



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

908 CRIMINAL WRIT PETITION NO. 940 OF 2023

Shaikh Gaffar @ Bablu Shaikh Sattar
Age 32 years occ: Labour
R/o: Lane No 25, Naregaon, Aurangabad.

... Petitioner

Versus

1. State of Maharashtra
Through Police Commissioner,
Aurangabad.
2. Section Officer of Govt of
Maharashtra Home Department
Mantralya Mumbai.

... Respondents

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Mr. Rameez M. Shaikh, h/f Mr. Imtiyaz S. Shaikh, Advocate for Petitioner.
Ms. R. R. Tandale, APP for Respondent/State.

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

DATE : 19th December, 2023.

Per Court:

. Heard.

2 The challenge in this writ petition is to the order of detention passed under Section 3 (3) 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 “M.P.D.A. Act”). The detention is mainly on account of the petitioner’s activities as a dangerous person were found to be prejudicial to maintenance of public order. The period of detention is 12 months. The order of detention has been confirmed by the State in the Department of Home.

3 The challenge is mainly on the ground of non subjective satisfaction of the detaining authority. The learned counsel for petitioner would submit that although the petitioner was detained for 12 months w.e.f. 17th February, 2021, again he has been detained relying on two crimes vide Crime No.482 of 2022 and Crime No.54 of 2023, which have no potential to have apprehension of disturbance of maintenance of public order. He first took us through the entire order of detention to submit it being a case of non subjective satisfaction by the detaining authority. According to him, the in-camera statements are as vague as could be. No date or day of the alleged incident committed against those witnesses have been given. The same caused prejudice to the petitioner in his defence. He, therefore, urged for grant of petition.

4 The learned APP would, on the other hand, submit that the petitioner is history sheeter. About 17 crimes were registered against him during the period from the year 2013 to 2021 and therefore, an

action of preventive detention was taken against him vide order dated 17th February, 2021. After having come out of the jail, the petitioner again involved in three crimes mentioned in the first chart in paragraph No.3 of the detention order. The same indicates the petitioner being a dangerous person, he involved in similar crimes, no sooner he comes out of the jail. The learned APP took us through the in-camera statements of the witnesses to indicate the petitioner to have had accosted them and robbed them of money on two different dates in the month of January and February. According to the learned APP, the criminal activities of the petitioner suggest that no sooner he comes out of the jail, again lands behind the bars on account of involvement in criminal activities. According to her, subjective satisfaction of the detaining authority shall not be a matter of judicial review. Insufficiency of the material also cannot be looked into. All the timelines under the M.P.D.A. Act have been adhered to. She, therefore, urged for dismissal of the petition.

5 Considered the submissions advanced. Perused the order of detention. It is true that the petitioner has a criminal history. Not less than 17 crimes were registered against him during the period from years 2013 to 2021. Based on those crimes, he was subjected to preventive detention for a period of 12 months in terms of Section 3(3) of the M.P.D.A. Act. He came out of jail, in March 2022. Within days of

his release, he was involved in crime being C.R. No.76 of 2022 registered for the offences punishable under Sections 354, 294(b), 504 and 506 read with 34 of IPC. Close reading of the detention order indicates that the detaining authority to have not relied on this crime for passing of the detention order. It further suggests that the details of the said crime such as averments in the FIR based on which the said crime was registered, have not been reproduced in the detention order. We have, therefore, to exclude the said crime from consideration. Then what remains are two crimes i.e. crime being C.R. No.482 of 2022, registered for the offences punishable under Sections 452, 354, 354(d), 294(b), 323, 504 and 506 of IPC and crime being C.R. No.54 of 2023, registered for the offences punishable under Sections 324, 323 and 504 of IPC. The averments in the FIR relating to Crime No.482 of 2022, indicate the petitioner to have entered the house of the informant on 26th December, 2022 and talked obscene with her. We do not propose to observe anything about merits of the said crime, suffice it to say the FIR in relation to the said crime was lodged five days after the alleged incident i.e. on 31st December, 2022. Even if we take those allegations to be true, the said crime can only be said to be an individual centric, meaning thereby to have no potential to have apprehension of there being disturbance to maintenance of public order.

6 Then is the second crime, being C.R. No.54 of 2023, registered for the offences punishable under Sections 324, 323 and 504 of IPC, the petitioner was not arrested. He was given a notice under Section 41-A of the Code of Criminal Procedure. In the crime being C.R. No.482 of 2022, the petitioner was granted bail within 15 days of his arrest. The detaining authority did not apply for cancellation of the bail. He, however, proposed to put up a proposal again for petitioner's detention for a period of 12 months.

7 True, there are two in-camera statements. The witnesses gave those statements on condition of keeping their identity secret, as they were apprehensive of the petitioner. We have perused both the statements. One of the witnesses claims to have been robbed by the petitioner of Rs.2600/- in the last week of January. The second witness claims to have been robbed of Rs.1500/- in the second week of February. Both these statements are silent to give date or day of the incident. True, the learned APP claims to have apprehension that had those been disclosed, the identity of the witnesses would have come to light. When, according to the sponsoring authority, the petitioner indulges in number of such crimes, it would have been difficult who was one of the victims who gave such in-camera statement. In our view, had those persons/witnesses given specific date or day of the incident, the petitioner would have been in a better position to defend

himself. It might be a case on the given day the petitioner had been somewhere else. As such, the vagueness of those statements necessarily cause the petitioner prejudice in his defence. We, therefore, do not propose to sustain the order of detention based on two in-camera statements.

8 As such, if considered rationally, the material that has been relied upon for detaining the petitioner for a period of 12 months, was grossly inadequate, much less, has no potential to have apprehension of disturbance to maintenance of public order. For all these reasons, the criminal writ petition deserves to be allowed. Hence, the following order is passed:

ORDER

- I. The criminal writ petition is allowed in terms of prayer clause (B).
- II. The petitioner be released forthwith, if not required in any other crime.

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]

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