



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

Criminal Writ Petition No. 300 / 2024

Dnyaneshwar @ Mauli s/o Devidas Kharad,

Age : 35 years, Occu. Agri.

R/o Siddheshwar Phata, Gondi,

Tq. Ambad, District Jalna.

...Petitioner

Versus

1. State of Maharashtra
Through Secretary,
Home Department (Special),
Mantralaya, Mumbai.
2. The State of Maharashtra
Through District Magistrate, Jalna.
3. The State of Maharashtra,
Superintendent Central Jail,
Aurangabad.
4. The Assistant Police Inspector,
Gondi Police Station,
Tq. Ambad, Dist. Jalna.

..Respondents

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Advocate for the Petitioner : Mr. R.G. Hange h/f Mr. A.R. Hange

A.P.P. for Respondents /State : Mr. G.A. Kulkarni

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

**RESERVED ON : 21 MARCH 2024
PRONOUNCED ON : 2 APRIL 2024**

JUDGMENT [Per Shailesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard the matter finally with the consent of both the parties.

2. The petitioner is aggrieved by the order dated 04.12.2023 passed by the respondent no.2/District Magistrate, detaining him 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 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience). Hence, this petition is filed.

3. The respondent no.2/detaining authority considered following offences and two in-camera statements of the witnesses to hold him liable for detention.

Sr. No.	Police Station	C.R. Number	Date of Registration	Nature of Offence
1	Gondi Tal. Ambad	509/2019	27.12.2019	Under Sections 379 of IPC r/w Section 3 & 4 mines and minerals act.
2	Gondi Tal. Ambad	495/2019	17.12.2020	Under Sections 379, 109, 34 of IPC
3	Gondi Tal. Ambad	271/2021	08.08.2021	Under Sections 379 of IPC r/w Section 3 & 4 mines and minerals act, section 15 of environment protection act and section 48(7), 48(8) of Maharashtra Land Revenue Code 1966.
4	Gondi Tal. Ambad	132/2023	01.04.2023	Under Sections 379 of IPC r/w Section 3 & 4 mines and minerals act,
5	Gondi Tal. Ambad	144/2023	07.04.2023	Under Sections 353, 504, 506, 294 of IPC
6	Gondi Tal. Ambad	331/2023	22.07.2023	Under Sections 379 of IPC
PREVENTIVE ACTION				
1	Gondi Tal. Ambad	07/2023	06.05.2023	Under Section 110 of Cr.P.C.

4. The petitioner is committed to prison on 06.12.2023. The grounds of detention and relevant papers are served on him on 06.12.2023. State Government approved detention vide order dated 14.12.2023. After detention, the grounds on which order was passed and the order was placed before the Advisory Board. Board submitted its report on 02.01.2024. The State Government confirmed the order of detention on 11.01.2024.

5. Learned Counsel for the petitioner submits that subjective satisfaction by the detaining authority is perverse. There is no cogent material to resort to drastic action of detention. In-camera statements are unreliable. The offences pitted against the petitioner do not show his incriminating role. It is further submitted that orders of bail have not been considered. Lastly, the submission is that there is delay of more than four months in passing the order of detention from registration of the last offence.

6. Learned Counsel for the petitioner seeks reliance upon the following judgments :

- (i) Devidas Lalji Ade Vs. State of Maharashtra and Ors.
Criminal Writ Petition No.469/2022
- (ii) Naseem @ Nasimoddin Moseenoddin Jamadar Vs. State of Maharashtra and Anr.
Criminal Writ Petition No.278/2022
- (iii) Sandeep Govind Pawar Vs. State of Maharashtra and Ors.
Criminal Writ Petition No.172/2023

7. Per contra, learned APP supports impugned order on the basis of affidavit-in-reply. He also places on record relevant dates of events. He would submit that petitioner is found to be habitual offender involved in serious offences. The papers of investigation of the offences were considered by the authority. After considering all relevant material, subjective satisfaction is arrived at. He would submit that there was no need to consider bail orders separately and to deal with them. To demonstrate potentiality of the petitioner, the proximity of last three offences is shown.

8. We have heard submissions advanced by the learned Counsel for both the sides. We have gone through relevant material placed before us. The impugned action against the petitioner was taken on the basis of six offences, a preventive action and two statements. A common thread of all the offences is that alleged activity of the petitioner has a nexus to excavation, transportation and theft of sand.

9. The last offence was registered on 22.07.2023 bearing C.R. No.331/2023. It also reveals from record that in-camera statements were recorded on 01.07.2023 and 24.07.2023. They were verified by Sub-Divisional Police Officer. The proposal was forwarded and reached the detaining authority on 28.07.2023. The impugned order was passed on 04.12.2023. The petitioner was actually detained on 06.12.2023. On the same date, he was served with relevant papers. After passing impugned order, it was approved by the State Government under Section 3(3). It was further confirmed on 11.01.2024.

10. Record reveals that the petitioner was granted pre-arrest bail in at least three offences pitted against him. In the remaining offences, he was released on regular bail. The grounds of detention do not reflect consideration of reasons assigned by the regular Court for granting bail. Learned APP tries to justify this by submitting that charge sheets are filed in three offences. Relevant papers of investigation were placed before detaining authority. Therefore, it indicates that the detaining authority considered the relevant aspect. This Court is consistently following principles that reasons for enlarging a detainee on bail or pre-arrest bail would constitute relevant inputs for the detaining authority. The grounds of detention do not reflect application of mind to this aspect.

11. Learned Counsel for the petitioner, in this regard, relies upon the judgment in the matter of Naseem @ Nasimoddin Moseeonoddin Jamadar Vs. State of Maharashtra and Anr. We have considered relevant paragraph no. 14. He is right in making submissions in this regard. Subjective satisfaction suffers from shadow of doubt.

12. It is being submitted that the first offence was registered on 27.12.2019 bearing C.R. No.509/2019. Next one was registered on 17.12.2020. Third one on 08.08.2021. The proposed action is taken against the petitioner in 2023. The submission is that there is no live link between the proposed action and material used against the detainee. It reveals that all though first three offences were from 2019 to 2021, last three offences are from 01.04.2023 to 22.07.2023, within

close proximity of three months inter se. Immediately after registration of the last offence, the in-camera statements of the witnesses were recorded. The offences from 2019 to 2021 are cited to show the tendency of the petitioner and his track record. We find no substance in the submission of the learned Counsel that old and stale cases are considered.

13. We have considered in-camera statements of the witnesses. Those were duly verified by competent authority. The statements lack material particulars and no offence was registered pursuant to the incidents referred in the statements. In-camera statements have a corroborate value. The proposal of detention would not be decided solely on the basis of in-cameral statements. Therefore, vagueness of the statements per se would not be fatal.

14. Learned Counsel for the petitioner made an endeavour to point out FIR in each offences to argue that the involvement of the petitioner is false implication and there is lack of evidence. The detaining authority is not expected to consider the merits of the offence or the prosecution pitted against the detainee.

15. Next submission is in respect of delay in passing impugned order. Last offence was registered on 22.07.2023. One of the in-camera statements was recorded on 01.07.2023 and another was recorded on 24.07.2023. Those were verified by independent authority. The proposal was prepared and reached detaining authority on

28.07.2023. Thereafter impugned order was passed on 04.12.2023. In this regard, learned APP would point out the sequence of events from paragraph no.18 and 19 of reply. There is no explanation as to why time from 28.07.2023 to 04.12.2023 was consumed. There is laxity in passing impugned order. We are of the considered view that delay of more than four months has not been explained satisfactorily.

16. We have carefully considered the offences pitted against the petitioner. It has been already recorded that all the offences disclosed his activities of illegal excavation, transportation, sale and theft of sand. The subjective satisfaction is recorded in paragraph nos. 6 to 8 of grounds of detention. In paragraph no.6, petitioner has been recorded as 'dangerous person'. The respondent no.2 reiterates it in paragraph no.5 of reply. All offences pitted against petitioner indicate that he could be sand smuggler. Surprisingly, no such finding is recorded by detaining authority. This is non-application of mind.

17. Learned Counsel would rely upon judgment in the matter of Devidas Lalji Ade (supra). We have gone through paragraph nos. 14 to 18 of the said judgment. In that matter only three offences were considered to record petitioner as dangerous person. The judgment is distinguishable on facts. We are not prepared to follow the same.

18. Learned Counsel for the petitioner has also submitted that there is breach of Section 10. The petitioner was actually committed to prison on 06.12.2023. Order of detention was approved on 14.12.2023.

On the same day, the papers were forwarded to the Advisory Board. He was heard and opinion was given by Advisory Board on 02.01.2024 with a recommendation to confirm order of detention. Thereafter on 11.01.2024 order of confirmation was issued by the Government. A representation was made by the petitioner on 29.12.2023 which is undisputed. The representation was not placed before the Advisory Board. The respondents failed to consider it. We cannot be oblivious of law that making representation is a valuable constitutional safeguard provided by Article 22(5). Non-consideration of representation amounts to violation of constitutional right of petitioner which is fatal.

19. The result of above analysis is that the subjective satisfaction in the present matter is perverse. The delay in passing impugned order has gone unexplained. The representation dated 29.12.2023 has not at all been considered by the competent authorities. In such a situation, we have no alternative than to quash the impugned order of detention. Therefore, we pass following order :

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause (B).
- (ii) Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE