



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1528 OF 2023

Shaikh Akhtar Shaikh Rashid
Age 30 years, Occu. Labour,
R/o Achanak Nagar, Near Bilal Masjid,
Gandhinagar, Beed, Taluka and
District Beed.

... PETITIONER

VERSUS

- 1) The State of Maharashtra
through the Dy. Secretary,
Home Department (Special),
Mantralaya, Mumbai – 400 032
- 2) The District Magistrate,
Office of the District Magistrate,
Collectorate, Nagar Road, Beed,
Taluka and District Beed.
- 3) The Superintendent of Police,
Beed, Taluka and District Beed.
- 4) The Sub-Divisional Police Officer,
Beed, Taluka and District Beed.
- 5) The Police Inspector,
Peth Police Station, Beed,
Taluka and District Beed.

... RESPONDENTS

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Mr. Menezes Joslyn A. Advocate for petitioner
Mrs. V.N. Patil Jadhav, A.P.P. for respondents
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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

Date of reserving judgment : 7th November, 2023

Date of pronouncing judgment : 30th November, 2023

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith and taken up for final hearing at admission stage with the consent of learned counsel for the parties.

2. The challenge in this Writ Petition, under Article 226 of the Constitution of India, is to an order dated 21/8/2023, passed by the District Magistrate, Beed (respondent No.2), detaining the petitioner under Section 3 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 (M.P.D.A. Act for short). The order of detention has been confirmed by the State of Maharashtra in Department of Home (respondent No.1) vide order dated 28/8/2023. The period of detention is for 12 months. The detention is on the ground of the activities of the petitioner, being a dangerous person, were prejudicial to maintenance of public order.

3. Heard. The challenge is mainly on the ground of non-subjective satisfaction by the detaining authority. The learned counsel for the petitioner would submit that, the petitioner was granted bail in the crimes which have been relied on by the detaining authority for passing the order impugned in this Writ Petition. There is about two months delay between registration of

the last crime and the date of order of detention. As such, there is no live link between the two. The crimes relied on were stale and remote in point of time. Turning to the in-camera statements of the witnesses, learned counsel would submit that, those were stereo type. The incidents referred to in those statements are of the month of July 2023. The police officer could have lodged the F.I.R. relying on the in-camera statements. The statements have been recorded while the petitioner was on bail. It was just difficult to imagine that those witnesses came forward to give their statements while the petitioner was on bail. They, however, did not dare to come forward while the petitioner was behind the bars. According to learned counsel, at the most it would be a case of law and order and not maintenance of public order. According to him, personal liberty is most cherished. Detention without a trial is frowned upon. Learned counsel for the petitioner ultimately urged for allowing the petition.

4. The learned A.P.P. would, on the other hand, submit that, there were not less than six crimes registered against the petitioner, besides a preventive action under Section 110 of the Code of Criminal procedure. The learned A.P.P. took us through the order of detention, the affidavit-in-reply filed by the detaining authority and the police papers of the crimes relied on. According to her, the graph of the criminal activities of the petitioner was ascending. There was lull in his activities, only on account of there

being Corona pandemic Covid-19. The victims did not come forward to speak against the petitioner. Such was his terror in the vicinity. The learned A.P.P. reiterated the order of detention to ultimately submit the same to have been passed after having been subjectively satisfied with the material placed before the detaining authority. She ultimately urged for dismissal of the petition.

5. Considered the submissions advanced. Perused the order of detention, in-camera statements and the police papers relied on. Before appreciating the grounds of challenge, it would be apposite to have a glance at the relevant provisions of the M.P.D.A. Act.

6. Section 2(a) of the M.P.D.A. Act reads as under :

“2. In this Act, unless the context otherwise requires,

(a) “acting in any manner prejudicial to the maintenance of public order” means –

(i) to (iii)

(iv) in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.

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(b-1) “dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal

Code or any of the offences punishable under Chapter V of the Arms Act, 1959.”

Explanation :- For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia if any of the activities of any of the persons referred to in this clause, directly or ‘indirectly’ is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health or disturbance in public safety and tranquility or disturbs the day to day life of the community by black-marketing in the essential commodities which is resulting in the artificial scarcity in the supply of such commodities and rises in the prices of essential commodities which ultimately causes inflation or disturbs the life of the community by producing and distributing pirated copies of music or film products, thereby resulting in a loss of confidence in administration.

7. True, there were 7 crimes registered against the petitioner during the period from May 2021 to July 2023. First 2 crimes were registered in the year 2021. Third one was registered in April 2023. The crimes referred to in the order of detention are as follows :

Sr. No.	Police Station	Crime No. & Under Section	Date of registration	Present status
1.	Peth Beed	Cr.No.76/2021: 188 IPC, 18(c), 18-A, 65(17) of Drugs and Cosmetics Act r/w S.3, 7 of Essential Commodities Act	01/05/2021	Pending trial
2.	Peth Beed	Cr.No.149/2021: 354, 354D, 504, 506, 34 of IPC	06/08/2021	Pending trial

3.	Neknoor	Cr.No.265/2021: 420, 406, 201, 34 of IPC	12/11/2021	Pending trial
4.	Peth Beed	Cr.No.97/2023: 457, 380 IPC	25/04/2023	Pending trial
5.	Peth Beed	Cr.No.131/2023: 379, 34 IPC	03/06/2023	Pending trial
6.	Peth Beed	Cr.No.124/2023: 324, 323, 504, 506, 34 IPC	22/05/2023	Pending investigation
7.	Peth Beed	Cr.No.179/2023: 341, 323, 504, 506 IPC	19/07/2023	Pending Investigation
8.	Peth Beed	Chapter Case	14/06/2023	Final Bond

8. Close reading of the order of detention would, however, indicate that the detaining authority has relied on the two crimes vide C.R. No.124/2023 and 179/2023 and two in-camera statements. It is true that, the past criminal activities may be referred to as a prelude. We have perused the police papers of the fourth and fifth crimes registered against the petitioner in respect of the offence of theft. The F.I.Rs. in both those crimes were registered against unknown person. In one of the two crimes, the involvement of the petitioner was surfaced only based on the statement of a co-accused. In another one, the petitioner was found to have been in possession of a operation table, allegedly stolen from a Primary Health Centre. There were no papers relating to identification of the alleged stolen table recovered from the petitioner's possession. Had those two crimes been relied on for passing the order of detention, we would have ignored those papers considering the nature of material (police papers relied on).

9. The learned A.P.P. submitted that, subjective satisfaction of the detaining authority cannot be a matter of judicial review. She would further submit that, sufficiency or insufficiency of the material relied on also could not be a matter of judicial review. We may partially agree with her submissions. The question is whether the material relied on was rationally sufficient to form a basis for order of detention. Let us, therefore, advert to the crimes and the in-camera statements relied on.

10. First one is C.R. No.124/2023, registered on 22/05/2023. It pertains to the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code. The offences are bailable one. The investigating officer appears to have had issued the petitioner a notice under Section 41-A of the Code of Criminal Procedure. The F.I.R. therein was lodged by the victim himself. A perusal thereof suggests that, the victim was called by the petitioner and his associates. He was asked to accompany them to commit theft. When he declined to join them, all the four, including the petitioner, beat him up. The assault was made by the co-accused. The petitioner allegedly held his legs so as to facilitate the co-accused to mount an assault on the victim.

11. The other crime being C.R. No.179/2023, registered for the offences punishable under Sections 341, 323, 504, 506 of the Indian Penal Code. The F.I.R. is dated 19/7/2023. The victim

himself lodged the F.I.R. It has been alleged therein that, on the given day i.e. on 19th July itself, he was proceeding towards his house via Chandni Chowk. The petitioner intercepted him. He caught hold of his collar and slapped on his face. The reason for the assault was the informant (victim) to have reported to the police the petitioner to have committed theft. The petitioner even gave threats to his life. One Shaikh Mubin Shaikh intervened. He too was abused by the petitioner. Passers-by gathered at the scene of offence. The petitioner then left.

12. Then there are two in-camera statements. One of the witnesses stated in the statement that in July 2023, he was proceeding to buy mutton. The petitioner intercepted him. He fished out a Kukri and gave life threats. The reason behind the same was, the witness had asked businessmen not to pay the petitioner money.

13. The second witness has stated that, in the very month (July), the petitioner intercepted him and made a demand of money for consumption of alcohol. When the witness told the petitioner to have no money, he was robbed of a sum of Rs.700/-. When the witness asked the petitioner to return his money, the petitioner gave him a punch. The witness raised cries. The passers-by started running helter-skelter, fearing the petitioner. Shop owners downed the shutters of their respective shops.

14. The aforesaid activities and the crimes registered against the petitioner are said to have potential to cause disturbance to maintenance of public order. The sponsoring authority (Police Station, Peth Beed), therefore, put up the proposal for the petitioner's detention under the M.P.D.A. Act. Relying on the aforesaid material, the order impugned herein was passed. Both the crimes registered against the petitioner pertain to bailable offences. The petitioner was not arrested in any of those crimes. It is not that in bailable offence the accused cannot be arrested. If a person is arrested in case of a bailable offence, he has to be granted bail. In both the crimes, the investigating officer had issued the petitioner notice under Section 41-A of the Code of Criminal Procedure. The same suggests the investigating officer did not find the petitioner's arrest imminent in both the crimes. In our view, by no stretch of imagination, both the crimes could be said to have potential as to cause disturbance of maintenance of public order. Both the crimes were individual centric. In case of **Amina Begum Vs. State of Telangana (2023 INSE 788)**, it has been observed :

“32. We may refer to the decision of the Constitution Bench of this Court in **Ram Manohar Lohia v. State of Bihar (1966) 1 SCR 709**, where the difference between “law and order” and “public order” was lucidly expressed by Hon’ble M. Hidayatullah, J. (as the Chief Justice then was) in the following words :

“54. *** Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When

two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.

55. It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

15. So far as regards in-camera statements are concerned, we are of the view that those are vague. It is very risky to rely on in-camera statements alone to hold the order of

preventive detention. When the sponsoring authority even did not find a case to arrest the petitioner in both the crimes, it is difficult to assume the very authority to find a case to put up a proposal to detain the petitioner under M.P.D.A. Act. In short, in our view, the material relied on was rationally not sufficient to pass an order of preventive detention under Section 3 of the M.P.D.A. Act. We, therefore, find it to be a fit case to set aside the same. In the result, the petition succeeds. Hence the order :

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause (B).
- (ii) The petitioner be set at liberty forthwith if not required in any other case.

Rule made absolute in above terms.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-