



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

CRIMINAL WRIT PETITION NO. 38 OF 2024

Shaikh Javed @ Tipya Shaikh Maqsud

....Petitioner

Versus

1. The State of Maharashtra

2. Commissioner of Police, Aurangabad.

3. The Jail Superintendent,
Central Prison, Aurangabad.

....Respondents

....
Advocate for Petitioner : Mr. Kartik R. Sharma
APP for Respondents : Mr. K.N. Lokhande

...
**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

Judgment reserved on : 04 MARCH 2024

Judgment pronounced on : 13 MARCH 2024

JUDGMENT (PER : SHAILESH P. BRAHME, J.) :

1. Rule. Rule is made returnable forthwith with the consent of the parties. Heard both the sides finally at the admission stage.

2. Petitioner is assailing order of detention dated 20.10.2023 passed by respondent no. 2 – Commissioner, declaring petitioner as a dangerous person.

3. The Detaining Authority has taken into account two offences bearing C.R. No. 268 of 2023 under Sections 394, 506, read

with 34 of the Indian Penal Code registered on 19.07.2023 and C.R. No. 346 of 2023 for the offences punishable under Sections 354-A, 452, 323, 504, 506 read with 34 of the Indian Penal Code and under Section 4/25 of the Arms Act, registered on 20.09.2023. Additionally, preventive actions taken against the petitioner on 01.10.2019 and 22.11.2021 under 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, (hereinafter referred to as 'the Act' for the sake brevity and convenience), preventive action under Section 110 of the Code of Criminal Procedure and two in-camera statements have also been considered.

4. Learned counsel for the petitioner submits that there is non application of mind by the Detaining Authority and there is a perversity in arriving at the subjective satisfaction. The offence pitted against him would not show any prejudice to the public order. Order of anticipatory bail dated 21.09.2023 passed by the High Court in anticipatory bail application no. 1437 of 2023 has not been considered. Learned counsel would submit that there is no cogent material to brand petitioner as a dangerous person.

5. It is further submitted that there is gap of two years between commission of crimes. Old and stale cases have been considered by the

Detaining Authority. Impugned order is contended to be actuated by political rivalry.

6. Learned APP would oppose the submissions of the petitioner by relying upon affidavit-in-reply. He would submit that there is overwhelming material against the petitioner for taking action against him under the Act. On earlier two occasions, he suffered action of detention under the Act without there being any challenge to them. He would further submit that subjective satisfaction is based on intelligible reasoning. Despite drastic preventive actions, he continued to indulge in serious criminal activities covered by Chapter XVI of IPC.

7. Having heard learned counsel for both the sides, we have assessed record pitted against the petitioner. It transpires that there are six offences registered against him which are serious in nature. Out of them last two offences have been considered along with preventive actions and in-camera statements.

8. There is no dispute that petitioner suffered action of detention for one year vide order dated 01.10.2019. Thereafter, again he was subjected to same action vide order dated 22.11.2021. Both the orders were not challenged and have been executed. He is facing third preventive action under the Act. The successive proceedings against the

petitioner under Act would be a pointer to his continued criminal conduct and habitual notoriety. Previous detention orders are clinching to brand him as a dangerous person.

9. Petitioner was set at liberty on 21.11.2022 from the last detention. Immediately, he committed offence bearing C.R. No. 268 of 2023 on 19.07.2023. After two months, again he committed offence bearing C.R. No. 246 of 2023. He did not mend himself despite preventive actions and continued his criminal activities. We have no iota of doubt to hold that for petitioner ordinary penal laws are inadequate to curb his activities. We may record that even the preventive actions under the Act were unable to control him.

10. We have considered the allegations against the petitioner in the last two offences registered against him. Those are falling under Chapter XVI of Indian Penal Code. In-camera statements and the preventive actions would unequivocally indicate that activities are detrimental to the public order. We do not find any perversity in the subjective satisfaction arriving at by the Detaining Authority.

11. Application for anticipatory bail of the petitioner was allowed by High Court on 21.09.2023 which was in respect of C.R. No. 268 of 2023. The reasons assigned in the order, no doubt, would be

relevant input for the Detaining Authority but for their non-consideration the impugned order would not vitiate. Overwhelming material pitted against the petitioner cannot be overlooked. We find no merit in the submissions of the petitioner.

12. Though, a ground is raised in the petition that there was a gap of two years between the commission of crimes vide ground no. 5, no submissions have been advanced to demonstrate the delay. Last two offences were registered on 19.07.2023 and 20.09.2023. Affidavit-in-reply shows that immediately in-camera statements were recorded thereafter. We do not find any substance in the contention that old and stale cases have been considered by the Authorities.

13. We have gone through affidavit-in-reply. It reveals from paragraph nos. 7, 9 and 10 that due procedure and timeline was followed.

14. There is no material on record to show that due to any political rivalry, impugned order is taken against petitioner. Criminal record against petitioner is overwhelming. He is habitual offender. Therefore, there is no merit in contending that detaining authority was biased. Further grievance of petitioner is that offences of 2020 and 2021 have also been considered. But paragraph no. 4 of the grounds of detention specifically mentioned that last two offences of 2023 have been considered. Earlier offences are referred to show track record and

habitual tendency to indulge in criminal activities. The detaining authority is justified in forming subjective satisfaction.

15. We do not find any perversity or illegality in the impugned order. Criminal Writ Petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]