

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 CRIMINAL WRIT PETITION NO.1235 OF 2023

Wajid Khan Sabir Khan

..APPLICANT

-VERSUS-

1. The District Magistrate, Jalgaon
2. The State of Maharashtra
3. The Jail Superintendent

..RESPONDENTS

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Advocate for Petitioner: Mr.Jadhav Satej S.
APP for Respondent/State : Mr.A.R. Kale

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 7th NOVEMBER, 2023.**

ORAL ORDER :-

. Heard.

2. The challenge in this writ petition, under article 226 of the Constitution of India, is to order of detention dated 28th April, 2023 passed by the District Magistrate, Jalgaon (Respondent no.1) detaining the petitioner under section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter for the sake of brevity referred to as "the M.P.D.A. Act").

3. The order of detention has been confirmed by the State of

Maharashtra in Home Department (Respondent No.2). The period of detention is for 12 months.

4. The order has been passed holding the petitioner as dangerous person, his activities being prejudicial to the maintenance of public order.

5. The learned advocate for the petitioner would submit that there was no material on the basis of which the detaining authority could have come to subjective satisfaction to pass order of detention. According to him, the petitioner was externed for a period of one year from Jalgaon and Nashik districts considering his past criminal activities. It was order of externment dated 4th August, 2021. The petitioner took exception to the order of externment by filing Writ Petition. The petition was allowed setting aside the order of externment. The learned advocate meant to say that crimes and preventive actions those were considered for passing externment order, were found to be inadequate to extern the petitioner from Nashik and Jalgaon districts. According to him, based on the very crimes no more severe action than externment could have been passed. The learned advocate meant to say that for passing order of detention those criminal activities ought not to have been the basis. He would further advert our attention to FIR and related papers of the

C.R. No.493/2022, on the basis of which the order of detention has been passed. Relying upon two in-camera statements, he would further submit that there is delay of not less than five months in passing the order of detention. According to him, live link between the criminal activities of the petitioner and order of detention has not been established. He would further submit that in-camera statements are as vague as they could be. According to him, the petitioner has been prejudiced in his defence because of such statements. According to him, rationally thinking person would not have acted upon such material to pass the order. He, therefore, urged for allowing the writ petition.

6. Learned APP opposed the petition. He took us through the entire material produced on record. Then he referred to past criminal activities of the petitioner. According to him, there is live link between all the criminal activities and order of detention. He would further submit that had there been non-application of mind by the detaining authority, there would not the file been returned to the concerned Police Station for rectification. He took us through various documents i.e. dated 26th January, 2023 to the date of 10th April, 2023, on which the proposal for detention was received by the detaining authority. The learned APP then took us through the FIR of C.R. No.493/2022 to indicate that the petitioner was one of the

members of the unlawful assembly. The common object of which was to have a bid on the life of victim therein. According to him, the petitioner was equally criminally liable for offence punishable under section 307 of IPC in view of the principles of constructive criminality under section 149 of the IPC. He then took us through in-camera statements of the witnesses. On reading of the order of detention, he would submit that the detaining authority was very much justified in passing the order. According to him, the Court under exercise of writ jurisdiction under Article 226 of the Constitution of India cannot sit in appeal over such orders. According to him, every technical aspects and mandatory provisions of the Act have been complied with. He places on record the entire material that was relied upon by the detaining authority to pass the order impugned herein.

7. Considered the submissions advanced. Perused the order of detention and material relied on. So far as regards the delay in passing the order of detention, we are not with the submission of the learned advocate for the petitioner because last crime relied upon was on 19.11.2022. In-camera statements were recorded within two months i.e. in January, 2023. The proposal for detention was moved by the concerned Officer Incharge of the Police Station on 30th February, 2023. Same was received by the detaining authority on 6th March, 2023. Since there were some lacunae in the proposal, the

detaining authority returned proposal back to the concerned authority. It was again received by him on 10th April, 2023. While the order of detention has been passed within 18 days of the receipt of the proposal. We, therefore, reiterate that we do not find it to be a case of delay in passing the order of detention causing any kind of prejudice to the petitioner.

8. So far as regards subjective satisfaction of the detaining authority is concerned, in our view, based on the material relied, on thinking rationally, the order of detention ought not to have been passed.

9. In para 4 of the detention order four criminal activities of the petitioner from the year 2018 to 2020 have been considered. The petitioner had already been acquitted of one of those four crimes still the said crime has been relied on. Same suggests non-application of mind by the detaining authority. Last of those four crimes is dated 21st May, 2020. Two preventive measures taken against him under Criminal Procedure Code were of the year 2019 and 2020. Based on all these criminal activities of the petitioner, he was externed from districts Nashik and Jalgaon vide order dated 4th August, 2021. However, the said order came to be set aside by this Court in an order in Criminal Writ Petition No.412 of 2022. Reason for setting

aside the externment order was that co-accused Haidar was prime accused in all those crimes, against him no such action of externment was proposed. On such ground of discriminatory treatment to the petitioner order of externment was set aside. All those crimes and preventive actions have again been relied on for passing the order of detention impugned herein. When this Court queried learned advocate for the petitioner, would submit that co-accused Haidar and others, who were accused in the earlier those four crimes, have not been subjected to order of detention. When we call upon the learned APP to explain the situation, he informs to have no instructions in that regard. We believe the submissions made by the learned advocate for the petitioner.

10. We have perused the FIR, based on which crime bearing C.R. No.493 of 2022 has been registered against the petitioner and co-accused Haidar, who was one of the main accused in the said crime. He had wielded chopper. Here learned advocate for the petitioner informs that no action of preventive detention has been taken against Haidar. Close reading of the FIR would indicate that although the petitioner herein was member of unlawful assembly, he has not been attributed with any overt act. The learned APP might be right that petitioner would be equally liable in view of the principle of constructive criminality. According to us, the trial Court would take

care thereof while deciding the Sessions case arising out of C.R. No.493 of 2022.

11. In our view, this crime ought not to have been basis for the order of detention.

12. It is true that order can be sustained based on in-camera statements alone. We have perused in-camera statements of both the witnesses, who have specifically stated that the petitioner had intercepted them and assaulted in the month of October and November, 2022. Both witnesses did not give any specific date on which the petitioner committed offence against them. Had they been clear in their statements stating the date and day of incident, the petitioner would not have been prejudiced in his defence. Had they given the specific date and day of incident, the petitioner could have met their case, might be showing us or the concerned authorities that he was somewhere else when the alleged incidents took place. In short, the petitioner was deprived of making of defence of alibi. We, therefore, are not inclined to rely on those in-camera statements to sustain the order of detention.

13. It is reiterated that there was time gap of not less than two and half years between the crime No.173 of 2020 and crime no.493

of 2022. Those past four criminal activities were stale so far as regards the proceedings under MPDA Act are concerned. It is reiterated that considering the role of the petitioner in the crime bearing C.R. no.493 of 2022 and in-camera statements the order impugned herein is unsustainable. It at the most was a case of law and order. The petition is allowed. The order of detention is hereby set aside. He be set at liberty forthwith if not required in any other case.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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