

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

901 CRIMINAL WRIT PETITION NO.1066 OF 2023

Kailash S/o Ramesh Shinde.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through, Additional Chief Secretary,
Home Department, Mantralaya, Mumbai-32.
2. The District Magistrate,
District Collector Office, Hingoli.
3. The Superintendent,
Harsul Central Jail, Aurangabad.
4. The Sub-Divisional Police Officer,
Basmat, Control Room, Dist. Hingoli.
5. The Police Inspector,
Police Station Basmat (City),
Basmat, Dist. Hingoli.

... **Respondents**

...
Mr. Wajeed Ahmed Shaikh, Advocate for Petitioner.
Mr. R. V. Dasalkar, APP for Respondents.

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

DATE : 15th September, 2023.

Per Court:

. Heard.

2 The challenge in this petition is to the order of detention
dated 23rd May, 2023 passed by the District Magistrate, Hingoli and

confirmed by the State of Maharashtra in Department of Home on 17th July, 2023. The order of detention has been passed on the ground of the activities of the petitioner as a dangerous person, were found to be prejudicial to the maintenance of public order.

3 The challenge is mainly on the following grounds:-

- (i) There is no material to arrive at a subjective satisfaction to pass the impugned order.
- (ii) The delay of five months in passing the order of detention post registration of the last crime against the petitioner.
- (iii) Delay in recording of in-camera statements and vagueness therein.
- (iv) Delay in forwarding the order of detention to the State of Maharashtra forthwith.

4 We do not propose to dwell at length on the submissions advanced by the learned counsel for the petitioner, since some of them may be part of the reasons in support of our order. The learned APP would, on the other hand, submit that the order of detention itself indicates subjective satisfaction of the detaining authority. All the crimes, not less than seven in number, were taken into consideration. There is proximity amongst the crimes and the order of detention.

According to him, there were two public holidays between the date of detention and the date on which the State Government approved the detention order. According to him, even if the order is sent through a messenger, it takes not less than 24 hours to reach the office concerned. The officers there need to do some work for the matter being put up for approval by the concerned officer. As such, according to him, delay of four days, if any, did not cause any prejudice to the petitioner. Turning to the factual matrix, the learned APP would submit that the first crime registered against the petitioner is under Sections 3 and 4 read with 25 of the Arms Act. Another one is a theft in a dwelling house, besides two in-camera statements. Even the other crimes have been referred and relied on so as to form base for passing the order impugned herein.

5 We have considered the submissions advanced. Perused the relevant provisions 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 “the Act”) and all the papers relied on for passing the order of detention.

6 In our view, the material relied on did not have potential to arrive at a subjective satisfaction to hold the activities of the petitioner

to be prejudicial to the maintenance of public order. The order has been passed mainly relying on the last two crimes, namely Crime No.251 of 2022 and Crime No.558 of 2022. Crime No.251 of 2022 pertains to the offence punishable under Sections 457 and 380 of the Indian Penal Code i.e. theft in a dwelling house. We fail to understand as to how this offence falling under Chapters XVI and XVII of the Indian Penal Code, has a potential to observe the said act to be prejudicial to the maintenance of public order. We have perused the FIR of the said crime. The said crime has been registered against an unknown person. We do not come across any paper of investigation to indicate the same to be constituting the material, which could be converted into admissible piece of evidence so as to implicate the petitioner in the offence of theft punishable under Section 380 of the Indian Penal Code.

7 The next crime pertains to the petitioner to have been found in possession of Khanjir and a country made revolver. The FIR thereof indicates that a Khanjir and a country made revolver came to be seized from a car (Swift Dzire). The petitioner was very much in the car. As per the prosecution case itself, the petitioner was not found brandishing those weapons so as to create terror in the society, so as to ultimately cause an issue of maintenance of public order. As such, in our view, both these crimes relied on, did not have a potential to

arrive at a subjective satisfaction to conclude the petitioner's alleged activities to be prejudicial to the maintenance of public order.

8 Then what remains are the two in-camera statements. True, those have been verified. The learned APP may be justified in contending that the order of detention may be passed based on in-camera statements. He may be correct, but we are not ready to accept his submission. Close reading of those statements suggests, they are silent to state when the incident stated therein in fact did take place. As such, those statements suffer from vagueness. In our view, it would be therefore, very risky to rely on such statements to uphold the order of detention.

9 Moreover, the affidavit-in-reply is silent to offer any explanation or details as to when the State Government received the order of detention, so as to confirm it on 17th July, 2023. Even we exclude the holidays of two days, it would still be a case of delay of five days. We may exclude one day towards conveying the order through a messenger. Still there is delay of four days. Section 3(3) of the Act mandates such order to be submitted to the State Government forthwith. The term "forthwith" has been subject of interpretation by the Honourable Apex Court in the case of *Hetchin Haokip Vs. State of Manipur and Ors.*, [2018] 6 S.C.R. 597, wherein even the delay of four

days, in the facts and circumstances of the said case, has been held to be relevant for non sustaining the order of detention. We are conscious of the fact that if the delay is explained satisfactorily, the said ground may not be available for the petitioner. It is, however, needs to be stated that the affidavit-in-reply is silent to explain the delay in forwarding the order to the State Government for its approval. In the aforesaid factual backdrop, the order impugned herein does not stand legal scrutiny. 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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