



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1563 OF 2023

Pawan Manikrao Dakhore

..Petitioner

vs.

State of Maharashtra and ors.

..Respondents

Mr.A.V.Lavte, Advocate h/f. Mr.S.G.Ghongade, Advocate for petitioner
Mr.R.R.Tambe, APP for State

CORAM : R.G.AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATE : DECEMBER 13, 2023

ORDER :-

Heard both sides.

2. The challenge in this petition under Article 226 of the Constitution of India, is to the order dated 29.08.2023, passed by the District Magistrate, Hingoli, detaining the petitioner under under Section 3(1) 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", for short).

3. The challenge is mainly on the ground of non-subjective satisfaction of the detaining authority. The submissions made by

learned counsel for the petitioner might be the grounds for allowing this Writ Petition and therefore, we do not propose to refer them in extenso hereat.

4. Learned APP would, on the other hand, submit that there were five crimes registered against the petitioner. All were of serious nature. Besides these crimes, there are in-camera statements of the witnesses, who speak against the petitioner. Both the statements indicate that the petitioner used to threaten innocent persons with dagger. The victims did not come forward to speak against the petitioner, such was the petitioner's terror. Learned APP took us through the FIRs of the relevant crimes relied on, to ultimately submit that the detaining authority was subjectively satisfied to pass the order of detention. According to him, the subjective satisfaction of the detaining authority cannot be the subject matter of judicial review. She, therefore, urged for rejection of the petition.

5. Considered the submissions advanced. Perused the grounds of detention and the documents relied on.

6. The order of detention is dated 29.08.2023. The last of the five crimes relied on for passing the detention order pertains to

offence under Section 4 read with Section 25 of Arms Act. It was registered on 16.08.2023. The FIR of the said crime has been lodged by a police official. It has been averred in the FIR that a secret information was received that the petitioner armed with a dagger was threatening the persons in the village. The police officials went to the village. Search at the residence of the petitioner was made. The dagger came to be recovered from his residence. In this crime, the petitioner was not arrested. He was issued notice under Section 41-A of the Code of Criminal Procedure. The offence is necessarily non-bailable one, being punishable with imprisonment for five years. It is not that in all the offences punishable with imprisonment with seven years, there is bar to effect arrest of the person committing such offence. Perusal of Section 41-A of Cr.P.C. shows that if the Investigating Officer is required to arrest the accused, he can record the reasons therefor and effect the arrest. In this case, nothing of that sort has been done. The petitioner was neither found in actual possession of the dagger nor was he alleged to have used the dagger on the given day or in the recent past. The dagger was seized from his residence. It is submitted that the petitioner along with his family members, including some male members, are residing in the said house. Seizure of the dagger,

therefore, could not be said the petitioner to have been in conscious possession thereof. The order of detention indicates that this crime led the sponsoring authority to put up the proposal for detention of the petitioner, in addition to the in-camera statements.

7. True, there were other four crimes registered against the petitioner. Next crime relied on is dated 13.01.2023. The gap between the order of detention and registration of the said crime is of seven and half months. The FIR thereof indicates that the petitioner assaulted the father of the informant with knife. The incident appears to have occurred while the tractor was stationary at the middle of the road and the petitioner and his associates were riding a motorbike. We do not propose to make further observations. Suffice it to say that the facts of the said case would indicate that it might, at the most, be a case of maintenance of law and order. The petitioner was granted bail in the said crime. The authorities concerned did not apply for cancellation of bail. It is reiterated that the said crime took place seven and half months before the order of detention was passed.

8. In two of the three remaining crimes, FIR was registered against unknown persons. Police papers on record are short of

making out a case of material, which could be admissible in evidence against the petitioner. Learned counsel for the petitioner would submit that relying on the statement of the co-accused, the petitioner is being prosecuted in those two crimes. If such is the thing, in our view, those two crimes also could not be said to be sufficient material to rely for passing the order of detention. As regards the third crime is concerned, it is punishable under Section 354-A. The petitioner is alleged to have expressed his love to the victim girl of 17 years and 11 months of age. It might be a case of one-way love. This crime too cannot be said to have ramification as regards maintenance of public order. If all the crimes are taken cumulatively, they could not be said to have potential to cause disturbance of the public order.

9. So far as regards the in-camera statements are concerned, in our view, those have been recorded only with a view to support the proposal put up by the sponsoring authority. Although the witnesses claimed to have been threatened by the petitioner, the statements are vague. One of the witnesses stated that one month before 25.08.2023, he was threatened by the petitioner and the other one relates to the incident occurred about

one and half months before the vary date. We find that relying on such statements would be very risky to sustain the order of detention.

10. In short, there is no live-link between the order of detention and the crimes registered against the petitioner. Crime No.192 of 2023 that impelled the authority to pass the order of detention, pertains to seizure of dagger from the residence of the petitioner. The petitioner was not found to have wielded the same. If considered rationally, said crime ought not to have been relied on for passing the order of detention.

11. For all the above reasons, we find it to be a fit case to interfere with the order impugned. In the result, the petition succeeds. Hence, the following order:-

- (i) The Writ Petition is allowed in terms of prayer clauses (B) and (C).
- (ii) The petitioner be released forthwith, if not required in any other case.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP