

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

CRIMINAL WRIT PETITION NO. 1032 OF 2023

Gajanan Santosh Pawar

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mr. A.R. Shaikh, Advocate for petitioner
Mr. M.M. Neralikar, A.P.P. for respondents
....

CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 27th SEPTEMBER, 2023

PER COURT :

1. Heard.

2. The challenge in this petition is to order dated 26th April, 2023 passed by Respondent No.2 - District Magistrate, Hingoli in DC-1/KAVI-252/2023/1564 detaining the petitioner under Section 3(1) read with 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 ('the M.P.D.A. Act'). The said order is confirmed by Respondent No.1 - Home Department (Spl.), Government of Maharashtra in MPDA-0523/CR.166/Spl-3B vide order dated 20th June, 2023. The period of detention is of twelve months from the date of detention i.e. 27th April, 2023.

3. The challenge is mainly on the ground of material relied on to pass the impugned order to have no potential to arrive at a conclusion/subjective satisfaction by the detaining authority.

4. Learned counsel for the petitioner would submit that an action of externment had initially proposed against the petitioner. It was abruptly recalled and the proposal for detention was moved. Even in-camera statements of the witnesses indicate that according to them it was a fit case for externment of the petitioner. According to learned counsel, order of detention is silent to spell out reasons as to how the proposed action of externment was found to be inadequate to prevent the so called dangerous activities of the petitioner. He would further submit that the order is also silent to indicate the reasons that the petitioner was likely to be granted bail in immediate future since application of bail had already been moved by him. Learned counsel for the petitioner ultimately urged for grant of the petition.

5. Learned A.P.P. took us through entire order of detention. According to him, each and every material relied on indicate the detaining authority to have rightly arrived at subjective satisfaction. The question of subjective satisfaction cannot be a matter of judicial review. According to him, a copy of application for bail was part of the papers submitted by the sponsoring authority. He would further submit the petitioner was indulged in three crimes pending proposal for externment. The authority, therefore,

found it fit to be a case to have recourse of the provisions of M.P.D.A. Act instead of Section 56 of the Maharashtra Police Act.

6. Learned A.P.P. would further submit that not less than seven crimes were registered against the petitioner besides three chapter cases and the proposal for externment. Same suggests the petitioner to have continuously indulged in criminal activities. Last three crimes were committed by him in quick succession or during short interval. The same was sufficient for recall of the proposal for externment of the petitioner with a view to initiate action under the M.P.D.A. Act. Learned A.P.P. reiterated that the detaining authority was only supposed to arrive at subjective satisfaction for passing the order of detention. According to him, there is no breach of mandatory provisions of M.P.D.A. Act to say it a fit case of breach of fundamental right of Article 22(5) of the Constitution of India. He would further reiterate that High Court cannot sit in appeal over subjective satisfaction arrived at by the detaining authority. He ultimately urged for dismissal of the petition.

7. We have considered the submissions advanced. Gone through the entire material on record. It is true that there were seven crimes registered against the petitioner including three which have been relied on. A chart indicating registration of all those crimes of the petitioner is part of the impugned order. Even a case in which the petitioner has been acquitted has

been referred to. However, in the order impugned herein, last three crimes have been relied on besides two in-camera statements.

8. Close reading of the chart indicating the crimes registered against the petitioner would suggest that three crimes which have been taken into consideration by the petitioner for passing the order impugned herein were allegedly committed by him about thirteen months after the last crime was registered against him in November 2021. As such, there was a lull in his criminal activities for little over thirteen months. In spite of the same, the concerned authority has made a proposal for his externment for reasons best known to them. We have perused the proposal of externment. It was abruptly withdrawn on the ground of three crimes were registered against the petitioner pending consideration of the externment proceeding. Learned A.P.P. tried to justify this action by contending that the police authorities shall be expected, if such course of observation is made, first to have recourse to provisions under Sections 107 to 110 of the Code of Criminal Procedure, then Section 56 of Maharashtra Police Act and as a last resort to Section 3 of the M.P.D.A. Act. He tried to justify that detaining authority had sufficient material available with him to pass the order impugned herein. According to learned A.P.P., the initial proposal for externment proceeding has, therefore, no bearing of subjective satisfaction of the detaining authority.

9. We are not at one with the submissions made by learned A.P.P. Admittedly, recourse to Section 56 of the Maharashtra Police Act would indicate that all such matters which can form basis for order of detention under the M.P.D.A. Act is required to be considered for an externment order. It is true that the concerned police officer might have been justified in putting up the proposal for withdrawal of intended externment action in view of petitioner's involvement in three crimes. The fact is however, the order of detention has been silent to state as to why the recourse under Section 56 of the Maharashtra Police Act was inadequate against the petitioner and it was necessary to have recourse to the provisions of M.P.D.A. Act. Admittedly, it is not a case of the State that after externment order was passed, the petitioner committed breach thereof and entered into criminal activities. In our view, the detaining authority ought to have spell out something on this aspect in the impugned order. It is true the authorities concern may have recourse to M.P.D.A. Act in preference to chapter proceedings under Code of Criminal Procedure or externment action under Maharashtra Police Act.

10. Now, let us turn to the material relied on for passing the order impugned herein. The first crime, being Crime No. 219 of 2023 was for the offence punishable under Section 341, 323, 504 and 506 of the I.P.C. All those offences were bailable one. The petitioner was given a notice under Section 41(d) of Cr.P.C. The same would have no potential to rely on for

passing the order impugned herein. True, learned A.P.P. wanted to suggest that the impugned order has a cumulative effect of all the crimes registered against the petitioner. The second crime, being Crime No. 254 of 2023 which has been relied on pertains to Section 4/25 of the Arms Act. Police papers thereof indicate the petitioner to have not brandished the weapon. Provisions of the Arms Act were invoked against him since a knife was found in his trouser pocket. 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 that whether a person is found or made use of a firearm or any other weapon, same would not be sufficient to observe it to be a case constituting issue of maintaining the public order.

11. Third such crime is being Crime No. 217 of 2023 registered for the offence punishable under Sections 307 and 324 of the I.P.C. Police papers thereof indicate the petitioner to have attempted to assault the victim therein with a knife. The said victim could successfully ward off the blow and therefore, escaped unhurt. It may be seen that last of the three crimes was somewhat serious in nature compared to other earlier crimes. It is reiterated that earlier two aforementioned crimes i.e. Crime Nos. 219 of 2023 and 254 of 2023 either taken together or individually, have no potential to observe the said activities to be prejudicial to the maintenance of public order. So far as third crime is concerned, the petitioner was on bail and his application for

bail was pending. The order impugned herein is silent to observe that the petitioner was likely to get bail in immediate future and order of detention was required to be passed so as to imminently prevent breach of public order. Learned A.P.P. tried to justify the order contending that it is only after two days of passing of the order impugned, the petitioner was granted bail. Same suggests the detaining authority was in the know that the petitioner would get bail and revert back to the criminal activities. These are the reasons given by learned A.P.P. and not by the detaining authority. It is reiterated that the detention order is silent to observe that the last crime that was taken into consideration was such that the petitioner would be released on bail in immediate future and passing of the impugned order was, therefore, imminent so as to prevent the petitioner reverting back to the criminal activities.

12. So far in-camera statements are concerned, those are vague. None of the witness could give date on which the petitioner had intercepted them and robbed of money. Last paragraph of their statement if considered to be their own statements, indicate the activities of the petitioner were fit to initiate externment proceeding against him. Be that as it may. Since both the witnesses did not give day and date on which the petitioner allegedly intercepted them and robbed of money, it is risky to rely on the in-camera statements.

13. It is reiterated that although the learned A.P.P. may be justified in contending that the conclusion arrived for passing the impugned order was cumulative effect of entire material, we are unable to agree with him since taking each and every case individually has no potential to hold the same to be prejudicial to the maintenance of public order. Then how come the cumulative effect thereof would be a different. For all aforesaid reasons, we are inclined to allow the criminal writ petition.

14. In view of above, order dated 26th April, 2023 passed by the District Magistrate, Hingoli in DC-1/KAVI-252/2023/1564 and confirmed by the Home Department (Spl.), Government of Maharashtra in MPDA-0523/CR.166/Spl-3B dated 20th June, 2023 are hereby set aside. The petitioner be set at liberty forthwith, if not required in any other case.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

SSD