



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

CRIMINAL WRIT PETITION NO. 65 OF 2024

Ankush Santosh Kurhade

....Petitioner

Versus

1. The State of Maharashtra.

2. The District Collector, Aurangabad.

3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad.

....Respondents

Advocate for Petitioner : Mr. D.S. Patil

APP for Respondents : Mr. K.N. Lokhande

...

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

Judgment reserved on : 21 February 2024

Judgment pronounced on : 28 February 2024

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

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

2. By way of this petition, the petitioner has questioned order of detention dated 18.07.2023, passed by respondent no. 2 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 of brevity and convenience) and order dated 26.07.2023 passed by respondent no. 1, approving order of detention.

3. The Detaining Authority has considered following two offences registered against the petitioner :

i. CR No. 18 of 2023 under Section 326, 341, 323, 504, 506 read with 34 of IPC, dated 23.01.2023.

ii. CR No. 65 of 2023 under Section 392, 323, 504, 506 (2) read with 34 of IPC and under Section 135 of the Maharashtra Police Act, registered on 09.04.2023.

4. A preventive action bearing Chapter Case No. 02 of 2018 taken against under Section 110 of Code of Criminal Procedure and in-camera statement of two witnesses have also been considered. The Detaining Authority has recorded that the activities of the petitioner are prejudicial to the public order. The petitioner is recorded to be undeterred even by preventive action so as to have resort to the action under the Act. He is found to be dangerous person within meaning of Section 2 (b - i) of the Act and directed to be detained. The petitioner has been committed on 03.08.2023.

5. It reveals from record that impugned order of detention has been approved by respondent no. 1 on 26.07.2023. The papers were

placed before Advisory Board on 18.08.2023. Impugned order was confirmed by respondent no. 1 on 14.09.2023. In this factual scenario, we are called upon to examine the impugned orders.

6. Learned counsel for the petitioner submits that the orders of bail enlarging the petitioner have not been taken into account by the Detaining Authority. There is delay in serving him with the impugned order. No time has been stipulated in the detention order. The subjective satisfaction is arrived at. The offence pitted against him and in-camera statements are not reliable. On this submissions, impugned orders are said to be vitiated.

7. Learned APP supports impugned order. He would submit that due procedure has been followed and timeline prescribed under the Act has been adhered to. The Detaining Authority has arrived at subjective satisfaction by appreciating incriminating material against the petitioner. He is found to have been involved in the serious offences under Chapter XVI and XVII of the IPC. He was absconding and was required to be arrested from Katargram, Surat (State of Gujarat). On 04.08.2023, all the relevant documents have been served on him. Learned APP has relied upon affidavit-in-reply in support of his submissions.

8. We have considered rival submissions of the parties. We have gone through the papers produced by the parties on record as well as affidavit-in-reply. At the outset, it is necessary to clarify that no submission has been advanced on behalf of the petitioner pertaining to violation of principles of natural justice. The grievance pertains to subjective satisfaction, delay and adequacy of the material pitted against the petitioner.

9. The Detaining Authority has taken into consideration last two offences, a preventive action and in-camera statements. All offences fall under Chapter XVI and XVII of the IPC. In-camera statements were recorded on 09.06.2023 and 10.06.2023. Those were verified by Sub-Divisional Police Officer on 26.06.2023.

10. We have considered relevant papers of offence CR No. 18 of 2023 which is registered on 23.01.2023. It is registered against two persons including the petitioner. Victim is assaulted at a public place. In another offence bearing CR No. 65 of 2023, the petitioner along with co-accused threatened and abused victim in broad daylight by using a knife. The petitioner is reported to have brandished weapon openly while passing through the street, thereby, creating terror.

11. In-camera statements of the witnesses reflect tendency of road robbery. Both the offences registered against him and in-camera

statement disclose his tendency to create terror even in broad daylight. We are of the considered view that his activities are detrimental to the public order. The Detaining Authority has rightly recorded finding in this regard.

12. The petitioner has also faced preventive action under Section 110 of Cr.P.C. He has executed a bond on 24.09.2018. thereafter, he has reported to be involved in three offences, albeit, only last two offences are considered. There is every reason to come to conclusion for the Detaining Authority that the petitioner is undeterred by regular penal laws.

13. With a material pitted against the petitioner as discussed above, we do not find any perversity, arbitrariness or impropriety in the subjective satisfaction. We find no merit in the submissions of the petitioner on the point of subjective satisfaction.

14. The petitioner has been released on bail from offences pitted against him. The grounds of detention do not reflect consideration of reasons assigned by the Criminal Court for enlarging him on bail. The reasons for enlarging detainee on bail is a relevant material to be considered by the Detaining Authority. The Detaining Authority should have applied its mind before arriving at subjective satisfaction. However, by implication of Section 5 A of the Act, entire order of detention would

not got vitiated. Though, we find merit in the submission of the petitioner in this regard, considering other grounds we are not inclined to interfere with the impugned orders.

15. Learned APP has brought to our notice a striking factor that the petitioner was required to be arrested from State of Gujarat on 03.08.2023. This conduct reflects on the notoriety of the petitioner. No sooner he was arrested, he was served with the relevant documents on 04.08.2023. We do not find any procedural lapses in extending opportunity to agitate grievance against the impugned order. The petitioner was even heard by Advisory Board on 05.09.2023, before forming opinion.

16. Learned APP has rightly invited our attention to paragraph no. 9 of the affidavit-in-reply to repel the submission of the petitioner that the period of detention has not been specified in the impugned order. In view of the judgment delivered by Supreme Court in the matter of *Mrs. T. Devaki Versus Government of Tamil Nadu*, **1990 (2) SSC 456**, we find no merit in the submission of the petitioner.

17. Last offence bearing CR No. 65 of 2023 was registered against the petitioner on 09.04.2023. In-camera statements were recorded on 09.06.2023 and 10.06.2023. They were verified on 26.06.2023 by Sub-Divisional Officer. The proposal was submitted to the Detaining

Authority on 08.07.2023. Thereafter, order of detention was passed on 18.07.2023. This sequence of events have been explained in paragraph no. 7 of reply. We do not notice any delay in taking action against the petitioner under the Act.

18. Impugned order was passed on 18.07.2023, against the petitioner. He was served with order and the relevant papers on 04.08.2023. This delay is attributable to the petitioner himself. He was absconding and required to be arrested on 03.08.2023. He cannot be heard to context that there is delay in serving the papers.

19. In view of our reasons assigned above, we are of the considered view that no interference is called for in the impugned orders. Writ Petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]