



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

CRIMINAL WRIT PETITION NO.1618 OF 2023

Gorakh Sadashiv Kale

..Petitioner

vs.

State of Maharashtra and ors.

..Respondents

Mr.A.R.Hange, Advocate for petitioner
Mr.V.K.Kotecha, 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 26.07.2023, passed by the District Magistrate, Beed, 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 for passing of the order of

detention. According to learned counsel for the petitioner, similar action was proposed against the petitioner in the year 2021. Four crimes registered against the petitioner during the period from 12.07.2014 to 06.04.2022 and action under Section 56(1)(A) of the Maharashtra Police Act, 1959 were relied on for passing the order of detention. That order was put up before the State Government for approval. The State Government did not approve the order of detention.

4. The sponsoring authority again referred to the entire material relied on during the earlier proposal besides two crimes registered in June, 2023, being Crime Nos.133 of 2023 and 147 of 2023, and two in-camera statements and put up the proposal for detention of the petitioner being a sand-smuggler, under Section 3 of M.P.D.A. According to learned counsel for the petitioner, it was, in fact, mischief committed by the sponsoring authority. The detaining authority ought to have been informed of the earlier order of detention to have not been approved by the State Government. According to him, it would be anybody's guess, if the last two crimes and the in-camera statements had only been placed before the detaining authority, whether the detaining authority would have been inclined to pass the order impugned herein.

5. Coming to the subjective satisfaction of the detaining authority, according to learned counsel for the petitioner, one of the two crimes pertains to theft of one brass of sand. The other crime pertains to the offences under Section 327 and 324 of Indian Penal Code. The petitioner was arrested in Crime No.133 of 2023 but was released same day. In other crime, he was issued with notice under Section 41-A of the Code of Criminal Procedure. According to him, both the crimes cannot be said to have potential to cause disturbance to maintenance of the public order. So far as the in-camera statements are concerned, learned counsel would submit that those are vague and might have been got up by the sponsoring authority only with a view to support the proposal for detention of the petitioner. He, therefore, urged for allowing the petition.

6. Learned APP would, on the other hand, submit that the earlier four crimes and the action under Section 56(3) of the Maharashtra Police Act were not relied on for passing the order of detention. Only last two crimes being Crime Nos.133 of 2023 and 147 of 2023 have been relied on besides two in-camera statements.

7. The authority concerned might be right in not relying on earlier crimes, which have been referred to, since those crimes were

committed during the period 2014-2020. The fact, however, remains that in paragraph 3.1 of the detention order, it has been observed thus:-

" दरम्यानच्या कालावधीत आपणाविरुद्ध तलवाडा पोलीस स्टेशन येथे कलम ३७९ भादंवि अन्वये दिनांक ०१.०६.२०२३ रोजी दखलपात्र गु.र.न.१३३/२०२३ दाखल करण्यात आला आहे. तसेच कलम ३२७, ३२८, ३२३, ५०४, ५०६, ३४ भा द वि अन्वये दिनांक १६.०६.२०२३ रोजी दखलपात्र गु र न १४७/२०२३ दाखल करण्यात आला आहे. पूर्वी करण्यात आलेल्या प्रतिबंधात्मक कार्यवाहीचा परिणाम झाल्याचे आपणावर दिसून येत नाही. त्यामुळे सदरची कारवाई अपुरी असल्याचे दिसून येते. याठिकाणी स्पष्ट करण्यात येते की, सदर स्थानबद्धतेचा आदेश पूर्वीच्या गुन्द्यांवर आधारित नसून केवळ आपला पूर्वीचा गुन्हेगारी इतिहास दर्शविण्यासाठी प्रतिबंधात्मक कार्यवाहीचा उल्लेख करण्यात आलेला आहे."

Same indicates that those criminal activities had influenced the detaining authority to pass the order of detention. The record indicates that the sponsoring authority had, earlier, put up a proposal for petitioner's detention under the provisions of M.P.D.A. relying on those four crimes and action under Section 56(3) of the Maharashtra Police Act. The State Government did not approve the order of detention. The reasons are not known.

8. We have closely gone through the proposal forwarded by the sponsoring authority. There is no whisper about the fact of the

State Government not approving the earlier order of detention. In our view, the sponsoring authority ought to have brought to the notice of the detaining authority the said fact. Had it been brought to the notice of the detaining authority, it would be nobody's guess, what would have been the consequence thereof. The detaining authority might not have passed the order of detention relying on the two crimes being Crime No.133 of 2023 and 147 of 2023 and two in-camera statements. Least said better about the crime of theft of one brass of sand (Section 379 of I.P.C.). We fail to understand as to how single crime of theft of one brass of sand could brand the petitioner to be a habitual sand-smuggler. We reiterate that both crimes, being Crime No.133 of 2023 and 147 of 2023, could not be said to have potential to cause apprehension of there being disturbance to maintenance of public order.

9. So far as regards the in-camera statements are concerned, we found them to be stereo-type, vague and recorded only with a view to support the proposal for detention of the petitioner.

10. For all the aforesaid reasons, the order impugned in this petition is unsustainable in law. We are, therefore, inclined to allow the petition. Hence, the following order:-

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

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP