



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

CRIMINAL WRIT PETITION NO. 122 OF 2024

Bhikan Ramesh Koli,
Age : 21 years, Occu. : Labour and
Gym Trainer,
R/o Village Utran, Tq. Erandol,
Dist. Jalgaon.

.. Petitioner

Versus

1. The District Magistrate
Jalgaon, District Jalgaon.
2. The State of Maharashtra
Through Addl. Chief Secretary,
Home Department (Special),
Mantralaya, Mumbai 32.
3. The Superintendent,
Central Prison Amaravati,
Jail Road, Camp Area,
District Amaravati.
4. The Superintendent of Police
Jalgaon, Tq. and Dist. Jalgaon.
5. The Officer In-charge of
Kasoda Police Station,
Tal. Erando, Dist. Jalgaon.

.. Respondents

Shri Yogesh A. Jadhav, Advocate for the Petitioner.
Shri V. K. Kotecha, A.P.P. for the Respondent Nos. 1 to 5.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 27 MARCH 2024.**

JUDGMENT (Per Shailesh P. Brahme, J.) :

. Rule. Rule is made returnable forthwith. With the consent of litigating sides heard finally at the admission stage.

2. The petitioner is questioning order of detention dated 13.12.2023 passed by the respondent No. 1/District Magistrate branding the petitioner as 'dangerous person' and detaining him U/Sec. 3(1) of the of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (hereinafter referred as to the 'M.P.D.A. Act' for the sake of brevity and convenience).

3. The subjective satisfaction is arrived at on the basis of two in camera statements and following antecedents :

Sr. No.	Police Station	Cr. No. & Date of Registration	Sections	Present Status
1	Kasoda	17/2023 26.02.2023	U/Sec. 4/25 of the Arms Act, 1959	Under investigation
2	Kasoda	137/2023 26.09.2023	U/Sec. 384, 385, 448, 143, 504, 506 of the I. P. Code.	Under investigation
3	Kasoda	164/2023 30.10.2023	U/Sec. 341, 143 of the I. P. Code	Under investigation
4	Kasoda	165/2023 30.10.2023	U/Sec. 341, 34 of I. P. Code r/w	Under Investigation

			Sec. 63 of Child Justice (Protection and Security of Children) Act, 2000 r/w Sec. 37(1)(3) for breach of Section 135 of Mumbai Police Act, 1951.	
5	Jilha Peth	407/2023 29.10.2023	U/Sec. 309, 353, 341 of I. P. Code r/w Sec. 37(1)(3) for breach of Section 135 of Mumbai Police Act, 1951.	

4. Learned counsel Mr. Yogesh Jadhav for the petitioner submits that subjective satisfaction is defective. Representation of the petitioner made on 28.12.2023 has not at all been considered. He would further submit that the offences pitted against the petitioner do not disclose any apprehension to the public order. Statements of the witnesses are unreliable. The offences pitted against the petitioner are concocted and do not reflect incriminating role.

5. Learned counsel for the petitioner seeks to rely upon the judgments rendered by the Supreme Court in the matters of **B. Alamelu Vs. State of T.N. and others** reported in *(1995) 1 SCC 306* and **State of T. N. Vs. Senthil Kumar and another** reported in *(1999)*

2 SCC 646.

6. Learned Assistant Public Prosecutor Mr. V. K. Kotecha supports the impugned order on the basis of affidavit in reply. It is contended that the petitioner is involved in serious offences and the preventive actions U/Sec. 107 and 110 of the Code of Criminal Procedure failed to prevent the petitioner from indulging into notorious activities. Learned A. P. P. would submit that representation was made belatedly. Matter was referred to the Advisory Board on 22.12.2023. Opinion recommending the detention was given by the Board on 19.01.2024. The State Government confirmed order of detention on 30.01.2024. It is submitted that the detaining authority has arrived at reasonable and plausible conclusion.

7. We have considered submissions of both the sides. Our attention is invited to the orders of acquittals passed in the offences prior to 2023. It is the grievance of the learned counsel for the petitioner that those acquittals have not been considered. The criminal antecedents before the detaining authority would constitute Cr. No. 17/2023, CR No. 137/2023, CR No. 164/2023, CR No. 165/2023 and CR. No. 407/2023. Orders of acquittal recorded in offences which were not matter of enquiry by the detaining authority would have no bearing over merits of the matter. We reject the submission on behalf of the petitioner.

8. Impugned order was passed on 23.12.2023. Petitioner made representation on 28.12.2023. This fact has not been

disputed by the respondents. It reveals from paragraph No. 2 of the affidavit in reply dated 21.03.2024 that representation was rejected on 07.03.2024. No material is placed on record by the respondents to show that rejection of representation was actually communicated to the petitioner at any point of time. The petitioner has raised a specific ground in this regard. Both replies filed by the respondents are silent as to the time when the petitioner was apprised of the rejection.

9. Interestingly, order of detention was approved by the State Government on 22.12.2023 U/Sec. 3(3) of the M. P. D. A. Act. Thereafter papers were placed before the Advisory Board on 22.12.2023. Advisory Board recommended detention vide its opinion dated 19.01.2024. Thereafter, the State Government confirmed detention by order dated 30.01.2024. When the papers along with opinion were before the State Government on or after 23.01.2024, it is incomprehensible as to why the representation was not placed before the Advisory Board and was not considered by the State Government from 23.01.2024 to 30.01.2024. It is arbitrariness to keep the representation lingering inordinately and that too when already relevant papers were before the State Government on or prior 30.01.2024. The rejection of representation later on 07.03.2024 does not conform to Article 22(5) of the Constitution of India.

10. Learned counsel for the petitioner has rightly referred to the judgment of the Supreme Court in the matter of **B. Alamelu Vs. State of T.N. and others** (supra). We propose to rely upon para

No. 6. In the present matter also we have noticed slackness and callous attitude on the part of the Government.

11. Another judgment of the Supreme Court in the matter of State of T. N. Vs. Senthil Kumar and another (supra) also supports the petitioner's case. As laid down in para No. 09 of the judgment, the case in hand also reflects that the detaining authority communicated grounds of detention, but the representation has not been decided before confirming the detention. We find substance in the submissions of the learned counsel for the petitioner in this regard.

12. Next submission pertains to the subjective satisfaction. We have gone through the relevant papers of the investigation and the offences pitted against the petitioner. CR No. 17/2023 shows that the he was possessing sword. In CR No. 137/2023, he was found to have formed unlawful assembly for compelling the office bearers of private company to engage employees as contract labourers. In CR No. 164/2023, he was found to be member of an unlawful assembly at the gate of a private company causing impediment in smooth functioning. In CR No. 165/2023, he was again found to be unlawfully assembled for pressing the demands of labourers. In the last offence bearing CR No. 407/2023, he was found to be hurling slogans and demonstrating for issuance of caste certificates at the office of Collector, causing obstruction to the traffic.

13. It is noticed that the petitioner is connected with some

disputes with the management of the private company, which resulted in registration of CR No. 137/2023, CR No. 164/2023 and CR No. 165/2023. The offences pitted against the petitioner do not show that the activities of the petitioner were of such nature that could not have been curbed by regular penal laws.

14. Considering subjective satisfaction as can be seen from the grounds of objection, we are of the considered view that drastic action against the petitioner was not warranted. We do not find activities of the petitioner were detrimental to the public order. Findings recorded in para No. 6 of the grounds of objection that the petitioner was found to have indulged in crimes against the public property and human body are perverse. The subjective satisfaction is defective, which would vitiate the impugned order.

15. Learned counsel for the petitioner has assailed reliability of the in camera statements. In camera statements are corroborative in nature. It is further submitted by the learned counsel for the petitioner that the petitioner was roped in a false case of CR No. 17/2023, in which he was found to be in possession of a sword. We do not propose to embark an enquiry into merits of the individual offences pitted against him. We, therefore, do not accept the submissions of the petitioner in this regard. In our conclusion, we find that the impugned order is unsustainable.

16. For the reasons recorded above, we pass following order :

O R D E R

- 1) The Criminal Writ Petition is allowed.
- 2) The petitioner Bhikan Ramesh Koli shall be set at liberty forthwith.
- 3) The Criminal Writ petition is disposed of.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb/March 24