



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

CRIMINAL WRIT PETITION NO. 347 OF 2024

Ajaysingh Hatyarsingh Tak,
Age : 25 Years, Occu. : Labour,
R/o Indira Nagar, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai – 32.
2. The District Magistrate, Hingoli,
Dist. Hingoli.
3. The Superintendent of Jail,
Central Prison, Aurangabad. .. Respondents

Shri Krushna Solanke, Advocate h/f Shri S. G. Ghongade,
Advocate for the Petitioner.
Shri G. A. Kulkarni, A.P.P. for the Respondent Nos. 1 to 3.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 20 MARCH 2024.**

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

. Rule. Rule is made returnable forthwith. Heard both the sides finally at the admission stage.

2. The petitioner is challenging order of detention dated

03.05.2023 passed by the respondent No. 2/District Magistrate, Hingoli U/Sec. 3(1) 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). The petitioner is held to be a dangerous person on the basis of CR No. 181/2023 and CR No. 203/2023 and two in camera statements.

3. Learned counsel for the petitioner submits that relevant material in the form of orders of bail have not been taken into consideration which affects the subjective satisfaction. He would submit that the offences pitted against the petitioner would not disclose any apprehension to public order so as to warrant drastic action under the M. P. D. A. Act. It is further submitted that timeline prescribed by Section 11(1) of the M.P.D.A. Act has not been followed. The detaining authority has not properly appreciated in camera statements and arrived at a defective conclusion.

4. Learned counsel for the petitioner refers to following judgments of the Supreme Court and this Court :

- (I) Ameena Begum Vs. State of Telangana and others reported in (2023) 9 SCC 587.
- (II) Sushanta Kumar Banik Vs. State of Tripura and others reported in AIR 2022 SC 4715.

- (III) Lallan Prasad Chunnilal Yadav Vs. S. Ramamurthi and othrs reported in 1992 ALL MR Online 510 (S.C.).
- (IV) Pandurang @ Panda Narayan Garud Vs. The District Magistrate Pune and others judgment dated 12.08.2022 in Cri. W. P. No. 454 of 2022.
- (V) Pawan Tukaram Kudale Vs. Commisssoner of Police, Pune and others reported in (2019) 1 AIR Bom R(Cri) 288.
- (VI) Nagesh Laxman Takmoge Vs. The Commissioner of Police, Solapur and others reported in 2019 All MR (Cri) 724.
- (VII) Ashokrao Uttamrao Pawar Vs. State of Maharashtra and others judgment dated 08.02.2023 in Cri. W. P. No. 738 of 2022.

5. Learned Assistant Public Pleader would support the impugned order by referring to affidavit in reply filed in the matter. It is submitted that due procedure of law has been followed for arriving at the impugned order. The timeline prescribed under the statute has been strictly adhered to. The conclusion drawn by the detaining authority is reasonable and plausible. It is further submitted that the petitioner is found to be involved in serious offences and habitual in using weapons. It is lastly submitted that no interference is called for in the impugned order under the jurisdiction of this Court.

6. We have considered rival submissions of the parties. Learned A. P. P. has produced on record original papers on the basis of which impugned action has been taken. Besides in camera statements, offences (1) CR. No. 181/2023 U/Sec. 457, 380

of the Indian Penal Code registered on 22.03.2023 and (2) CR No. 203/2023 U/Sec. 3/25 of the Arms Act registered on 30.03.2023 have been taken into consideration by the detaining authority.

7. We have considered first information report of CR No. 181/2023. The petitioner was released on bail in that case. We have also considered the allegations of another offence in CR No. 203/2023. In that offence also he was released on bail. The grounds of detention do not show that the orders releasing him on bail were considered by the detaining authority. It is settled view that reasons assigned for release of detenu on bail are relevant input for arriving at a subjective satisfaction. The subjective satisfaction in the present matter reflects non application of mind, which is fatal.

8. We are fortified in our view by judgments rendered in the matters of Pandurang @ Panda Narayan Garud Vs. The District Magistrate Pune and others and Pawan Tukaram Kudale Vs. Commissioner of Police, Pune and others.

9. We have considered relevant papers of investigation of both the offences. In CR No. 180/2023, it is alleged that house of the informant was broken open and trespassed by unknown person. Cash and television set was found to be stolen. During the investigation it revealed that the petitioner was involved. The offence is U/Sec. 457 and 380 of the Indian Penal Code. In another offence bearing CR No. 203/2023, the allegations against the petitioner are that he was found to be in possession of

Gavathi Katta (country/home made pistol) without any licence. The allegations in both the offences do not reflect the activity detrimental to the public order. There is no reason to infer that normal penal laws are inadequate to curb his activity.

10. We have also gone through in camera statements of both the witnesses recorded on 27.03.2023 and 29.03.2023. The grounds of detention do not refer to the incident cited by the witnesses in their statements. Both the witnesses specifically cite their confrontation with the petitioner. The statements have not been properly appreciated by the detaining authority.

11. We have carefully gone through the grounds of detention to examine sustainability of the subjective satisfaction. It appears that the offences previously registered against the petitioner preceding last two offences have also been taken into account to describe him as a weapon wielding desperado, dreaded criminal, striking terror in the mind of peace loving citizens. We have considered affidavit in reply. It shows that previous offences registered against the petitioner have also been taken into account which is impermissible being extraneous. For this reason also impugned order is unsustainable.

12. Petitioner was committed on 03.05.2023. Proposal was referred to the Advisory Board on 12.05.2023. Advisory Board forwarded the matter to the State Government with its opinion on 22.06.2023. The State Government confirmed the impugned order on 07.07.2023. We have gone through the original papers

produced before us by the learned A. P. P. It transpires that advisory board formed its opinion in writing on 21.06.2023 and forwarded it to the State Government on 22.06.2023. We find that the timeline provided by Sec. 11(1) of the M.P.D.A. Act has been followed. Impugned order cannot be faulted on this count.

13. Learned counsel for the petitioner has referred to the judgment of the Supreme Court in the matter of Ameena Begum Vs. State of Telangana and others (supra). We have considered relevant paragraph Nos. 34 to 37, 46 and 47 which explain the difference between 'law and order' and 'public order'. We have applied the same yardstick while examining the subjective satisfaction.

14. Having considered the relevant papers of offences pitted against the petitioner and in camera statements, we are of the considered view that subjective satisfaction is defective. Material pitted against the petitioner falls short to take drastic action under the M.P.D.A. Act. His activities cannot be said to be prejudicial to public order.

15. For the reasons recorded above, we find that the impugned order is unsustainable on the ground of subjective satisfaction. We, therefore, pass following order.

O R D E R

- (i) The writ petition is allowed.

(ii) The petitioner shall be set at liberty forthwith.

(iii) The Criminal writ petition is disposed of.

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

bsb/March 24