



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 156 OF 2024

Sayedu @ Syed Karim S/o Syed Husain,
Age:-31 years, Occu:- Labour
R/o- Sailani Nagr, Aundha (N)
Tq. Aundha(N) Dist Hingoli.

.. Petitioner

Versus

- 1) State of Maharashtra,
Through its Principal Secretary,
Home Department, Mantralaya, Mumbai.
- 2) Collector/District Magistrate,
Hingoli.
- 3) Superintendent of Police,
Hingoli.
- 4) PSO, Police Station, Aundha (N)
Dist. Hingoli.

.. Respondents

AND
CRIMINAL APPLICATION NO. 402 OF 2024 IN
CRIMINAL WRIT PETITION NO. 156 OF 2024
(SAYEDU @ SYED KARIM S/O SYED HUSAIN
VS.
THE STATE OF MAHARASHTRA AND OTHERS)

Advocate for petitioner / applicant : Mr. Uttam L. Talegaonkar (Through Legal Aid)
APP for the respondent – State : Mr. G.A. Kulkarni

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

RESERVED ON : 12 MARCH 2024
PRONOUNCED ON : 19 MARCH 2024

ORDER (MANGESH S. PATIL, J.) :

Under Article 226 of the Constitution of India, the petitioner is challenging the order of detention passed by the respondent no. 2 – the District Magistrate, Hingoli under section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers [Drug-

offenders, Dangerous persons and video pirates] Act, 1981 (hereinafter 'MPDA Act') on a proposal submitted by respondent nos. 3 and 4 under section 3(1).

2. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. The impugned order which is subsequently confirmed by the respondent no. 1 under section 3(3) of the MPDA Act is based on following criminal record and the preventive action.

Sr. No.	Name of Police Station	Crime Registration No.	Arrest date and Station Diary entry of the accused person	Court Case No.	Present Stage of the Crime
1	Aundha Nagnath	86 / 2021 Section 307, 353,332,120B,336,341,143, 147,148,149,506,188,427 of Indian Penal Code with Sec. 135 of Maharashtra Police Act with Sec. 3,7 of Prevention of Damage to Public Property Act	Released on 27.08.2021 since High Court has granted pre-arrest bail.	R.C.C. No. 210 / 2022	Sub judice
2	Aundha Nagnath	43 / 2023 Section 326,324,323,143,147,149 of Indian Penal Code with Section 4 / 25 Indian Arms Act	Date 27.03.2023 Time 13.28 Station Diary Entry 20 / 2023	..	Under Investigation
3	Aundha Nagnath	179 / 2023 Section 354(A),294,323,143,147, 149 of Indian Penal Code	Date 28.05.2023 Time 04.35 Station Diary Entry 04 / 2023	..	Under Investigation
4	Aundha Nagnath	186 / 2023 Section 153A of Indian Penal Code	Date 01.06.2023 Time 22.30 Station Diary Entry 31 / 2023	..	Under Investigation
5	Aundha Nagnath	201 / 2023 Section 341,504,506,323 of Indian Penal Code	Said accused is released by giving notice on 08.06.2023	RCC No. 201 / 2023	Sub judice

Preventive Action

Sr. No	Name of Police Station	Chapter Case No. and Date	Section	Result
1	Aundha Nagnath	08 / 2023 Date 22 / 04 / 2023	110 Cr.P.C.	01 Year long term Bond has been taken

Besides, statements of two anonymous witnesses recorded have also been relied upon to brand the petitioner as a 'dangerous person'.

4. Learned advocate for the petitioner would submit that the petitioner is an activist of an organization and had made attempts to unravel the illegal activities of police personnel which has triggered them to recommend his preventive detention. He has been implicated in false cases, three of which are still under investigation and the one is pending trial. He has been released on bail.

5. Apart from such general arguments and the stand of the petitioner, the learned advocate would rely upon following grounds for substantiating his prayer for quashment of the impugned order.

- i) Subjective satisfaction is not reasonable and plausible and is rather arbitrary and perverse.
- ii) The crimes against the petitioner relied upon by the detaining authority have no potential to disturb public order.
- iii) Opportunity of making representation by serving the relevant documents has not been extended and there is violation of Article 22(5) of the Constitution of India.
- iv) Statements of the anonymous witnesses have not been verified and copies thereof were not given to the petitioner.

- v) No order of preventive detention could have been legally passed and approved at a stretch for 12 months.
- vi) The grounds of detention are not communicated to the petitioner within the statutory time prescribed under section 8(1) of the MPDA Act.
- vii) The papers were not placed before the Advisory Board within three weeks of the detention as is contemplated under section 10 of the MPDA Act.
- viii) The petitioner has been detained for more than three months without the matter being considered by the Advisory Board.
- ix) The detention order has not been approved by the respondent no. 1 within 12 days under section 3 of the Act.

6. To buttress his submissions, the learned advocate for the petitioner would rely upon the following decisions :-

i) Lallan Prasad Chunnilal Yadav Vs. B. Ramamurthi and others; (1992) 3 Supreme Court Cases 498

ii) Balu S/o Waman Patole Vs. The Commissioner of Police and others (Criminal Writ Petition no. 155 of 2019 Judgment dated 26-03-2019)

7. Per contra, the learned APP would submit that all the mandatory process under different provisions of the MPDA Act have been meticulously followed. There is no breach. Subjective satisfaction is based on the objective material and is plausible one. This Court in exercise of the powers under Article 226 of the Constitution of India cannot substitute such satisfaction. The offences committed by the

petitioner relied upon by the detaining authority are falling under Chapter XVI of the Indian Penal Code. It has taken into consideration such four offences committed in a span of three months. The statements of anonymous witnesses have been taken into consideration after verification. There is no delay. Opportunity of making representation was extended after the petitioner was served with all the grounds of detention. There is no procedural lapse and the petition be dismissed.

8. We are alive to the limitations on the powers of this Court in exercise of the powers under Article 226 of the Constitution of India.

9. It is trite that since the impugned order is of preventive detention, affecting the fundamental rights of the petitioner, the provisions of the MPDA Act and the impugned action will have to be strictly in accordance with and within the time frame prescribed under different provisions of the MPDA Act.

10. It is necessary to note that the respondent no. 2 detaining authority has filed affidavit in reply. It expressly mentions about the grounds of detention having been served to the petitioner in the statutory time. To be precise, it mentions that after receipt of the proposal together with the papers, the statements of the anonymous witnesses were verified by the Sub Divisional Police Officer, Hingoli Mr. P.G. Deshpande.

11. Taking up different grounds in seriatim, as far as ground of validity of subjective satisfaction is concerned, four offences committed between February 2023 and June 2023 would demonstrate that in the month of February, he was involved in a crime committed as a member of an unlawful assembly. The incident had taken place on 27-02-2023. The injured therein had expressly stated about the accused persons including the petitioner herein having assaulted him. The petitioner was carrying a knife with which he assaulted him and was admitted in a hospital. Crime no. 179 of 2023 was committed on 27-05-2023. He is alleged to have outraged modesty of the informant, again as a member of an unlawful assembly and in furtherance of the common object. He was thereafter booked on 01-06-2023 for the offence punishable under section 153-A of the Indian Penal Code for broadcasting a video on his mobile with an intent to create enmity between two religions. On 08-06-2023 in crime no. 201 of 2023 without any rhyme and reason, he allegedly wrongfully restrained complainant after hurling abuses and even threatened him.

12. Apart from these four crimes, three of which are under Chapter XVI of the Indian Penal Code, statements of two anonymous witnesses have also been considered by the detaining authority. It is alleged by first witness that on 25-05-2023 in evening while he was passing from Tipu Sultan chowk, Aundha Nagnath, the petitioner with his accomplices threatened him at the point of knife, demanded money

and picked up Rs.850/- from his pocket and threatened him of dire consequences if the matter was reported to police. The second witness has stated that on 04-06-2023 at about 8.00 pm when he was in Sailani nagar, Aundha Nagnath in connection with his work, the petitioner accosted him, abused and beaten him without any reason. It is pertinent to note at this place that apart from the specific stand being taken in the affidavit in reply filed by the respondent no. 2 – District Magistrate, the statements have been duly verified by the Sub Divisional Police Officer.

13. The afore-mentioned material considered by the detaining authority to reach a conclusion that he is a dangerous person, the offences being peculiar in nature, in our considered view, is a plausible one. The two of the offences have been committed by him as a part of the unlawful assembly. He has already been booked under section 153-A of the Indian Penal Code which is an offence which inherently has the potential of disturbing the public order. The statements of the anonymous witnesses also indicate that without any animosity the petitioner has the tendency to terrorize the citizens. In view of such material, one can safely observe that the subjective satisfaction reached by the detaining authority is based on objective material which it has considered in the proper perspective.

14. Coming to the ground regarding violation of Article 22(5) of the Constitution of India, the affidavit in reply expressly mentions about

the grounds of detention having been served to the petitioner with all the necessary documents and about having extended him opportunity to make representation. It has been expressly mentioned in paragraph no. 16 of the affidavit in reply that the information about detention and the place of detention was given to the petitioner's relative Syed Altaf Syed Hussain on 27-06-2023. The grounds of detention and other relevant papers were served upon him on 29-06-2023 in presence of the jail authorities. There is no material to demonstrate that these are factually incorrect statements. Rather we have been shown the original papers which clearly bear signatures and thumb impressions of the petitioner with the dates. Consequently, it cannot be said that either the documents and grounds of detention were not furnished to him or that he was not extended any opportunity of making a representation.

15. Coming to the next ground, as has been already observed herein-above, apart from the statement in the affidavit in reply of the District Magistrate, the statements of the anonymous witnesses bear specific endorsement of the Sub Divisional Police Officer about having verified the statements by enquiring with the witnesses. It also bears the acknowledgment of the petitioner about having received the copies.

16. As far as the period of detention in the impugned order and the approval, suffice for the purpose to observe that the issue is squarely covered by decision in the matter of ***T. Devaki V.***

Government of Tamil Nadu; (1990) 2 SCC 456. Even paragraph no. 79 in ***Ameena Begum V. State of Telangana; (2023) 9 SCC 587,*** sets the issue at rest.

17. As regards the timeline prescribed under different sections of the MPDA Act, the impugned order was passed on 27-06-2023. He was actually detained on the same day. The grounds of detention were served upon him on 29-06-2023 together with all the papers. Those were explained to the petitioner in Marathi by the jail authority. Acknowledgment was obtained from the petitioner about having received the grounds of detention. Each of these papers bear his signature and thumb impression of 27-06-2023 and 29-06-2023. The order of detention was approved under section 3(3) on 07-07-2023.

18. Therefore, apparently, so far as the timeline prescribed under section 3 and 8 seems to have been followed.

19. However, in ground no. 17 of the petition, it has been expressly averred that the order of detention and papers were not placed before the Advisory Board within three weeks of the detention as contemplated under section 10 of the MPDA Act. However, though it has been denied in the affidavit in reply, the reply is conspicuously silent as to exactly on what date, the papers were placed before the Advisory Board. It has merely been mentioned that the Advisory Board

heard the petitioner through video conference on 27-07-2023.

Paragraph no. 22 and 23 read as under :-

22. With reference to ground No. XVII, I say and submit that the grounds of detention were communicated and placed before the advisory board in the stipulated time period as mentioned in the Act. There is no violation of any section of MPDA Act. Hence the petition filed by the petitioner deserves to be dismissed and kindly be dismissed in the interest of justice.

23. With reference to ground No. XVIII, I say and submit that deponent No. 02 has passed the order of detention on date 27/06/2023 under section 3 of the MPDA Act 1981 and the petitioner was given chance to be heard before the Hon'ble Advisory Board for which the Video Conference was kept on date 27/07/2023. The petitioner was heard by Hon'ble Advisory Board, and the Board found that there is no point in the say pleaded by the petitioner for which the Hon'ble Advisory Board recommended the confirmation to the order of detention passed by the deponent no. 02 and all the rules and regulations are completely followed while passing the order. There is no violation of any section of MPDA Act. Hence the petition filed by the petitioner deserves to be dismissed and kindly be dismissed in the interest of justice.

20. When section 10 requires the papers to be placed before the Advisory Board within three weeks of the actual detention, it was imperative for the respondents to have disclosed this ground not only by filing appropriate affidavit but even by producing the documents to establish the fact that the papers were actually placed before the Advisory Board within three weeks of actual detention which happened on 27-06-2023. In our considered view, this lapse would go to the root of the impugned order.

21. In substance, though we are not with the petitioner in respect of other aspects and grounds being raised by him for

impugning the order of detention, absence of any material to demonstrate strict compliance with section 10 of the MPDA Act which mandates the papers to be placed before the Advisory Board within three weeks of actual detention, in our considered view, would vitiate the impugned order.

22. The writ petition is allowed.

23. The petitioner shall be set at liberty forthwith.

24. Pending application is disposed of.

25. We quantify the fees of advocate for the petitioner - Shri Uttam L. Telgaonkar to be Rs.3,000/- (Rs. Three Thousand), to be paid by High Court Legal Service Sub-Committee at Aurangabad.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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