

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

CRIMINAL WRIT PETITION NO.121 OF 2023

Akash @ Dhamma Yashu Khetre
Age 26 years, Occu. Agriculture
R/o Triveninagar, N-7, Cidco
Aurangabad

... PETITIONER

VERSUS

- 1) The State of Maharashtra
through Deputy Secretary,
Home Department,
Mantralaya, Mumbai – 32
- 2) The State of Maharashtra
through Commissioner of Police,
Aurangabad.
- 3) The State of Maharashtra
through Superintendent,
Central Jail, Aurangabad

... RESPONDENT

.....
Mr. M.V. Salunke, Advocate for petitioner
Mr. M.M. Nerlikar, A.P.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

Date of reserving judgment : 5th July, 2023

Date of pronouncing judgment : 13th July, 2023

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith and taken up for
final hearing at admission stage with the consent of learned counsel

for the parties.

2. The challenge in this petition under Article 226 of the Constitution of India is to the order dated 29/8/2022, passed by the respondent No.2 (Commissioner of Police), Aurangabad, detaining the petitioner w.e.f. 29/8/2022. The order of detention has been confirmed by the respondent No.1 (State of Maharashtra). The order of detention has been passed on the ground that the activities of the petitioner are prejudicial to the maintenance of public order, he being a dangerous person.

3. The learned counsel for the petitioner would submit that, three crimes registered against the petitioner and two in-camera statements of witnesses have been relied on as a basis for the impugned order of detention. According to him, the petitioner was granted bail vide order dated 8/8/2022 by the Court of Additional Sessions Judge, the detaining authority did not take into consideration the order granting the petitioner bail. The same suggests that the detaining authority did not get itself subjectively satisfied for passing the impugned order. The learned counsel relied on the judgment of this Court in case of **Mujib Abdul Shaikh Vs. District Magistrate, Aurangabad (Criminal Writ Petition No.221 of 2023)**. He also relied on the Apex Court judgment in case of **Rushikesh Tanaji Bhoite Vs. State of Maharashtra & ors. (2012 Cri.L.J. 1334)**. He, therefore, urged for allowing the

petition. He would further submit that, the in-camera statements of the witnesses have been recorded on 8th and 10th of August 2022 i.e. on the day the petitioner was granted bail i.e. on 8th August 2022.

4. The learned A.P.P. would, on the other hand, submit that, the impugned order contains the grounds and reasons in support of the detention order. According to him, the detention order itself demonstrates the detaining authority was conscious of the fact of the petitioner to have been granted bail in one of the crimes. According to him, even if the said crime is excluded from the considerations, the other two crimes and two in-camera statements of the witnesses did make out a case of the petitioner being a dangerous person and his activities to be prejudicial to the maintenance of public order. The learned A.P.P. ultimately urged for dismissal of the petition.

5. Considered the submissions advanced. perused the order impugned herein, besides the material relied in in support thereof. Before advertng to the factual matrix, it would be apposite refer to the provisions of Section 2(a) 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 (M.P.D.A. Act for short). Section 2(a) of the M.P.D.A. Act

reads as under :

“2. In this Act, unless the context otherwise requires, –

(a) “acting in any manner prejudicial to the maintenance of public order” means –

(i) to (iii)

(iv) in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order;

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6. The detaining authority has referred to 9 crimes registered against the petitioner besides preventive action taken against him under Section 110(e) (g) of the Code of Criminal Procedure and 2 in-camera statement of the witnesses. 6 out of 9 crimes registered against the petitioner have simply been referred to as the petitioner’s criminal history. Those crimes have not been relied on for passing the impugned order.

7. First of the 3 crimes relied on is dated 3/3/2022. It is C.R. No.101/2022, registered under Section 160 of the Indian Penal Code. The informant of the said crime is a police constable. The averments in the said F.I.R. indicate that there was a fight between

the two groups. One of the two groups was headed by the petitioner herein. It is an offence of affray i.e. fighting of two or more persons in public place and disturbing the public peace. The same crime being bailable one, the petitioner was not arrested.

8. The next crime registered against the petitioner is dated 4/3/2022. It was for the offences punishable under Sections 324, 143, and 147 of the Indian Penal Code. The petitioner and his associates had threatened and even assaulted the informant Vikas Kajale. The next crime relied on is C.R. No.356/2022, registered for the offences punishable under Sections 392, 504, 506 read with Section 34 of the Indian Penal Code. The allegations against the petitioner and his associates were that, they robbed the informant of money. Then there are two in-camera statements of the witnesses who did not wish to have their identity disclosed because of apprehension of the petitioner. The statements of both the witnesses indicate the petitioner and his associates robbed both of them of cash of Rs.6350/- and 1200/- respectively at knife point during night hours. These incidents took place in the second and third week of July 2022. The statements have been recorded on 8th and 9th of August 2022.

9. The order of detention indicates the detaining authority was conscious of the fact of the petitioner to have been granted bail in C.R. No.356/2022. Even we exclude the crime in which the bail

was granted to the petitioner from consideration, the fact remains that the impugned order is passed on two in-camera statements duly verified and two more crimes, one of which pertains to fighting in public place and disturbing the public peace. We are, therefore, of the view that, the impugned order demonstrates subjective satisfaction of the detaining authority for passing the impugned order. In our view, therefore, the Writ Petition fails. The same, therefore, stands dismissed. Rule discharged.

10. The petitioner was granted temporary bail for 8/10 days to attend marriage of his sister. The said period shall not be excluded while counting the period of 12 months detention, meaning thereby, the petitioner shall be released on completion of 12 months from the date of his detention.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-