

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

CRIMINAL WRIT PETITION NO. 834 OF 2023

Vishwanath @ Sonu S/o Diliprao Kadam
Age :- 20 years, Occ. Agri.,

Permanent R/o Tapovan, Tq. Aundha (N),
Dist. Hingoli
At present R/o Sainagar, Jawla Bazar,
Tq. Aundha (N), Dist. Hingoli

..PETITIONER

VERSUS

1. State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate, Hingoli,
Tq. & Dist. Hingoli
3. The Superintendent of Jail,
Parbhani, Tq. & Dist. Parbhani

..RESPONDENTS

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Mr. A.V. Lavate h/f Mr.S.G. Ghongade, Advocate for petitioner
Mr. N.T. Bhagat, A.P.P. for respondents

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 13th JULY, 2023**

PER COURT :

1. Heard.
2. The challenge in this petition, under Article 226 of Constitution of India, is to the order dated 28th March, 2023 passed by Respondent No.2 –

District Magistrate, Hingoli directing the petitioner's detention w.e.f. 28.03.2023. The petitioner thus came to be detained in view of he being a dangerous person within the meaning of section 2(a) and 2(b-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 ('M.P.D.A. Act'). The order of detention has been confirmed by the State of Maharashtra, Respondent No.1.

3. The challenge is mainly on the ground of non-subjective satisfaction by the detaining authority before passing the order impugned herein. According to the learned advocate for the petitioner, in camera statements of two witnesses relied upon has not been duly verified by the Officer concerned. Moreover, two crimes registered against the petitioner have been relied upon. While referring to the first crime, being Crime No.21 of 2023, it has been observed by the detaining authority that the petitioner assaulted the informant of the said crime with a knife. FIR of the crime suggests, it was some other person, who wielded the knife and not the petitioner. He adverts our attention to another crime i.e. C.R. No.57 of 2023 to suggest, it was the co-accused, who assaulted the informant with knife. According to the learned advocate, even if the said crime is taken into consideration, it was between two persons, the said crime cannot be said to

have implication of being prejudicial to the maintenance of public order. He, therefore, urged for allowing the petition.

4. The learned APP has placed on record affidavit in reply by the detaining authority. The grounds of detention have been reiterated therein in justification of the order of detention. According to the learned APP, the petitioner was involved in not less than five crimes, although two crimes have been taken into consideration for his detention. The learned APP ultimately urged for dismissal of the petition.

5. Considered the submissions advanced. Perused the order impugned herein and affidavit in reply. Before advertng 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;

(iv-a) ...

(iv-b) ...

(v) ...

(b) ...

(b-1) “dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.”

6. Let us find whether the detaining authority was subjectively satisfied on the basis of material relied on for passing order impugned herein. There are in camera statements of the witnesses suggesting the petitioner to have claimed himself to be a gang leader (Bhai). Veracity of these statements can not be gone into, since this Court is not sitting in an appeal. The fact remains that the statements of these two witnesses have not been duly verified. The Deputy Superintendent of Police has simply put a word “verified” just above his signature. It is not known as to whether he has verified the identity of the persons giving the statements or contents thereof. It would only be anybody’s guess about what has been in fact verified by the Officer concerned. In our view, therefore, those statements ought not to have been relied on by the detaining authority for passing the impugned order.

7. So far as regards two crimes taken into consideration are concerned, first one is C.R. No.21 of 2023 registered on 14th January, 2023 for the offences punishable under sections 326, 323, 504, 506 of the Indian

Penal Code. In the order of detention, the detaining authority has observed the petitioner to have assaulted the informant with a knife, whereas, the FIR of the said crime indicate that it was associate of the petitioner, who wielded knife. The same suggests non-subjective satisfaction by the detaining authority.

8. True, in the second crime taken into consideration, the petitioner is alleged to have assaulted the informant with an iron rod, the averments in the FIR of the said crime, do indicate that it was a fight between two persons i.e. victim on one hand and the applicant and its two associates on the other. By no stretch of imagination, the said crime could be said to have potential of being prejudicial for maintenance of public order. As such, in our view, the order of detention is not based on subjective satisfaction of the detaining authority, the same is therefore liable to be set aside. Writ Petition, therefore, succeeds. Criminal writ petition 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.)

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