



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1598 OF 2023

Lakhan Tukaram Kale

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mr. R.G. Hange, Advocate for petitioner
Mr. V.K. Kotecha, A.P.P. for respondents
....

CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 11th 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 26th July, 2023 passed by Respondent No.2 – District Magistrate, Beed in File No. 2023/RB-Desk-1/Pol-1/MPDA-08 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 order of detention has mainly been challenged on the ground of non-subjective satisfaction by the detaining authority. According to

learned counsel for the petitioner, there were five crimes registered against the petitioner. Four of them pertain to the years 2014 and 2019. As such, those crimes did not have live link with the order of detention. The last crime was registered on 01st June, 2023 for offence punishable under Section 379 of the Indian Penal Code ('I.P.C.'). The petitioner was arrested and immediately granted bail therein. The authority concerned did not apply for cancellation of bail. So far action under Section 110(g) of the Code of Criminal Procedure ('Cr.P.C.') is concerned, it was old one i.e. of the year 2020. Same is the case of externment proceeding, whereunder the petitioner was externed way back in September 2022. This also is a stale matter. Moreover, the order of externment was revoked by the Divisional Commissioner in appeal in June 2021. The same indicates non-application of mind by the detaining authority. He, therefore, urged for grant of the petition.

4. Learned A.P.P., on the other hand, would submit that not less than five crimes were registered against the petitioner besides preventive measure under Section 110 Cr.P.C. of externment proceeding. He then took us through two in-camera statements of the witnesses to indicate the petitioner to have had threatened them of dire consequences if they go public regarding petitioner's illegal activities as to unauthorised excavation of sand. According to learned A.P.P., non-subjective satisfaction of the detaining authority cannot

be a matter of judicial review. According to him, the time frame under the M.P.D.A. Act has been adhered to. He would also rely on the externment proceedings to submit that there was no deterrence thereof and even thereafter the petitioner indulged in unauthorised excavation of sand. He, therefore, urged for dismissal of the petition.

5. Considered the submission advanced. Perused the order of detention with the grounds thereof.

6. Five crimes registered against the petitioner have been referred to in the order of detention. Two crimes thereof pertain to offence punishable under Section 324 of the I.P.C., less serious. Both the crimes allegedly took place in the year 2014. The order of detention has been passed in 2023 i.e. nine years thereafter. As such, for passing the impugned order, those crimes could very well be said to have been stale and there is no live link with the order of detention. Same is the case of next two crimes registered in 2019 for the offence punishable under Sections 379 read with Section 34 of the I.P.C. There is a gap of not less than four years between those two crimes and the order of detention. As such, for passing the order of detention, the only crime relevant was, Crime No. 134 of 2023. In the said crime, the petitioner was granted bail on the next day of his arrest. There is nothing to indicate the Investigating Officer had applied for cancellation of bail on the

ground of the petitioner's criminal antecedents. So far preventive action taken under Section 110 of Cr.P.C. is concerned, same goes back to three years preceding the order of detention. Same may have relevance, but cannot be a ground for the detaining the petitioner on account of there being a gap of not less than three years. It is not in dispute that order of externment of the petitioner has been set aside by the appellate authority (Divisional Commissioner) in January 2021. The detaining authority was kept in dark of the said order. Had the same been placed before the detaining authority, it would be nobody's guess whether the detaining authority would have been inclined to pass the order impugned herein. In our considered view, the only offence punishable under Section 379 of I.P.C. could not form basis for passing the order of detention for a period of twelve months on account of petitioner's activities prejudicial to the maintenance of public order.

7. So far as regards two in-camera statements are concerned, both the witnesses deposed to have been threatened by the petitioner of dire consequences if they go public with the petitioner's illegal activities. Those statements are recorded in July 2023, while the petitioner was on bail. The two in-camera statements pertain to the incidents dated 21st and 29th June, 2023 respectively. Considered rationally, it would be very risky to rely on these two in-camera statements which were recorded while the petitioner

was on bail. The nature of last crime relating to the theft of one brass sand was grossly insufficient material to rely for passing the order impugned herein. It is reiterated that had the detaining authority been apprised of the petitioner's externment order to have been quashed by the appellate authority, the detaining authority might not have even passed the order impugned herein. As such, non placing of all the relevant material before the detaining authority also lead us to allow the petition.

8. In view of above, we are inclined to allow the petition. Order of detention dated 26th July, 2023 passed by Respondent No.2 – District Magistrate, Beed in File No. 2023/RB-Desk-1/Pol-1/MPDA-08 is set aside. The petitioner be released forthwith, if not required in any other crime.

(SANJAY A. DESHMUKH, J.)

SSD

(R.G. AVACHAT, J.)