioner has not availed of the facility contained in Paragraph 14 of the Grounds for Detention, which permits making of representation for any insufficiency/mistake, which is quoted as under :-

23. We have heard Mr. Satyavrat Joshi, learned counsel appearing for Petitioner and Mrs. Mhatre, learned APP for the State and with their able assistance we have perused the Petition, documents fled therewith, the Detention Order, Grounds for Detention as also the record produced before us.

24. With respect to the first ground regarding there being no subjective satisfaction of the Detaining Authority with respect to the two in-camera statements alleging that the Detaining Authority has not himself personally verified the truthfulness of the in-camera statements, so as to ascertain that witnesses are not willing to come forward to give evidence in public against Petitioner by reason of apprehension on their part as regards the safety of their person or property, we have seen the original record. Firstly, we find that the Special District Police Officer has verified the statements of the two witnesses, the truthfulness of the incident and the fear expressed by the witnesses. Further in the Grounds for Detention, the Detaining Authority i.e. Respondent No.2 has in Paragraph 4 referred to such an exercise carried out by the S.D.P.O. It is submitted by the Detaining Authority that in view of the verification done by S.D.P.O. about the truthfulness and apprehension expressed by the in-camera witnesses, he has come to the conclusion that the statements of the in-camera witnesses were true. A perusal of the judgments of this Court, on which learned

APP has placed reliance i.e. Pravin Ganpat Kakad (supra) and Santosh Kashinath Kamble (supra), also shows that there is no specific format laid down in law regarding verification of the in-camera statements. The law requires that a superior officer verifies the correctness of such in-camera statements and that the Detaining Authority refers to such verification and thereupon records satisfaction about the truthfulness of the same. Moreover, in Paragraph 8 of the Grounds for Detention, it has been specifically stated by the Detaining Authority that he has carefully gone through the material placed on record and that he is subjectively satisfied that Petitioner is acting in a manner prejudicial to the maintenance of public order. Considering the aforesaid, we are of the opinion that the requirement of law in this regard stood satisfied and there is no substance in the said ground raised on behalf of Petitioner. In view of our above observation that S.D.P.O. has personally verified the in-camera statements, the fear expressed by the witnesses, it would not be necessary for us to deal with the decision of Shahjahan w/o. Kalimkhan Samshadkhan Pathan (supra) relied on behalf of Petitioner.

25. With respect to the ground regarding variance in the Marathi and English version of the Grounds for Detention is concerned, it is observed that the reference to the year in Paragraph 6 of the Grounds for Detention in respect of three out of seven items, the year in the original Marathi version is 2018, but with respect to the English version, it is 2020. This is simply a typographical error in the English version and can hardly be said to be a material variance; much less a variance which could lead to Petitioner being unable to make effective representation to the Home Department. When we specifically asked learned counsel appearing for Petitioner as to how error in the years in respect of the three C.R.s mentioned in Paragraph 6 has affected his opportunity to make effective representation to the Home Department, he was unable to give any answer. Learned counsel for Petitioner could not demonstrate how such minor errors had prevented Petitioner from moving an effective and purposeful representation. Therefore, there is no substance in the said ground raised on behalf of Petitioner and the same is rejected. Moreover, Petitioner could have pointed out these typographical errors to the Detaining Authority pursuant to Paragraph 14 of the Grounds for Detention and could have got the same clarified which he has failed to do. It would therefore not be necessary for us to deal with the decision of Yogesh Nandu Pujari (supra) cited by learned counsel for Petitioner, as the said decision would not apply to this in view of what we have observed above.

26. Coming to the ground raised by Petitioner regarding blanking of the place of incident in the in-camera statements furnished to him, we have taken a look at the original file and note that the places blanked out have been mentioned in the two in-camera statements but only in the copies supplied to Petitioner the same has been blanked out. Therefore, the contention on behalf of Petitioner that the Detention Order was based on extraneous material does not hold any water. The copies of the in-camera statements supplied to Petitioner contains all material

particulars and of which no grievance has been raised on behalf of Petitioner. We also agree with the submission made by learned APP, that the places have been blanked out to protect the witnesses. In view of the aforesaid, it cannot be said that material particulars necessary for making effective representation to the Home Department had not been provided to Petitioner. The submission of non-application of mind by the Detaining Authority on this ground is also therefore rejected. In this regard it would be useful to refer to the decision of this court in the case of Firoz Khan alias Aabu S/o. Ajikhhan Alias Pappu Pahelwan Vs. State of Maharashtra & Anr., 2011 ALL MR (Cri) 3481, where it has been held to the effect that once the detenu has been informed sufficient particulars of the material allegations against him so as to enable him to make an effective representation there is no merit in the grievance that certain particulars were left blank.

27. The next ground raised on behalf of Petitioner pertains to the reliance placed by the Respondent No.2-Detaining Authority on only one criminal proceeding bearing C.R. No. 636 of 2020, registered on 23rd August, 2020 against Petitioner and two in-camera statements to arrive at the subjective satisfaction and that there is no live link in the matter. A perusal of the Grounds for Detention show that although reference to earlier criminal proceedings registered between the year 2018 and 2020 have been made in Paragraph 6, but it has been specifically stated in Paragraph 1 that the Detention Order is based only on grounds in Paragraph 4(b)(i) and 4(b)(ii), which refer only to C.R. No.636 of 2020 under Sections 307, 341, 323, 504, 506, 143, 147, 148, 149 of IPC. Even learned APP has submitted that the subjective satisfaction of the Detaining Authority is only on the basis of C.R. No.636 of 2020 and the two in-camera statements and not on the basis of the criminal antecedents in Paragraph 6 of the Grounds for Detention stating that the same is only past history. Therefore, it becomes clear that the Detention Order is based only on the aforesaid CR No.636 of 2020 dated 23rd August, 2020 read alongwith the two in-camera statements recorded in November, 2020.

28. The question is whether the aforesaid material i.e. the single criminal proceeding dated 23rd August, 2020 for offences under Sections 307, 341, 323, 504, 506, 143, 147, 148, 149 of the IPC, alongwith the two in-camera statements, would be sufficient for the Detaining Authority to reach its conclusion that Petitioner is a "dangerous person" as defined under Section 2(b-1) of the MPDA

Act and that it was necessary to issue the Detention Order so as to maintain public order as per Section 3(1) of the MPDA Act.

29. "Dangerous person" as defined in the MPDA Act is quoted as under :-

"2. Definitions. In this Act, unless the context otherwise requires,-

(a)

(b)

(b-1) "dangerous person" means 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 Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. (LIV of 1959;).

Also, Section 3(1) of the MPDA Act is relevant and is quoted as under :-

"3(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained."

30. A perusal of the definition of dangerous person shows that when a person either individually or as a member of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapters XVI and XVII of the Indian Penal Code or any offences punishable under Chapter V of the Arms Act, he would stand covered under the said definition. Further under Section 3(1) of the MPDA Act may with a view to preventing a person from acting in any manner prejudicial to maintenance of public order issue a Detention Order against that person.

31. It is therefore significant that such a person should be habitually committing such offences, which disturbs public order. Detention without any such opportunity is a drastic step and has to be justified on the basis of material that can demonstrate that the detenu is a dangerous person and that he has been habitually indulging in such activities, which results in disturbance of public order. Section 2(b-1) of the MPDA Act defines a dangerous person which is quoted as above in Paragraph 29. In our view, a solitary act as referred to in a lone C.R. No.636 of 2020 would not constitute a habit, particularly observing that admittedly and statedly the cases referred to in Paragraph 6 of the Grounds for Detention are only past history, and not being the grounds as contained in Paragraph 4 of the said Grounds for Detention. In this context, a decision of our Court in the case of Jay @ Nunya Rajesh Bhosale Vs. The Commissioner of Police, Pune & Ors. cited in 2015 ALL MR (Cri) 4437 is relevant, where also this Court, while dealing with a similar situation of solitary act, observed as under :-

"10. Thus, a perusal of the Section 2(b-1) would show that if the person singly or as a member or a leader of a gang "habitually commits" or attempts to commit or abets the commission of any offence punishable under Chapter XVI or Chapter XVII of the IPC or Chapter V of the Arms Act, he would be a dangerous person in terms of Section 2(b-1) of the MPDA Act. Just as a single swallow does not make a summer a solitary act, does not constitute a habit. In the instant case, after the three incamera statements are excluded from consideration as the verification of all the incamera statements by the ACP was not furnished to the detenu and CR No. 3088 of 2015 cannot be taken into consideration, for the reasons stated in paragraph 7 above by us, that leaves us to only with CR No. 91 of 2015. We

shall now proceed to examine whether on the basis of this CR, the detenu can be held to be a dangerous person so as to sustain the order of detention.

11. On applying 5-A of MPDA Act, only CR No. 91 of 2015 remains. In such case it can be held that the detention order is issued only on the basis of CR No. 91 of 2015. This solitary act would not constitute a "habit". In our view on the basis of the said solitary CR No. 91 of 2015 it cannot be said that the petitioner - detenu "habitually commits" or attempts to commit or abets the commission of any of the offences mentioned in Section 2(b-1) of the MPDA Act and since the detenu has been detained as he is a "dangerous person", the impugned detention order would not be sustainable in law."

Therefore, in our view Petitioner could not be defned to be a dangerous person and detained without a trial.

32. Further, in the case of Arun Ghosh Vs. State of West Bengal, 1970 (1) SCC 98, the Supreme Court had the occasion to deal with Section 3(2) of the MPDA Act to consider the difference between public order and law and order. In that case, it was held that 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 was held therein that 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. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. Paragraph 3 of the said decision is relevant, which is quoted as under :-

"3. The submission of the counsel is that these are stray acts directed against individuals and are not subversive of public order and therefore the detention on the ostensible ground of preventing him from acting in a manner prejudicial to public order was not justified. In support of this submission reference is made to three cases of this Court: Dr. Ram Manohar Lohia v. State of Bihar; Pushkar Mukherjee and Others v. State of West Bengal and Shyamal Chakraborty v. The Commissioner of Police, Calcutta and Another. In Dr. Ram Manohar Lohia's case this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. 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 specifed 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 affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town

where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications 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. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquility there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as *ordre publique*. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Dr. Ram Manohar Lohia's case examples were given by Sarkar, and Hidayatullah,

JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. The question to ask is : Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

33. Also, the Hon'ble Supreme Court in the case of T. Devaki Vs. Government of Tamil Nadu and others, reported in (1990) 2 SCC 456 held that there is a basic difference between 'Law and order' and 'public order'. The question whether a man has committed only a breach of law and order or has acted in the manner prejudicial to public order, is a question of degree and extent of the reach of the act upon the society. It was held that a solitary assault on one individual can hardly be said to disturb public peace or place public order in jeopardy so much as to bring the case within the purview of preventive detention law. Such a solitary incident can only raise a law and order problem and no more. As can be seen from Paragraph 3 of the Grounds for Detention, C.R. No.636 of 2020 has been registered on 23rd August, 2020, under Sections 307, 341, 323, 504, 506, 143, 147, 148, 149 of IPC, where Petitioner, who is stated to be in friendship with an accused, against whom complainant had filed a complaint for assault with weapons and for beating him, pursuant to which Petitioner was arrested on 24th August, 2020 in connection with the investigation, remanded to police custody on 28th August, 2020 and released on bail on 23rd September, 2020. This, in our view, appears to be one solitary assault on one individual, which can hardly be said to disturb public peace or public order, so as to bring Petitioner within the purview of preventive detention law. This case, therefore, prima facie appears to be a case of law and order rather than a public order. Applying the abovesaid position of law to the facts of the present case shows that the contention raised on behalf of Petitioner appears to have merit.

34. In our view, therefore, on a plain reading of the quoted Sections as well as the decisions on the cases of Arun Ghosh (supra) and T. Devaki (supra) it could not be said that Petitioner is a dangerous person, who has been habitually indulging in such activities resulting in disturbance of public order.

35. In the present case, the Respondent No. 2-Detaining Authority admittedly has specifically relied upon only the aforesaid C.R. No.636 of 2020 dated 23rd August, 2020 and the two in-camera statements to issue the Detention Order. A perusal of the contents of the in-camera statements as quoted in the Detention Order, would show that the witnesses have referred to incidents that occurred in October 2020 and November 2020. In such a situation, when the Detaining Authority itself has placed reliance on a singular criminal proceeding and two in-camera statements, it becomes crucial that there is a live link established between the criminal proceeding relied upon and the Detention Order issued by the Detaining Authority.

36. The lone C.R. No.636 of 2020 was registered under Sections 307, 341, 323, 504, 506, 143, 147, 148, 149 of IPC on 23rd August, 2020. While the first in-camera statement is of 26th November, 2020 and the second in-camera statement is of 30th November, 2020 and the Detention Order has been issued on 19th January, 2021. There is a gap of about five months between the date of the C.R. and the Detention Order and the two statements in the month of November appear to be recorded only to fill in this gap. Keeping in mind this gap

between the registration of one C.R. and the Detention Order, we are of the view that there is hardly a proximate or live link between the material on which the authority has placed reliance and the Detention Order. Petitioner's reliance upon the decisions in the cases of Mrunalini Virendra Lonare (supra) as well as Ajay Nagesh Nagmode (supra) are also apt.

37. Further, in this context, reference to a decision of the Hon'ble Supreme Court in the case of Khaja Bilal Ahmed Vs. State of Telangana & Ors. [Criminal Appeal No.1876 of 2019 @ SLP (Crl.) No.5487 of 2019] is also relevant, where the Hon'ble Supreme Court has considered the concept of live and proximate link in the context of the subjective satisfaction to be arrived at by the Detaining Authority. Paragraph 15 of the said decision authored by Hon'ble Justice Dr. Dhananjaya Y Chandrachud is quoted as under :-

"15. In the present case, the order of detention states that the fourteen cases were referred to demonstrate the "antecedent criminal history and conduct of the appellant". The order of detention records that a "rowdy sheet" is being maintained at PS Rain Bazar of Hyderabad City and the appellant "could not mend his criminal way of life" and continued to indulge in similar offences after being released on bail. In the counter affidavit filed before the High Court, the detaining authority recorded that these cases were "referred by way of his criminal background... (and) are not relied upon". The detaining authority stated that the cases which were registered against the appellant between 2009 and 2016 "are not at all considered for passing the detention order" and were "referred by way of his criminal background only". This averment is plainly contradictory. The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal

connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future."

38. It is important to note that in the facts of the present case also there is a reference to seven cases as a matter of background history only whereas the Detention Order is based on one solitary crime registered and two in-camera statements. The Grounds for Detention do refer to those cases but do not consider them a ground for issuing the Detention Order which is based on a solitary C.R. No. 636 of 2020. In fact as recorded earlier learned APP has also clearly stated that the past incidents referred to in Paragraph 6 of the Grounds for Detention are not the ground for the subjective satisfaction arrived at by the Detaining Authority. As per the above decision of the Hon'ble Supreme Court, satisfaction to be arrived at by the Detaining Authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live and a proximate link with the satisfaction of the Detaining Authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus/link with the immediate need to detain and individual. Admittedly, the seven cases in the previous history referred to in Paragraph 6 of the Grounds for Detention neither appear to have any direct nexus nor a live link with the immediate need to detain the Petitioner under the MPDA Act. Even the Detention Order, as we have observed earlier, does not have a live or proximate link to the lone C.R. registered. As held in the abovereferred decision of the Supreme Court, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. Also going by the aforesaid decision, such material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.

39. The nature of offence registered against Petitioner can be taken care of by the process of ordinary law, where Petitioner would get an opportunity of dealing with the evidence at the trial.

40. In the circumstances, on the basis of the material placed on record and the specific criminal proceeding, as also in-camera statements relied upon by the Detaining Authority and the discussion as above, we are not convinced that such an extraordinary step of issuance of Detention Order was justified. The nature of such Detention Order is drastic and extraordinary because it results in detaining a person without recourse to the process of trial under ordinary law. Detention without trial is a serious encroachment on the fundamental right of a citizen. It has to be based on proper subjective satisfaction recorded on the basis of cogent material indicating that unless such a drastic step is taken, that the person is a dangerous person, there would be disturbance to public order. In view of what we have observed above and on the basis of the material placed before us, we

are not satisfied that such a drastic action of issuing the impugned Detention Order was justified in the facts and circumstances of the present case. As far as cases under Indian Penal Code are concerned, law may take its own course. Therefore, we are inclined to allow the Writ Petition.

41. Accordingly, the Writ Petition is allowed.

42. The impugned Detention Order dated 19th January, 2021 issued by the Respondent No.2, The Collector and District Magistrate, Sangli, is quashed and set aside.

43. Consequently, Petitioner is directed to be released forthwith unless required in any other case.

44. Rule is made absolute in the above terms.

45. The record produced before us is returned herewith.