

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 567 OF 2016

Dnyaneshwar s/o Manohar Yadav
Age 23 years, Occ. Jaibhawani Nagar
Mukundwadi, Aurangabad

...Petitioner

versus

1. The State of Maharashtra,
Through Dept. of Home Affairs
Mantralaya,
Mumbai 400 032

(Copy to be served on Govt. Pleader
High Court of Judicature
Bench at Aurangabad)

2. The Commissioner of Police
Aurangabad Commissionerate
Aurangabad

3. Police Station In charge
Mukundwadi Police Stationary
Aurangabad

...Respondents

.....
Mr. Atul P. Shejul, Advocate for the petitioner
Mr. D.R. Kale, A.P.P. For the respondents
.....

**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 23rd JUNE, 2016

ORAL JUDGMENT :- (PER A.V. NIRGUDE, J.)

1. Heard.

2. By this petition, the petitioner, who is a detainee under the

provisions of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act 1981 (M.P.D.A. Act) is challenging the order dated 23.1.2016, passed by the Commissioner of Police, Aurangabad directing his detention for a period of one year. On perusal of the facts of this case, we noticed that all formalities, required to be complied with under the provisions of the M.P.D.A. Act were properly complied with. After the orders was passed on 23.1.2016 the petitioner was arrested and was sent to jail. Thereafter, his case was immediately referred to the State of Maharashtra for approval of the order dated 23.1.2016. Thereafter, the case was referred to Advisory Board, before whom the petitioner was produced and was heard. The Advisory Board approved the impugned order. Thereafter, this petition is filed.

3. Learned counsel for the petitioner tried to convenience us that the petitioner could not be said to be a “dangerous person”, as defined in the Act. He admitted that there are few cases filed against the petitioner but they are not of serious nature so as to label the petitioner as dangerous person. The term 'dangerous person' is defined under Section 2 (b-1) of the M.P.D.A. Act, which reads as under:-

“2 (b-1). “dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempt 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.”

4. The affidavit in reply filed by the Commissioner of Police,

Aurangabad enumerates cases, which are pending against the petitioner. From the narration of facts in the affidavits, we found that the petitioner was first arrested in crime No. 68 of 2015 on 4.5.2015. This was a crime of kidnapping and rape but the petitioner was released on bail in this crime on 14.5.2015. We have no difficulty in holding that in this case the role of the petitioner was important one. On 15.5.2015, Mukundwadi police registered another offence under Section 395 of I.P.C. The petitioner was arrested in the said crime on 17.5.2015 and during investigation it was found that the witnesses identified him as one of the dacoits. He remained in the custody till 25.8.2015. Thereafter, Mukundwadi police also initiated chapter proceeding under Section 110 of I.P.C. against the petitioner. Later on having regard to the alleged criminal activities of the petitioner, the Police Inspector of Mukundwadi police station conducted confidential enquiry, in which it was found that due to the threats and terror of the petitioner, no one has dared to give statement against him. During this enquiry, in camera statements were recorded and report was sent to the Commissioner for further action. It is thereafter the Police Commissioner satisfied and come to the conclusion that the petitioner is dangerous person, as defined under the M.P.D.A. Act.

5. Learned counsel for the petitioner asserted that this conclusion of the Commissioner was grossly erroneous. We do not agree with this argument. There are circumstances against the petitioner. The question before the Commissioner was whether these activities and allegations made against the petitioner would make him dangerous person. There could be difference of opinion between two persons but it is the Police Commissioner's opinion, which we cannot substitute our view and hold that the petitioner is not danger person. The Police Commissioner specifically mentioned in his affidavit that

he has substantiative satisfaction to hold that the petitioner has acquired status of dangerous person. We are not inclined to disturb the findings recorded by the Commissioner. Besides this, the opinion was further confirmed by the lawfully constituted advisory Board. We are therefore, not inclined to interfere in the action taken by the Police Commissioner against the petitioner. The petition stands dismissed. Rule discharged.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)

rlj/