



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1325 OF 2023

Gokul @ Mahakal Balu Gore

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mr. P.P. Dawalkar a/w Mr. Nikhil Haridas, Advocates for petitioner
Mr. A.R. Kale, Add.P.P. for respondents
....

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

PER COURT :

1. Heard.
2. The challenge in this petition, under Article 226 of the Constitution of India, is to the order dated 17th August, 2023 passed by Respondent No.2 – District Magistrate, Aurangabad in D.O.2023/MPDA/DET-06/DC-259 thereby detaining the petitioner under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Robber and Black Marketing of Essential Commodities Act, 1981 ('M.P.D.A.').
3. The challenge in mainly on the ground of non-subjective satisfaction by the detaining authority. According to learned counsel for the

petitioner, although there are six crimes registered against the petitioner, only last three crimes registered in the year 2023 have been relied on besides two in-camera statements. On the next day of one of those three crimes i.e. Crime No. 232 of 2023, the petitioner got married. On the previous day of the marriage, there was *haldi* ceremony. He places on record marriage invitation card alongwith photograph indicating him to have been applied with *haldi* (turmeric). According to him, it is a custom that once *haldi* is applied on the eve of marriage, the bride or bridegroom does not leave the residence. The time of said incident is stated to be little past 09:00 p.m. Name of the petitioner has not been figured in the F.I.R. except his first name. So far as the last crime, bearing no. 237 of 2023 is concerned, learned counsel would submit that petitioner's name does not figure in the said F.I.R. Sections of I.P.C. invoked are 143, 147, 149 and 506. Same suggests those were less serious offences, being not sufficient to detain the petitioner for a period of twelve months. He however, admits his alleged involvement in a crime, bearing no.179 of 2023 wherein the petitioner assaulted father of the informant with a iron rod. So far as two in-camera statements are concerned, according to him, those witnesses claim to have been robbed by the petitioner. He would submit that none of the crimes registered against the petitioner indicates his involvement in offence punishable under Sections 392 or 384 of the I.P.C. According to him, there is every reason to contend that those statements are got up so as to support the proposal for detention of the

petitioner. He would further submit that the sponsoring authority had initiated a chapter proceeding under Section 110(e)(g) of Code of Criminal Procedure ('Cr.P.C.'), based on the very crimes. It is not known from any of the police papers as to why the officer concerned did change his mind and decided to have a recourse of draconian provision of preventive detention. According to learned counsel, as such it is a case of no material sufficient to detain the petitioner under Section 3 of the M.P.D.A. Act. He, therefore, urged for allowing the petition.

4. Learned Additional Public Prosecutor would, on the other hand, submit that six crimes were registered against the petitioner. He then took us through police papers of Crime No. 232 of 2023. He relied on statement of one Sohail Sayyed, who named the petitioner in his statement. Then he took us through police papers of Crime No. 237 of 2023. Admittedly, name of the petitioner does not figure in the F.I.R. of this crime. When we called upon learned Additional Public Prosecutor to show as to why the sponsoring authority changed his mind from taking recourse under Section 110 of Cr.P.C. to a stringent provision under Section 3 of the M.P.D.A. Act, he had no papers with him therefor. He then took us through two in-camera statements of the two witnesses, who stated the petitioner to have had intercepted them and robbed of money at the knife point. According to him, the detaining authority has observed in the detention order that preventive

measure vide chapter proceeding proved to be futile and therefore, order of detention was being passed. He would further submit that subjective satisfaction of the detaining authority cannot be a matter of judicial review. According to him, the documents relied on today itself have not been placed on record alongwith affidavit. He meant to say that the document might have been prepared to suit the petitioner's case. He further submit that recourse to Section 14(2) of the M.P.D.A. Act can be taken if the petitioner indulges in similar activities. Learned A.P.P. ultimately urged for dismissal of the petition.

5. Considered the submissions advanced. Perused the order of detention and police papers relied on.

6. The order of detention indicates that action under Section 110 of Cr.P.C. was initially proposed by the sponsoring authority. It was a chapter case bearing no. 7 of 2023, meaning thereby the proceeding was initiated before the Sub-Divisional Magistrate. That proceeding came to be dropped only with a view to take an action under Section 3 of the M.P.D.A. Act. There is nothing to indicate the petitioner to have involved in any crime post initiation of the chapter proceeding. There is also nothing before us to indicate as to why the sponsoring authority changed its mind and decided to have recourse to the draconian proceeding like one in question i.e. action

under Section 3 of the M.P.D.A. Act. Moreover, on same material he proposes an action in the nature of chapter proceedings to be initiated against the petitioner. The detaining authority has observed in the order that the said action has proved futile. There is however nothing to indicate the petitioner to have indulged in any crime post dropping of the said proceeding. This observation, therefore, suggests non-application of mind. We, however, cannot dispute what has been submitted by learned Additional Public Prosecutor for taking recourse under Section 14(2) of the M.P.D.A. Act. Even the crimes earlier committed by the petitioner might be considered, if any such similar action is proposed against him and he found to have indulged therein post this order.

7. So far as three crimes relied on are concerned, in Crime No. 237 of 2023 petitioner's name does not figure. The said offence is not so serious so as to take action under the M.P.D.A. Act. Therefore, one has to refer to other crimes registered against the petitioner. Then we propose to refer Crime No. 232 of 2023 alleged to have been committed in the night of 08th May, 2023. A marriage invitation card alongwith photograph of the petitioner has been placed on record. On close reading of these documents one cannot infer those to have been made to suit the petitioner's case. Marriage invitation card indicates that the petitioner got married on 09th May, 2023 i.e. within fifteen hours of happening of the alleged crime. Marriage invitation

card indicates that the *haldi* ceremony was scheduled on 06:00 p.m. on 08th May, 2023. The photograph indicates the petitioner has been applied with *haldi* (turmeric) by the female members of the house. There is custom that once turmeric is applied on the previous day of the marriage, the bride or bridegroom does not leave the residence. In the case in hand, the crime is said to have been committed just three hours after the haldi ceremony. Full name of the petitioner does not figure therein. Only first name 'Gokul' figures in the F.I.R. and all other papers. True, one Sohail came forward after a month and named the petitioner as one of the culprits.

8. Then comes Crime No. 179 of 2023. Learned counsel for the petitioner candidly admits petitioner's name figured in the F.I.R. The petitioner allegedly assaulted father of the informant with an iron rod. The said crime took place on 16th April, 2023. There is gap of not less than four months between registration of the said crime and order of detention. As such, there is no live link between first four crimes and order of detention. We exclude Crime No. 232 of 2023 from consideration on account of petitioner's marriage and *haldi* ceremony. We do not propose to observe anything more in relation to the said crime. Needless to mention, the trial Court dealing with the said crime shall not be influenced by any of the observations made by this Court in this petition.

9. So far two in-camera statements are concerned, we do not propose to rely on those because none of the crimes registered against the petitioner indicates him to have ever involved in a crime of extortion or like one. Those two incidents are stated to have been taken place at the night time. The allegations are also vague, meaning thereby no date and time of the alleged incident have been narrated therein. We further reiterate that a reason as to why the sponsoring authority found the proposed action which was initiated against the petitioner was found inadequate to curb the petitioner's criminal activities is not forthcoming. For all these reasons, we find interference with the order impugned herein is called for.

10. In the result, criminal writ petition is allowed. Order of detention dated 17th August, 2023 passed by Respondent No.2 – District Magistrate, Aurangabad in D.O.2023/MPDA/DET-06/DC-259 is hereby set aside. Petitioner be released forthwith, if not required in any other case.

(SANJAY A. DESHMUKH, J.)

SSD

(R.G. AVACHAT, J.)