

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 414 OF 2023

Bandu Kathalu Gaikwad
Age : 50 years, Occ : Labour,
R/o Saundana, Tq. And Dist. Beed.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through Dy. Secretary
Home Department, Mantralaya,
Mumbai – 32.
2. The State of Maharashtra
Through District Magistrate,
Beed.
3. The State of Maharashtra
Through Superintendent Central Jail
Aurangabad.
4. The Police Inspector,
Beed Rural Police Station,
Tq and Dist. Beed.

..RESPONDENTS

...
Advocates for Petitioner : Mr. Rajendra G. Hange & Mr. Anirudh R. Hange
APP for the Respondents : Mr.R.V. Dasalkar
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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATED : 9th JUNE, 2023.

JUDGMENT (PER Sanjay A. Deshmukh, J.) :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.

2. The petitioner is challenging the order of detention bearing No.2023/RB-Desk-1/Pol-1/MPDA-02 passed by the District Magistrate, Beed dated 17.01.2023 by which he was detained for one year.

3. Heard learned advocate for the petitioner and learned APP for the respondents.

4. The learned advocate for the petitioner pointed out that the petitioner has been illegally detained without subjective satisfaction and application of mind by the District Magistrate, Beed. The confidential statements of the witnesses are contradictory to each other. The order is passed after four months belatedly and not even within reasonable time. The false incident of effecting raid about the incident dated 14.07.2022 is shown and in respect of same, the crime was registered on 08.09.2022 i.e. after two months of the incident. The authority has relied upon the documents of that crime illegally.

5. The petitioner was not arrested in any crime registered against him but notice was issued to him under sections 41-A and 170 of the Criminal Procedure Code, 1973. This shows that custody of the petitioner was not necessary.

6. It is further urged that on 26.08.2022, the Police Constable sent a report to the Sub-Divisional Officer, Beed to take preventive action against the petitioner under section 93-B of the Maharashtra Prohibition Act, 1949. The said proceeding was registered as Chapter Case No.7/2023, which was ultimately dropped. The documents of the said case were wrongly relied upon. Wrong reasons are mentioned that there is apprehension of breach of law and maintenance of public order that would affect if the petitioner is not detained. The authority did not act fairly, and failed to supply the legible copies of the concerned documents to him. Some documents were supplied in English language without translating it into Marathi, which is totally unfair and illegal. He lastly prayed to set aside the impugned order and release the petitioner forthwith.

7. The learned APP by relying upon the affidavit in reply filed by Radhabinod Aribam Sharma, the Chief Administrator (New Town), CIDCO, Aurangabad submitted that seven offences were registered against the petitioner. One out of it was preventive action. It is also urged that the order passed by the authority is in accordance with the provisions of law and facts and circumstances are justifying the detention of the petitioner.

8. The documents filed on record shows that the following cases are registered against the petitioner :-

Sr. No.	Police Station	Crime No.	U/sec.	Date of registration	Charge-sheet No.	Court case No.	Status
01.	Beed Rural	241/2019	65(e) M. Pro. Act	22/08/2019	78/2019 25/12/2019	SCC No.379/2020	Pending in Court
02.	Beed Rural	50/2020	65(e) M. Pro. Act	19/02/2020	41/2020 01/07/2020	SCC No.1115/2020	Pending in Court
03.	Beed Rural	145/2020	65(e) M. Pro. Act., 188, 269, 270 IPC	30/04/2020	42/2020 01/07/2020	SCC No.1119/2020	Pending in court
04.	Beed Rural	399/2020	65(e) M. Pro. Act	21/12/2020	8/2021 13/02/2021	SCC No.284/2021	Pending in Court
05.	Beed Rural	213/2022	65(e)(f) M. Pro. Act	14/07/2022	31/2022 23/07/2022	SCC No.849/2022	Pending in Court
06.	Beed Rural	289/2022	65(e)(f) M. Pro. Act	08/09/2022	—	—	On investigation

Preventive Action

Sr. No.	Police Station	Chapter Case No.	Section	Date	Remark
01.	Beed Rural	07/2022	93 of Mah. Prohibition Act	26/08/2022	Final bond

9. Thus seven cases are registered against the petitioner. Out of which five cases are pending in the Court and case no.6 is still under investigation.

10. The preventive action is also admittedly dropped against the petitioner under Chapter Case No.7/2022.

11. The State Government has to justify the order of detention and place it before the Advisory Board constituted under section 9, as contemplated by section 10 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 (For short, "MPDA Act"). We find that this procedure is not followed by the authority.

12. In the context of this case, the observations of the Division Bench of this Court in the case of **Smt. Vijaya Raju Gupta Vs. Shri R.H. Mendonca and others** reported in **2001 All MR (Cri.) 48** are relevant and beneficial. The law is laid down in it that the detaining authority has to satisfy subjectively on the facts of the case and on the basis of the verification of documents and material that, the detention of the detenu is absolutely necessary to prevent his dangerous activities.

13. In this case, merely because the petitioner is prosecuted in six cases and one case for preventive action is not sufficient to detain him. There are statements of the two confidential witnesses which does not inspire confidence. We found that only empty formalities are complied by the authorities. Further the crime is

registered on 08.09.2022 regarding effecting of raid dated 14.07.2022. The detention order was passed belatedly after two months of starting of the proceedings against the petitioner. No prompt action is taken. The authority has not held that ordinary law of the land is ineffective for preventing the illegal activities of the petitioner. It shows that the authority did not apply its mind subjectively. It was not necessary for the authority to resort this extraordinary remedy without factual and legal justification. The authority wrongly held that the petitioner's activities are prejudicial to the maintenance of public order. Mere surmises of the detaining authority is not sufficient. Liberty of the petitioner cannot be sacrificed, merely because he is implicated in some criminal proceedings. The action of preventive detention is exceptional and even draconian as held by the Hon'ble Supreme Court in the case of ***Mallada K Sri Ram Vs. State of Telangana and others*** reported in **2022 SCC Online SC 424**. Therefore, the argument of the learned APP is not acceptable in this regard.

14. In view of the reasons discussed above, we hold that the impugned order of detention of the petitioner is illegal and requires inference. Hence the following order:-

ORDER

a. The Writ Petition is allowed in terms of prayer clause "B".

- b. The detention order of the petitioner passed by the District Magistrate, Beed dated 17.01.2023 in file No.2023/RB-Desk-1/Pol-1/MPDA-02 is quashed and set aside.
- c. The petitioner be released forthwith, if not required in any other case.
- d. Rule made absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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