

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.915 OF 2021

PETITIONER : Vilas Kisan Pawar,
Aged about 31 years, Occ-Labour,
R/o Mohda, Kelapur, Dist Yavatmal,
At Present District Prison, yavatmal

..VERSUS..

RESPONDENTS : 1. State of Maharashtra,
Through its Secretary, Home Department
(Special) Mantralaya, Mumbai.

2. The Collector/Magistrate, Yavatmal, Dist
Yavatmal

Shri M. N. Ali, Advocate for the Petitioner
Shri M. J. Khan, APP for the Respondent Nos.1 and 2.

CORAM : SUNIL B. SHUKRE AND G. A. SANAP, JJ.

DATE : 14th JULY, 2022.

ORAL JUDGMENT : (Per : Sunil B. Shukre, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

3. The detention order has been passed, which is
impugned here, by considering the two crimes registered

against the petitioner, one preventive action taken against the petitioner under Section 93 of the Maharashtra Prohibition Act, 1949 (for short, “the said Act”) and the statements of two confidential witnesses.

4. The crimes which were considered were registered on 08.03.2021 and 22.05.2021 at Pandharkawada Police Station, Yavatmal under Section 65(F) and 65 (E) of the said Act, respectively.

5. The preventive action taken under Section 93 of the said Act where-under a final bond for keeping peace was taken from the petitioner had concluded on 18.03.2021. The statements of two confidential witnesses were recorded on 01.07.2021 and 02.07.2021. The statements recorded on 01.07.2021 referred to an incident involving criminal activity of the petitioner, which had occurred in the month of May 2021, similarly the statement dated 02.07.2021 had referred to another incident of criminal activity of the petitioner, which had occurred in the month of March 2021.

6. The impugned detention order in the present case has been passed on 30.09.2021. It is clear that the impugned detention order had no live link with the criminal activities of the petitioner, which were considered by the detaining authority. The criminal activity involved in two crimes related to dates of 07.04.2021 and 28.05.2021. The preventive action taken against the petitioner under Section 93 of the said Act related to an action taken on 18.03.2021. The incidents of criminal activity mentioned in the statements of confidential witnesses referred to what happened in the months of March-2021 and May-2021 respectively. The last of criminal activity of the petitioner was vide Crime no.558 of 2021 registered on 22.05.2021. In between the last of the recorded criminal activity of the petitioner and the date on which, preventive detention order was passed, there is no criminal activity attributed to the petitioner. If this is so, the preventive detention order could not have been passed. After all, the necessity for preventively detaining a person arises, only when there is a continuous series of a criminal activity creating a reasonable belief that if not controlled, it will lead to disturbance of public order, and therefore, this Court in its

several judgments has held that there must be existing a live link between the last of the criminal activity and the date on which, the detaining order was passed so that the object of preventive detention is well served. This is not the case here and therefore on this ground alone, we are of the view that the impugned order deserves to be quashed and set aside.

7. Apart from what is stated above, in two crimes registered against the petitioner, the petitioner was not arrested and was clearly given an intimation under Section 41(1)(a) of the Code of Criminal Procedure, thereby creating an impression that the Investigating Officer did not consider the petitioner as so dangerous a criminal as would warrant his arrest in the crimes registered against him, which were non bailable. This is important aspect of the matter which has not been taken into consideration by the detaining authority.

8. Thus, we find that the impugned order suffers from consideration of a irrelevant material and non consideration of relevant material, which is the view consistently taken by us in Criminal Writ Petition No.75 of 2022 decided on 28.06.2022,

Criminal Writ Petition No.804 of 2021 decided on 27.06.2022 and Criminal Writ Petition No.78 of 2022 decided on 11.07.2022 respectively.

9. The above discussion would show that the criminal writ petition deserves to be allowed. The petition is **allowed** in above terms of prayer Clause (i), which reads as under :

“(i) Pass any appropriate writ order or direction and thereby quash and set aside the impugned order dated 30.09.2021 (Annexure No. I) passed by Respondent No.2, Collector, Yavatmal.”

10. The petitioner be released forthwith, if not required in any other crime.

(G. A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

TAMBE