



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1547 OF 2023

Hirasing Huryasing Chavan

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mr. G.K. Naik-Thigle, Advocate for petitioner

Mr. A.R. Kale, Add.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 25th September, 2023 passed by Respondent No.6 – District Magistrate, Hingoli in D.O. No.2023 DC-01/KAVI-623/2023/606 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 petitioner has been detained for a period of twelve months on account of he being a dangerous person and as such his activities being

prejudicial to the maintenance of public order. The order of detention has been confirmed by the State Government, Department of Home.

4. Learned counsel for the petitioner would submit that although six crimes were registered against the petitioner, the last two crimes have only been relied for passing the order of detention besides two in-camera statements. Rest of the crimes registered against the petitioner and relied on were old and stale one. The order of externment and action taken under Section 107 of Code of Criminal Procedure were also old one. As such, the first four crimes and preventive measures taken against the petitioner did not have live link with the action of preventive detention taken against the petitioner. He would further submit that one of the last two crimes pertain to possession of an arm, i.e. sword. The petitioner is Sikh by religion. It was, therefore, nothing wrong of having been found in possession of the sword. It is not the case of prosecution that the petitioner wielded the sword in commission of any crime. According to him, the order of detention thus is based on only one crime, which was committed against an individual. The said crime cannot be said to have potential to cause apprehension of the activity of the petitioner likely to cause disturbance to maintenance of public order. He would further submit that in-camera statements are vague and stereotype. Those have been got up statements so as to ensure the order of detention sustains, if taken exception to in the Courts of law. Learned counsel ultimately urged for allowing the writ petition.

5. Learned A.P.P. would, on the other hand, submit 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. He would further submit that not less than six crimes were registered against the petitioner besides preventive action in the nature of externment and chapter proceedings. Learned A.P.P. then adverted our attention to the two in-camera statements to submit that there is terror of the petitioner in the vicinity. Witnesses, therefore, do not dare to come forward to speak against him. The same speaks in volume, necessitating passing of order of detention. According to learned A.P.P., non-subjective satisfaction of the detaining authority cannot be a subject of judicial review. This Court cannot sit in appeal over such order. He, therefore, urged for dismissal of the petition.

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

7. 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 detainee.

8. True, in all six crimes were registered against the petitioner during the period from October 2018 to September 2023. The two crimes, bearing Crime Nos. 497 and 424 of 2023 have been relied on. The other four crimes referred to did take place in the years 2018, 2019 and 2021. The preventive action taken against the petitioner was of the year 2018 and action of externment is of 2019. As such, there is no live link between first four crimes registered against the petitioner and preventive measures taken against him. The record also indicates that order of externment passed against the petitioner was set aside by this Court. Thus, there remains only two crimes for being considered as to whether those have potential to find petitioner's activities being prejudicial to the maintenance of public order. One of those two crimes i.e. Crime No. 497 of 2023 is for offence punishable under Section 4 read with Section 25 of the Arms Act. The petitioner was found in possession of a sword. Admittedly, he did not wield the same in commission of any crime. He is a Sikh by religion. Law permits him to possess such kind of article. The detaining authority, therefore, ought not to have relied on such crime.

9. Then, there is Crime No. 424 of 2023 registered for offence punishable under Section 307 read with Section 34 of the I.P.C. The

petitioner alongwith three others is alleged to have committed the said crime. Averments in the F.I.R. of the said crime indicate that there was a long standing dispute (over ten years) over agricultural field. The informant was, therefore, assaulted by all of them with an iron rod. This crime, therefore, cannot be said to have any potential to infer the petitioner's activities were aimed against public at large. It was an individual centric offence.

10. Then there are in-camera statements of two witnesses. One of those two witnesses has alleged the petitioner to have had intercepted him on 17th July, 2023 by 03:00 p.m. and threatened him of dire consequences, if he goes public against the petitioner's criminal activities. While the second witness has stated that in the month of July 2023 the petitioner asked him to pay some money for consumption of alcohol. When he refused, the petitioner slapped him. The statement of this witness is vague so far as day and time of the incident is concerned. If the above referred two crimes which have been registered against the petitioner are excluded from consideration, in our view it could be very risky to sustain the order of detention passed only on two in-camera statements alone. It would also be a guess whether the detaining authority would have passed the order of detention, had he excluded the two crimes which were registered against the petitioner. As such, in our view, material relied on for passing the order impugned herein, if considered rationally, did not have potential to either hold the petitioner to be a

dangerous person or have apprehension of he indulging in similar activities resulting into causing disturbance to public order. In our view, therefore, the order impugned herein do not stand judicial scrutiny. Interference therewith is, therefore, warranted.

11. In the result, criminal writ petition is allowed. Criminal writ petition is allowed. Order of detention dated 25th September, 2023 passed by Respondent No.6 – District Magistrate, Hingoli in D.O. No.2023 DC-01/KAVI-623/2023/606 is hereby set aside. Petitioner be released forthwith, if not required in any other case.

(SANJAY A. DESHMUKH, J.)
SSD

(R.G. AVACHAT, J.)