

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

CRIMINAL WRIT PETITION NO. 389 OF 2023

Sunil Shivaji Waghmare
Age: 29 years, Occu.: Driver,
R/o Shastri Nagar, Jawala Bazar,
Tq. Aundha Nagnath, Dist. Hingoli

..PETITIONER

VERSUS

1. State of Maharashtra
Through Deputy Secretary,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate, Hingoli
District Magistrate Office,
Hingoli
3. The Secretary,
Advisory Board (MPDA),
Home Department (Special),
Mantralaya, Mumbai-32
4. The Superintendent,
Central Prison, Aurangabad

..RESPONDENTS

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Mr. S.P. Katneshwarkar, Advocate for petitioner
Mr. P.G. Borade, A.P.P. for respondents

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 10th JULY, 2023**

PER COURT :

1. Heard finally at admission stage with consent of learned counsel
for the parties.

2. The challenge in this petition, under Article 226 of Constitution of India, is to the order of detention dated 22nd December, 2022 passed by Respondent No.2 – detaining authority under Section 3(2) 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 a period of twelve months. The said order is passed observing the petitioner to be a dangerous person within the meaning of Section 2(b-1) of the M.P.D.A. Act. The order of detention has been confirmed by the State of Maharashtra.

3. Although in the order of detention there is reference to the petitioner's past criminal activities, only two criminal cases registered against him and two in camera statements given by the witnesses have been relied on for passing the impugned order. The challenge to the order impugned herein is mainly on the ground of non-subjective satisfaction of the detaining authority.

4. Learned counsel for the petitioner would submit that the in camera statements have not been duly verified by high ranking police officer. So far as two crimes registered against the petitioner are concerned, one thereof pertains to the petitioner to have been found in possession of a

dagger and therefore, Section 4/25 of the Arms Act came to be invoked against him. The other crime pertains to wrongfully restraining and voluntarily causing hurt. The said crime was individual centric. By no stretch of imagination, both the crimes registered against the petitioner could be said to have been prejudicial to the maintenance of public order. Learned counsel, therefore, urged for allowing the petition.

5. Learned A.P.P. first took us through the affidavit-in-reply filed by the detaining authority. According to him, in camera statements have been verified, although not in extenso. The other two crimes registered against the petitioner have potential to cause prejudice to maintain public order. Learned A.P.P. justifies order impugned herein.

6. Before adverting to the factual matrix, reference to the relevant provisions of the M.P.D.A. Act is a must.

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

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

(i) ...

(ii) ...

(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;”

7. Let us advert to the material relied on by the detaining authority so as to find whether the same makes out a case of subjective satisfaction. There are two in camera statements dated 03rd and 04th December, 2022. We do not propose to advert to those statements since the Sub-Divisional Police Officer, Sub-Division, Vasmat has not duly verified those statements. Endorsement by the said officer in compliance with verification of those statements is as under :-

“Verified”
Sd/-
16/12/2022

8. From the aforesaid endorsement it would only be anybody’s guess as to whether such officer has verified the signature and authority of the police officer, who recorded those statements. It may also raise another inference as to the concerned officer to have simply verified identity of the persons, who gave their in camera statements. We are, therefore, of the view that the detaining authority ought not to have acted upon such statements.

9. So far as regards two crimes registered against the petitioner are concerned, first one is Crime No. 432 of 2020 registered for the offence punishable under Section 4/25 of the Arms Act. The petitioner was allegedly found in possession of a dagger on 04th November, 2020. It was not the case of the prosecution that the petitioner was found brandishing the dagger in his possession. A Division Bench of this Court in case of ***Sudarshan Tukaram Mhatre Vs. R.D. Tyagi, Commissioner of Police, Thane and Ors., 1990 Cri.L.J.***

1964 has observed - mere carrying concealed firearm in public place – not menace to public order. In our view, by no stretch of imagination, the fact that the petitioner was found in possession of a dagger constitute an act prejudicial to maintain public order.

10. Then remains the other crime, being Crime No. 491 of 2022 registered on 03rd December, 2022. Averments in the F.I.R. relating to the said crime suggest the petitioner to have intercepted the informant therein and assaulted him for the reason of him to have lodged a crime against the petitioner. The said crime was allegedly committed by the petitioner against an individual. The same cannot be said to have potential of being cause prejudicial for maintenance of public order. As such, in our view, the material relied on by the detaining authority in support of the impugned order suggests lack of subjective satisfaction. Based on such material, no person would have arrived at a subjective satisfaction for passing order of detention, as has been passed by Respondent No.2 – detaining authority. We are, therefore, inclined to allow the petition.

11. In view of above, criminal writ petition succeeds. Same is allowed in terms of prayer clauses [B] and [C]. The petitioner shall be released forthwith, if not required in any other case.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

SSD