



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 119 OF 2024

Sayed Bilal Sayed Munwar,
Age : 23 Years, Occu. : Labour,
R/o Mastanshah Nagar,
Hingoli, Tq. & Dist. Hingoli. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai – 32.
2. The District Collector,
Collector Office, Hingoli,
Dist. Hingoli.
3. Sub-Divisional Police Officer,
Sub-Division Hingoli (Rural),
Dist. Hingoli.
4. The Police Inspector,
Police Station Hingoli (City),
Tq. and Dist. Hingoli.
5. The Superintendent of Jail,
Harsul Central Prison,
Aurangabad. .. Respondents

Shri Shashikant E. Shekade, Advocate for the Petitioner.
Shri G. A. Kulkarni, A.P.P. for the Respondent Nos. 1 to 5.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

**CLOSED FOR JUDGMENT ON : 08.04.2024
JUDGMENT PRONOUNCED ON : 23.04.2024**

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. With the consent of parties taken up for final hearing at the admission stage.

2. The petitioner is challenging order of detention dated 28.08.2023 passed by the respondent No. 2/District Collector, Hingoli U/Sec. 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (for the sake of convenience and brevity hereinafter referred as to the “M.P.D.A. Act”) and order of confirmation dated 06.09.2023 passed by the respondent No. 1.

3. The respondent No. 2/Detaining Authority arrived at subjective satisfactin that the petitioner is a dangerous person considering his indulgence in the criminal activities, preventive actions, order of externment passed U/Sec. 56 of the Maharashtra Police Act and two in camera statements.

4. Learned counsel for the petitioner submits that subjective satisfaction is perverse and arbitrary for not considering order of bail. Allegations against petitioner are merely possessing weapon and nothing more than that and recourse to action for detention was unwarranted. He would submit that the material pitted against the petitioner is not sufficient to show that

activities of the petitioner were prejudicial to the maintenance of public order. He would further submit that in camera statement of witness 'B' has not at all been supplied. No proper opportunity was given to the petitioner to make representation.

5. Learned counsel for the petitioner seeks to rely upon following judgments of the Supreme Court and this Court :

- I. Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others reported in (2012) 1 SCC (Cri) 693.
- II. Ameena Begum Vs. State of Telangana reported in (2023) 9 SCC 587.
- III. Ashokrao Vs. State of Maharashtra and others reported in (2023) 1 Bom CR (Cri) 737.
- IV. Nilesh Sunil Pendulkar Vs. District Magistrate Ahmednagar and others reported in 2024 SCC OnLine Bom. 694.
- V. Judgment dated 15/16 September, 2015 in Cri. W. P. No. 2331 of 2015 in the matter of Jay @ Nunya Rajesh Bhosale Vs. The Commissioner of Police, Pune and others.

6. Learned Assistant Public Prosecutor supports impugned orders on the basis of affidavit in reply. He would submit that in all 14 offences were registered against the petitioner, but only last 04 offences were selected for proposed action of detention. He would submit that considering order of externment dated

08.08.2021, petitioner is said to have indulged in aggravated form of misconduct. It is further submitted that petitioner did not demand in camera statement of witness 'B'. The subjective satisfaction of the detaining authority is plausible and reasonable. Lastly, it is submitted that statutory procedure was followed by the competent authority while passing impugned orders.

7. We have considered rival submissions of the parties and we have also gone through relevant material of the criminal cases pitted against the petitioner. Out of 04 cases, last 03 cases are registered U/Sec. 4/25 of the Arms Act and U/Sec. 142 of the Maharashtra Police Act, as in all cases petitioner was found with weapon. Remaining case that is CR No. 342/2023 is registered for offences punishable U/Sec. 399, 402 of the Indian Penal Code r/w Sec. 142 of the Maharashtra Police Act. Besides that preventive action was taken U/Sec. 107 of the Code of Criminal Procedure on two occasions against him. Learned A. P. P. is harping upon externment order dated 08.08.2021 suffered by the petitioner.

8. It reveals from record that petitioner was externed for a period of one year from 08.08.2021. The period of externment expired on 08.08.2022. The order of externment was not challenged by him. First offence bearing CR No. 342/2023 out of four, which were considered by the detaining authority, was registered on 22.04.2023. Obviously, remaining offences were registered subsequently. None of the offences were committed by

the petitioner when order of externment was in force. Despite that in all the offences Section 142 of the Maharashtra Police Act has been applied. Section 142 of the Maharashtra Police Act contemplate punishment for violation of order of externment. This is apparent defect, which has escaped from the consideration of the detaining authority.

9. The proposal for detention was founded on four offences in which Section 142 of the Maharashtra Police Act has been applied. While scrutinizing the papers of these offences, detaining authority ought to have noticed the apparent defect. We find that this is non application of mind by the detaining authority.

10. It reveals that the petitioner was arrested in furtherance of CR No. 342/2023 and 601/2023 and subsequently released on bail. The reasons assigned by the Court while enlarging him on bail have not been considered by the detaining authority. The grounds of detention are silent. Relevant material has escaped from consideration of the detaining authority. In view of settled legal position as depicted from the judgments in the matters of Nilesh Sunil Pendulkar Vs. District Magistrate Ahmednagar and others and Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others (supra) cited by the learned counsel for the petitioner, the subjective satisfaction appears to be defective.

11. We have considered papers of investigation of four offences pitted against the petitioner. In first offence bearing CR No. 342/2023, the petitioner was apprehended with weapon. In

remaining offences, he was found with the weapon. Those offences were registered under the Arms Act and not under the Indian Penal Code. There is no material to indicate that due to the activities of the petitioner any prejudice is caused to the public order. The offences piled against him can be dealt with by ordinary penal laws.

12. We have considered in camera statements also. Those also would not take the case any further. The statements of the witnesses indicate that they are tutored witnesses. Petitioner being found with the weapon on couple of occasions would be a lesser evil than brandishing weapon in the public or in broad day light. Learned counsel for the petitioner relies on the judgment of this Court delivered at Principal Seat at Bombay in the matter of Jay @ Nunya Rajesh Bhosale Vs. The Commissioner of Police, Pune and others (supra). We have gone through para No. 7 of the judgment. In that case also detinue was said to have possessed weapon. Relying on the judgment in the matter of ***Sudarshan Tukaram Mhatre Vs. R. D. Tyagi, Commissioner of Police, Thane and others, in 1990 Cri.L.J. 1964***, it was held that there was no prejudice to the public order. The ratio is applicable to the present case also. We are, therefore, of the considered view that subjective satisfaction is not only defective, but perverse.

13. It transpires that only in camera statement of witness 'A' was served upon the petitioner. It was incumbent upon the detaining authority to serve all documents along with grounds of detention on the detinue. In camera statements of witness 'B'

should have been supplied. The cumulative effect is that for want of necessary papers prejudice is caused to the petitioner, to make effective representation.

14. The analysis of our above reasoning is that the subjective satisfaction is perverse. There is no adequate material on record to show involvement of the petitioner in the activities prejudicial to the public order. Impugned action is actuated by *mala fides*. There is violation of Article 22(5) of the Constitution of India for not supplying the relevant documents. In that view of the matter, the impugned orders are unsustainable.

15. For the reasons recorded above, we pass following order.

O R D E R

- I. The criminal writ petition is allowed.
- II. The impugned order of detention dated 28.08.2023 passed by the respondent No. 2/District Collector, Hingoli and order of confirmation dated 06.09.2023 passed by the respondent No. 1, are quashed and set aside.
- III. The petitioner shall be set at liberty forthwith.
- IV. Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]