



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 CRIMINAL WRIT PETITION NO. 1549 OF 2023

Rahul Ganesh Shinde

..PETITIONER

-VERSUS-

The District Magistrate,
Aurangabad and others

..RESPONDENTS

...
Advocate for the Petitioner : Mr. Kale Kunal Arvind
APP for Respondent/State : Mr.A.R. Kale

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 22nd DECEMBER, 2023.**

PER COURT :-

. Heard.

2 The challenge in this writ petition is to the order of detention dated 01.06.2023 passed 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 (for short "M.P.D.A. Act").

3. The challenge is mainly on the ground of non-substantive satisfaction of the detaining authority for passing the order of detention. According to the learned advocate for the petitioner, the

detaining authority has relied upon two crimes, being Crime No.83 of 2023 for the offence punishable under sections 324, 323, 504, 506 of the Indian Penal Code and Crime No.143 of 2023 for the offence punishable under sections 341, 394 of the Indian Penal Code, registered on 27th February, 2023 and 30th March, 2023 respectively. Besides, action under section 110(e) (g) of the Cr.P.C. and MPDA Act dated 26th November, 2021. He would further submit that the first crime was being bailable, the petitioner was served with notice under section 41-A of Cr.P.C.. So far as regards the other offence is concerned, according to him, the said crime did not have potential of being prejudicial for maintenance of public order. The petitioner was granted bail within couple of weeks from his arrest. In camera statements have been recorded only post grant of bail. They are as vague as could be. Both have stated the petitioner to have robbed them. The vagueness of the statements caused the petitioner prejudice in his defence. He, therefore, urged for allowing the writ petition.

4. The learned APP would submit that not less than 8 cognizable offences and about equal number of non-cognizable cases were registered against the petitioner. He was detained for 12 months under M.P.D.A. Act. After having been out of jail, he again indulged in two crimes. Same suggests the tendency of the petitioner to indulge into criminal activities causing disturbance to the public

order. The learned APP took us through the first information report of both the crimes and then in-camera statements of both the witnesses. He read out order of detention from para 6 thereof. According to him, material before the detaining authority was sufficient to prevent the petitioner from indulging in similar activities, by passing the order impugned herein. According to him, if the petition is allowed, the petitioner being dangerous person would be a threat to entire society. The authorities concerned have every right to pass such orders, when sufficient material placed before them. According to him, each judgments of High Court or the Supreme Court is to be read in the facts and circumstances of the case concerned. Same can not have application to any other case. He, therefore, urged for dismissal of the petition.

5. We have considered the submissions advanced. Perused the order of detention and papers relied on. It is true that 8 crimes were registered against the petitioner, besides six non-cognizable cases. An action under section 110 of the Cr.P.C. was also taken against him. Based on the said material, the petitioner was detained in terms of section 3 of the M.P.D.A. Act w.e.f. 26th November, 2021. The very material has also been referred to in the impugned order, besides two crimes committed by him post he was released after 12 months of detention.

6. We are now only concerned with the crimes relied on by the

detaining authority. The first crime pertains to the offence under section 324 and related offences. It being bailable offence, the petitioner was served with notice under section 41-A. Our attention is adverted to the averments in the FIR of the said crime to suggest the petitioner to have intercepted the informant while he was on way. He assaulted the informant with knife (*Koyata*) and even threatened him with dire consequences. The incident took place on account of the informant's brother to have lodged a crime against the petitioner in the past with Vaijapur Police Station.

7. In our view, this offence is individual entry. We do not find averments therein to have potential to cause disturbance to the maintenance of public order.

8. So far as regards another crime is concerned, the offence is under sections 341 and 394 of the Indian Penal Code. The petitioner allegedly intercepted the informant while he was on way home. He robbed sum of Rs.5,000/- and threatened with dire consequences, if he goes public. In this case, the petitioner was granted bail after two weeks of his arrest. Admittedly, the detaining authority did not apply for cancellation of bail of the petitioner on the ground to have history of criminal activities.

9. There are two in-camera statements. Both the witnesses claimed to have been robbed by the petitioner of a sum of Rs.1500/- and Rs.5,000/- respectively. It is their case that the incidents took

place in 2nd week of January and last week of February of 2023 no dates of these incidents are stated. The learned APP would submit that if the date of incident was given, the identity of the victims could come to light. The victims could come forward to give statements only on condition of non-disclosing of their names. He may be correct in his submission. When it was case of detaining authority that the petitioner's activities are prejudicial to maintenance of public order, necessarily besides these two witnesses, there might have been number of victims of such activities of the petitioner. Had the witnesses given day or date of those incidents, the petitioner could have very well defended himself by saying that on the given days he was somewhere else. Needless to mention that relying upon such in-camera statements to sustain order of detention for 12 months would be very risky.

10. The Hon'ble Apex Court in the case of ***Ameena Begum Vs. The State of Telangana and others AIR 2023 SC 4273*** has observed when there exists issue of maintenance of law and order is sufficient to address the crimes which were under consideration in that order recourse to law of preventing detention should not have been passed. In para 45 of the judgment, it has been observed that while examining the history sheet of the detenu, the Apex Court in express terms clarified that a generalisation could not be made that the detenu was in the habit of

committing those offences. Merely because the detenu was charged for multiple offences, it could not be said that he was in the habit of committing such offences. Further, habituality of committing offences cannot, in isolation, be taken as a basis of any detention order, rather it has to be tested on the metrics of public order.

11. In our view, without going for cancellation of bail of the petitioner, sponsoring authority put up a proposal for detaining the petitioner for a period of 12 months relying on only two crimes, which in our view did not have potential of apprehension of activities of the petitioner being prejudicial to the maintenance of the public order. In our view, therefore, the impugned order deserves to be set aside. Hence the following order :-

ORDER

- (i) The 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.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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