



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 1760 / 2023

Shri. Nana @ Budha Uttam Koli
Age : 33 years, Occ. Labour,
R/o At Post Ravanje Budruk, Tal.: Erandol,
District Jalgaon.

Through wife as a next friend :

Ujjwala Budha Baviskar,
Age : 32 years, Occ. Household,
R/o At Post Ravanje Budruk, Tal.: Erandol,
District Jalgaon.

...Petitioner

Versus

1. State of Maharashtra
Through its Secretary,
Home Department (Special),
Mantralaya, Mumbai.
2. The Collector and District Magistrate,
Jalgaon.
Having office at the Collector Office,
Akashwani Chowk, Jalgaon.
3. The Superintendent of Police,
Jalgaon.
4. The Police Inspector,
Erandol Police Station,
Erandol.
5. The Superintendent,
Yerwada Central Prison,
Pune.

..Respondents

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Advocate for the Petitioner : Mr. Satej S. Jadhav

A.P.P. for Respondents /State : Mr. G.A. Kulkarni

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CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

RESERVED ON : 29 APRIL 2024

PRONOUNCED ON : 6 MAY 2024

JUDGMENT [Per Shailesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard both the sides finally with their consent at the admission stage.

2. The petitioner is challenging order dated 24.11.2023 passed by the respondent no.2/District Magistrate, Jalgaon under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience). The petitioner is held to be dangerous person on the basis of ten offences pitted against him, preventive actions, externment order dated 05.10.2015 and two in-camera statements.

3. Learned Counsel for the petitioner submits that out of ten offences, petitioner has been acquitted in nine offences which is overlooked. It is further submitted that the order enlarging

petitioner on bail in the last offence has not been considered. It is further overlooked that last offence was registered after time span of four years from its preceding offence. Thus according to learned Counsel subjective satisfaction is arbitrary. He submits that there was no need to resort to drastic action and the activities could have been controlled by ordinary penal laws.

4. Learned APP supports impugned order on the basis of affidavit-in-reply filed by the respondent no.2. He would submit that serious offences have been registered against petitioner. The externment order and preventive actions did not deter him. According to him, there is overwhelming incriminating material against petitioner to arrive at subjective satisfaction. It is further submitted that the time line has been meticulously followed by the respondents/authorities. He submitted that though the petitioner was acquitted of nine offences, impugned order is sustainable, considering last offence and in-camera statements. In-camera statements would also indicate the detrimental activities of petitioner. He seeks reliance upon the following judgments :

- i Smt. Phulwari Jagadambaprasad Pathak Vs. R.H. Mendonca and Others, 2000 AIR SCW 2727.
- ii Dhurus Kanu Vs. State of W.B.
AIR 1975 SC 571

5. We have considered rival submissions of the parties and the relevant record which formed part of proposal for impugned action of detention. It is not disputed that the petitioner has

been acquitted in nine offences. Last offence bearing C.R. No.123/2023 under Sections 379 and 353 of the Indian Penal Code is under investigation. It was registered on 05.07.2023. In-camera statements of witness-A was recorded on 10.09.2023 and that of witness-B on 15.09.2023. Petitioner was released on bail vide order dated 13.07.2023 in the last offence.

6. The grounds of detention show that the first seven offences pitted against petitioner could not be proved. Offences bearing C.R. No.2/2017 which is at Serial No.8 and C.R. No.1/2020 which is at Serial No.9 are shown to be pending trial. The sponsoring authority while forwarding proposal also stated same status of the offences. However, the petitioner was acquitted of all offences including C.R.No.2/2027 and 1/2020. Neither any care was taken by the sponsoring authority, nor the detaining authority bothered to look into the status of the cases pitted against the petitioner. This is serious flaw in exercise of jurisdiction by the detaining authority. The grounds of detention are totally silent on this aspect. There is no satisfactory reply to this fact situation. We are of the considered view that the subjective satisfaction is arbitrary.

7. Petitioner was released on bail vide order dated 13.07.2023 passed in C.R. No.123/2023. Reasons assigned by the learned Judicial Magistrate, First Class, Erandol have not been considered by the detaining authority. It is settled position of law that the reasons enlarging detinue on bail provide valid inputs

while arriving at a subjective satisfaction. A useful reference can be made to judgment rendered by the Supreme Court in the matter of Rushikesh Tanaji Bhoite Vs. State of Maharashtra & Ors., 2012 AIR (SC) 890. There is a merit in the submissions of learned Counsel that the subjective satisfaction is arbitrary.

8. It reveals that last offence was registered on 05.07.2023 after span of four years from its preceding offence bearing C.R. No.1/2020 which was registered on 04.01.2020. During these four years, no offence has been registered against petitioner. The preventive actions taken against him under Section 110 of the Code of Criminal Procedure were of 10.02.2017 and 19.03.2020. Last preventive action also precedes four years from last offence. An order of externment passed on 05.10.2015 has been pressed into service. Petitioner appears to have been externed for one year. Period of externment was over on 05.10.2016. Last offence was registered on 05.07.2023, after period of seven years. The live link between the material pitted against petitioner and the proposed action stands snapped. This aspect is overlooked by the detaining authority. The subjective satisfaction is not intelligible.

9. Learned APP vehemently submitted that in-camera statements are indicative of detrimental behaviour of the petitioner and would corroborate other material on record. Reliance is placed on ratio laid down by Supreme Court in the matter of Smt. Phulwari Jagadambaprasad Pathak (supra). It cannot be doubted, that statements against the detainee may

not be taken to the hilt but can provide inputs to show prejudice to the public order. However, in the present case, facts are totally different.

10. A careful perusal of both in-camera statements depicts interesting scenario. The statements were recorded on 09.10.2023 and 15.09.2023. Last offence was registered on 05.07.2023. There is a gap of two months in recording the statements. Petitioner being at large was not felt to be detrimental to the society or public order. Statement of witness-A narrates incident occurred prior to two months. Statement of witness-B narrates incident which occurred before 15 to 20 days. Initial part of the statement depicts criminal antecedents of the petitioner. Interestingly, statement of witness-B reflects *ahirani* dialect which is not shown to be translated or explained to the detaining authority. We have our reservation for the genuineness of the statements. The detaining authority failed to appreciate this aspect.

11. There is want of promptitude in recording statements of the witnesses and proposing action for detention. Though, the petitioner has not specifically taken ground of delay in recording statements, if we overlook this aspect, we would be failing in our duty. We are dealing with drastic action against petitioner. If a liberty of the citizen is at stake, the sponsoring authority as well as detaining authority should be extremely cautious. Considering over all aspects of the matter, we find that drastic action was not warranted.

12. Learned APP relies on the judgment of the Supreme Court in the matter of Dhurus Kanu (supra), wherein it is laid down that even a single occurrence would be sufficient to show that if detinue is to be left at large, he would indulge in similar activities in future. In that matter, the detinue was shown to have indulged in removing fish plates from the running track. The facts of the case in hand are altogether different. An isolated act or offence is not of such gravity. The judgment cannot enure to the benefit of the respondents.

13. Learned APP has pressed into service Section 5A to save impugned order. Impugned order suffers from perverse subjective satisfaction as well as unexplained delay. Delay is a fundamental defect which cannot be saved by Section 5A of the Act.

14. For the reasons stated above, we find that impugned order is unsustainable. We pass following order.

ORDER

- i. Criminal Writ Petition is allowed.
- ii. The impugned order of detention is quashed and set aside.
- iii. The petitioner shall be set at liberty forthwith.
- iv. Rule is made absolute in above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE