

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

CRIMINAL WRIT PETITION NO.481 OF 2023

Shaikh Ejaj Shaikh Amjad

..Applicant

Vs.

The State of Maharashtra
and ors.

..Respondents

Mr.Sayyed Tauseef Yaseen, Advocate for applicant

Mr.R.V.Dasalkar, APP for respondents

CORAM : R.G.AVACHAT AND

SANJAY A. DESHMUKH, JJ.

DATE : JUNE 09, 2023

ORDER :-

This petition has been filed for taking exception to the order of detention passed under Section 3(1) 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 ("the Act", for short). The order of detention reads thus :-

“
Whereas the District Magistrate, Beed is satisfied with respect to the person known as Shaikh Ejaj Shaikh Amjad, Age:25 years, r/o. Nalwandi Naka, Peth Beed, Tq. and Dist. Beed, is committing offences within the area of Police Station Beed City Police Station in District Beed and surrounding area of dacoity, demanding ransom, possessing illegal arms, restraintment, assault, abuse, threat to kill, causing loss etc. and dangerous

person by committing terror in the mind of general public.

And with a view to prevent him from demanding ransom, possessing illegal arms, restraintment, assault, abuse, threat to kill, causing loss and to prevent him from committing any act which shall affect public peace and order, it is necessary to make an order directing him to be detained under the provisions of 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 (Maharashtra Act No.55 of 1981) (Amendment) Act, 2009, 2015.

Now, therefore in exercise of the power conferred by sub section (2) of Section 3 of the said Act read with Government order Home Department (Special), Mantralaya, Mumbai No.MPDA-0622/Pra.kra.191/Visha-3(b), Dt.24 June, 2022, I, the District Magistrate, Beed, hereby directs that the said as Shaikh Ejaj Shaikh Amjad, Age:25 years, r/o. Nalwandi Naka, Peth Beed, Tq. and Dist. Beed, be detained under the said Act.”

2. Heard learned counsel for the parties.
3. The petitioner has been detained since 19.12.2022 as he is found to be a dangerous person within the meaning of sub-section (b-1) of Section 2 of the Act. The ground for detention is his criminal activities and that not less than seven crimes have been registered against him at various police stations, for the offences against human body.

4. The challenge in this petition is mainly on the ground of non-subjective satisfaction by the detaining authority, since the petitioner was acquitted in two of the crimes relied on for passing the impugned order. The fact that he was granted bail in Crime No.120 of 2022, registered at Beed City Police Station, Beed, was not considered. The detention order is also assailed on the ground of not mentioning the period of detention therein and not placing the matter before the Advisory Board within three weeks from the date of detention.

5. We do not propose to advert to the submissions advanced by learned counsel for the petitioner in extenso since the grounds raised by him would be our reasons in support of this order.

6. Learned APP would, on the other hand, submit that if we do not consider those two crimes, the detaining authority was well within its powers to pass the impugned order, since there were other crimes registered against the petitioner. Even preventive action was taken against him under Section 110 of the Code of Criminal Procedure and under Section 55 of the Maharashtra Police Act. Learned APP relies on a notice issued by the Advisory Board to the petitioner, indicating the date fixed for hearing before the Advisory Board. Learned APP meant to say that the notice was issued on

08.01.2023 and the same suggests that the matter was placed before the Advisory Board within three weeks from the date of detention. As regards non-mentioning of the period of detention in the impugned order is concerned, learned APP would submit is that it is not the mandate of Section 3(3) of the Act. He relies on the judgment of the Apex Court in the case of **Mrs. T. Devaki Vs. Govt. of Tamil Nadu and ors., AIR 1990 SC 1086**. According to him, the view taken by the Division Bench of this Court in the case of **Avinash @ Balu Atmaram More Vs. State of Maharashtra and ors., Criminal Writ Petition No.1745 of 2022 decided on 21.04.2023** needs to be reconsidered. He, therefore, urged for referring the matter to the Larger Bench.

7. Considered the submissions advanced. It is a matter of detention. Necessarily, personal liberty of the petitioner is involved. Even if, on one of the grounds, the petitioner is entitled for relief, the mater cannot be kept pending with a view to refer the same to the Larger Bench. For the present, we do not propose to take the submission of learned APP that the view taken in the case of **Avinash (Supra)** needs to be reconsidered.

8. As regards the question of non-mentioning the period of detention in the impugned order, close reading of the provision of

Section 3 of the Act would indicate that it is not a requirement of the Section.

9. Needless to mention the detaining authority has to have subjective satisfaction before order of detention is passed. True, there are not less than seven crimes registered against the petitioner. The petitioner has placed on record copies of the judgments in two of the criminal cases to indicate that he has been acquitted thereof, before the impugned order came to be passed. Same suggests that the concerned police officer did not place before the detaining authority the complete material. Had these judgments of acquittal of the petitioner were before the detaining authority, it can be anybody's guess of what would have been his subjective satisfaction. It has also been brought to our notice that the petitioner was granted bail in Crime No.120 of 2022. The order granting him bail was also not placed before the detaining authority. The Apex Court in the case of **Rushikesh Tanaji Bhoite Vs. State of Maharashtra and ors., (2012)2 SCC 72** has observed in paragraph 9 as under:-

“9. In a case where the detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed

before the detaining authority to enable him to reach at the proper satisfaction.”

10. Since, in two of the cases relied on to pass the impugned order, the petitioner herein was already acquitted before the impugned order was passed, the same indicates that the concerned police officer had not placed the complete material before the detaining authority to come to the subjective satisfaction for passing the impugned order. It is reiterated that had this material been before the detaining authority, his decision to detain the petitioner might have been different. On this sole ground, the order of detention is liable to be set aside, i.e. for want of subjective satisfaction and relying on the irrelevant material to pass the impugned order.

11. In the result, the following order:-

(i) The Writ Petition succeeds. The same is, therefore, allowed in terms of prayer clause (C).

(ii) The petitioner be released forthwith, if not required in any other case.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP