



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1503 OF 2023

Dinesh Kalidas Kulkarni

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mr. R.G. Nirmal, Advocate for petitioner
Mrs. R.T. Tandale, A.P.P. for respondents
....

CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 05th 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 16th September, 2023 passed by Respondent No.2 – District Magistrate, Hingoli in D.O. NO.2022 DC-01/KAVI-616/2023/541 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.'). The same has been confirmed by the Home Department, Government of Maharashtra.

3. The petitioner has been detained on the ground of he being a dangerous person within the meaning of Section 2(b-a) of the M.P.D.A. and as such his activities being prejudicial to the maintenance of public order. The period of detention is for twelve months. The challenge to the order of detention is mainly on the ground of non-subjective satisfaction by the detaining authority.

4. Learned counsel for the petitioner first took us through the entire order of detention to submit that although there were number of crimes registered against the petitioner, only four crimes have been relied on besides two in-camera statements. According to him, two of the four crimes i.e. Crime Nos. 446 and 434 of 2023 registered against him under Sections 500 and 501 of I.P.C. and Section 3 of the Police Act and under Sections 186 and 189 of I.P.C. and Section 7 of Criminal Law Amendment Act, respectively, do not get covered under Chapters XVI and XVII of the I.P.C. Reliance on these two crimes for passing the impugned order indicate non-application of mind by the detaining authority.

5. So far as regards other two crimes are concerned viz. Crime Nos. 221 and 433 of 2023, it is to be stated that in one of these two crimes, the petitioner was granted anticipatory bail. In another crime he was granted regular bail. Needless to mention that resort to preventive detention action

can only be made when existing laws fall short to curb the criminal activities of the accused. In these crimes when the Court has granted bail, the sponsoring authority appears to have not challenged the order granting bail nor has moved for cancellation thereof. If we go by the allegations made in the F.I.Rs., same indicate the petitioner is a press reporter. His first crime pertains to the informant, who was seen/captured washing groundnuts with drainage water. It was made a news item by the petitioner. A newspaper clipping has been placed on record. According to the informant, the petitioner had asked her to pay him a sum of Rs.500/- as protection money. Same is the fact about second crime. It was a case of illegal excavation of sand. The petitioner allegedly went to the site, snapped the photographs and/or made video recording of excavation of sand and made a demand of Rs.10,000/- for not to go public with the said incident. We do not find those two incidents to have potential to cause disturbance of maintenance of public order. Moreover, the competent Court had granted the petitioner bail in one of the two crimes and anticipatory bail in another. It is reported that sponsoring authority did not move the Court for cancellation of bail.

6. Then two in-camera statements are relied on. Both the statements pertain to the incident that took place about one and half year before the order of detention is passed. First such incident is of January 2022. Second statement does not dispute date and time and even year. Surprisingly these

statements have been recorded while the petitioner was on bail. In our view, relying on such quality of in-camera statements and the crimes which do not have potential to cause disturbance for maintenance of public order. Interference with the order impugned herein is called for.

7. In the result criminal writ petition is allowed. Order of detention dated 16th September, 2023 passed by Respondent No.2 – District Magistrate, Hingoli is hereby set aside. The petitioner be released forthwith, if not required in any other case.

(SANJAY A. DESHMUKH, J.)
SSD

(R.G. AVACHAT, J.)