



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1526 OF 2023

Arun Ramesh Kale

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mr. S.E. Shekade, Advocate a/w Mr. P.P. Tapse, Advocate for petitioner
Mr. A.R. Kale, A.P.P. for respondents
....

CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 06th 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, Hingoli in D.O. No.2023 DC-01/KAVI-553/2023/153 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.') and confirmation order dated 25th August, 2023 passed by Respondent No.1 – State of Maharashtra, Home Department.

3. The challenge is mainly on the ground of non submitting order of detention for the opinion of the advisory committee within a time frame and non-subjective satisfaction of the detaining authority. According to learned counsel for the petitioner, although six crimes registered against the petitioner are relied on, last three crimes registered against the petitioner have specifically been relied on for passing the order of detention besides two in-camera statements and preventive action taken under Section 107 of the Indian Penal Code.

4. Learned counsel took us through the F.I.R. of those three crimes to submit that two of them were against an individual. So far third crime is concerned, it pertains to seizure of a sword from the house of the petitioner. The petitioner resides alongwith his family members. He, therefore, can not be said to have had conscious possession of the sword. The sword was neither found in his actual possession nor has he wielded the same in commission of any crime. According to him, the two in-camera statements are as vague as it could be. Learned counsel, therefore, urged for allowing the writ petition.

5. Learned A.P.P. would, on the other hand, submit that order of detention itself indicate subjective satisfaction of the detaining authority. He submits that it is a prerogative of the District Magistrate to pass the order of detention, if he is satisfied on the material relied on that activities of a person

concerned are prejudicial to the maintenance of public order. The District Magistrate has every power even to not approve the proposal submitted by the sponsoring authority. Not less than six crimes were registered against the petitioner during the period from 2019 to 2023 besides registration of non-cognizable offence and preventive action. We were also taken through the in-camera statements of the two witnesses to suggest the petitioner to have created terror in the vicinity. No person comes forward to speak against him. The detaining authority was, therefore, justified in passing the order of detention. According to learned A.P.P., the advisory committee gave its opinion within the time frame. He also gave date on which the order of detention was placed before the advisory committee for its opinion. Learned A.P.P., therefore, ultimately urged for dismissal of the petition.

6. Considered the submissions advanced. Perused the order of detention and all the papers relied on.

7. After having made submissions by learned A.P.P. as regards the ground of challenge of non placing of order of detention before the advisory committee within the time frame, learned counsel for the petitioner came around not to press the same.

8. Now, the question is of non-subjective satisfaction of the detaining authority. It is not that an order of preventive detention cannot at all be a

subject of judicial review on the ground of non-subjective satisfaction by the detaining authority. Needless to mention, resort to law of preventive detention is had only when ordinary law falls short to curb criminal activities of the detenue.

9. True, there were six crimes registered against the petitioner. The first three crimes were of the years 2019, 2021 and 2022. There is no live link between these three crimes and date of order of detention. Those three crimes also pertain to the offences punishable under Sections 354, 323 and 324 of the Indian Penal Code ('I.P.C.'). Thus, what remains are the last three crimes registered against the petitioner in the year 2023. Those three crimes were registered in a span of one and half month. One of the three crimes viz. Crime No. 88 of 2023 pertains to seizure of a sword from the house of the petitioner. Undisputedly, the petitioner resides alongwith his family, comprising of other male members. The petitioner could not be said to have been in conscious possession of the sword recovered from his residence. Admittedly, he is neither found in actual possession thereof nor has he used the same in committing any crime thereby.

10. Then there are two crimes vide Crime Nos. 73 and 87 of 2023 committed on 18th June, 2023 and 26th July, 2023. While committing both these crimes, the petitioner admittedly did not use any weapon. Perusal of

the F.I.Rs. of both these crimes would indicate that the petitioner intercepted two of his villagers on different occasions. He made a demand of money. When they refused to pay him, he forcibly took out a sum of Rs.5,000/- and Rs.8,500/- from both of them respectively. In one of those crimes he even robbed the informant of his cell phone. These two crimes, although committed against two different persons, by no stretch of imagination could lead us to observe the petitioner's activities to have potential to cause disturbance to public order. It is just difficult to call him dangerous person relying on those two crimes. Needless to mention, resort to law of preventive detention is had only when ordinary law falls short to curb criminal activities of the detenu. Admittedly, the sponsoring authority did not take steps for cancellation of bail granted to the petitioner in those two crimes.

11. So far as two in-camera statements are concerned, one of them has stated that the petitioner had robbed him of Rs.10,000/- (Rupees Ten Thousand). The said incident took place a year before he gave his statement. On the same lines is the statement of another witness, who claims to have been robbed of Rs.5,000/- by the petitioner a year before. Both the witnesses did not give time, date and place of the crimes committed by the petitioner against them. The petitioner is thus deprived of defending himself as against these two in-camera statements.

12. In our view, if considered rationally, the material relied on to pass the order impugned herein could not be said to have potential to infer the petitioner to be a dangerous person or he is likely to indulge in activities causing disturbance to the maintenance of public order. In our view, therefore, interference with the order impugned herein is warranted.

13. In the result, Criminal writ petition is allowed. Order of detention dated 17th August, 2023 passed by Respondent No.2 – District Magistrate, Hingoli in D.O. No.2023 DC-01/KAVI-553/2023/153 and confirmation order dated 25th August, 2023 passed by Respondent No.1 – State of Maharashtra, Home Department are hereby set aside. Petitioner be released forthwith, if not required in any other case.

(SANJAY A. DESHMUKH, J.)

SSD

(R.G. AVACHAT, J.)