



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 349 OF 2024

Baban @ Gabarya Bhagaji Makale,
Age. 40 years,
R/o. Near Gate No. 56, Mukundnagar,
Munkundwadi, Aurangabad.Petitioner

Versus

1. The State of Maharashtra
2. The Police Commissioner
Police Commissioner Officer, Aurangabad.
3. The Superintendent of Police,
Aurangabad Central Prison,
Aurangabad.
4. The Police Inspector,
Mukundwadi Police Station,
Aurangabad (Urban).Respondents

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Advocate for Petitioner : Mr. Akash D. Gade
APP for Respondents : Mr. Amar V. Lavte

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

DATE : 02 MAY 2024

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

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

2. Petitioner is challenging order of detention dated 30.08.2023 passed by respondent no. 2 under Section 3 (1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and 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).

3. The Detaining Authority has recorded that petitioner is a dangerous person on the basis of five offences, one preventive action, previous order of detention under the MPDA Act and two in-camera statements.

4. Learned counsel for the petitioner submits that subjective satisfaction is perverse and arbitrary. The orders enlarging petitioner on bail have not been considered by the Detaining Authority. In-camera statements were not verified by the Competent Authority and liable to be discarded. There is delay in passing detention order and timeline has not been followed by the respondents. Learned counsel seeks to rely upon judgment of *Avinash @ Balu Atmaram More Versus The State of Maharashtra and others*, 2023 ALL.M.R. (Cri.) 1804 and *Nenavath Bujji Etc Versus State of Telangana*, AIR 2024 SC 1610.

5. Learned APP supports impugned order on the basis of affidavit-in-reply of respondent no. 2. He would oppose the submissions as petitioner is involved in serious offences falling under Chapter XVI and XVII of the Indian Penal Code. The orders releasing on bail were considered by the Authority though their reasonings are not reflected in the impugned order. The offences pitted against petitioner are under investigation and there is a recovery from the petitioner which shows his involvement. Learned APP would submit that the timeline provided by the statute has been specifically followed and for that purpose invited out attention to the affidavit-in-reply. He would vehemently submit that in none of the offences there was any animosity against the victim / informant. That shows petitioner has tendency to commit offence randomly against any person. Lastly, learned APP would invite our attention to Section 5 A of the MPDA Act. The subjective satisfaction is reasonable and plausible and cannot be faulted.

6. We have considered rival submissions of the parties, it reveals from record that five offences are pitted against the petitioner which are falling in Chapter XVI and XVII of the Indian Penal Code. Those are serious non bailable offences. There is a recovery of the stolen amount and articles from the petitioner in

almost all the offences. Besides the petitioner already suffered order of detention dated 20.11.2020. He indulged in the criminal activity after under going the earlier detention order.

7. We have considered grounds of detention in which the Detaining Authority has specifically considered the nature of the offences pitted against him, recovery at his instance and his habitual tendency to commit offences. Besides that, both in-camera statements and preventive action have been considered. The veracity of the in-camera statements was duly considered in paragraph no. 12 in the impugned order of detention. We do not find that the Detaining Authority has taken into account any extraneous material or left out any relevant material pitted against the petitioner.

8. We are conscious of the fact that we are not exercising appellate jurisdiction but restricted jurisdiction. After appreciation of the material, the Detaining Authority has specifically recorded findings in paragraph nos. 6 to 11 to arrive at the subjective satisfaction. We do not find that the subjective satisfaction is perverse or arbitrary. It also shows that Detaining Authority has

recorded that petitioner is habitual offender and considering his track record, he is likely to indulge in similar activities in future.

9. Considering the gravity of the material, it has been recorded that there is prejudice to the maintenance of public order. Considering the material, the Detaining Authority has come to conclusion that the activities are not possible to be curbed by ordinary penal laws. This exercise of jurisdiction is within four corners of law and as contemplated by provisions of Section 3 of the MPDA Act.

10. Learned counsel for the petitioner seeks to rely upon the latest judgment of the Supreme Court in the matter of *Nenavath Bujji* (supra). Our attention is invited to paragraph no. 43. Supreme Court has laid down parameters to arrive at the subjective satisfaction. Applying those parameters to the case in hand we find that subjective satisfaction is intelligible one and needs no interference.

11. It is vehemently submitted by the learned counsel that orders enlarging the petitioners on bail have not been taken into account by the Detaining Authority. The grounds of objection do not show that the reasons assigned by the criminal courts for enlarging petitioner on bail have been specifically considered. It is

settled legal position of law that the reasons enlarging detenue on bail are valid inputs for the Detaining Authority. However, by implication of Section 5 (A) of the Act, even if there is a merit in the submission of the petitioner in this regard, entire impugned order cannot be quashed.

12. In this regard, it is useful to refer to law laid down by Supreme Court in the matter of *Gautam Jain Versus Union of India and another*, **(2017) 3 SCC 133**. Paragraph 18 is as follows :

“18. A glimpse of the nature of issue involved, and the arguments which are advanced by both the parties thereupon, makes it crystal clear that insofar as the legal position is concerned, there is no dispute, nor can there be any dispute in this behalf. Both the parties are at ad-idem that if the detention order is based on more than one grounds, independent of each other, then the detention order will still survive even if one of the grounds found is non-existing or legally unsustainable (See Vashisht Narain Karwaria). On the other hand, if the detention order is founded on one composite ground, though containing various species or sub-heads, the detention order would be vitiated if such ground is found fault with (See A. Sowkath Ali). Thus, in the instant case, outcome of the appeal depends upon the question as to whether detention

order is based on one ground alone or it is a case of multiple grounds on which the impugned detention order was passed.”

(As verbatim)

13. We have considered in-camera statements. Those were recorded on 09.08.2023 and 11.08.2023 by Police Inspector. Thereafter, both the statements were verified by Deputy Commissioner of Police on 13.08.2023 and there is an endorsement to that effect. These statements and verification were duly considered by the Detaining Authority in paragraph no. 11 of the grounds of detention. We do not find any merit in the submission of the petitioner that statements are liable to be discarded.

14. To ascertain the adherence to timeline as provided by Section 8 to 11 of the MPDA Act, we have gone through the affidavit-in-reply. The Detaining Authority has tendered the progress of the proposal in paragraph no. 11. Order of detention was passed on 30.08.2023. Petitioner was absconding and actually detained on 06.09.2023. He was served with relevant papers on 08.09.2023. There is compliance of Section 8 (1) of the MPDA Act, within prescribed time.

15. The proposal was submitted to the State Government. Impugned order was approved under Section 3 (3) of the MPDA Act on 06.09.2023, within stipulated period prescribed by Section 10 of the Act. Thereafter, matter was referred to the Advisory Board on 19.09.2023. It recommended order of detention. Ultimately, impugned order was confirmed on 17.10.2023 by the State Government. The proposal was placed before Advisory Board within a stipulated period of three weeks from the date of detention. There is no reason to doubt the contents of paragraph no. 11.

16. Record reveals that all five offences pitted against the petitioner were committed from April 2023 to June 2023. Immediately, thereafter in-camera statements were recorded and those were verified. The proposal was forwarded to the Detaining Authority on 25.08.2023. Impugned order was passed on 30.08.2023. We do not find any delay in processing the proposal. Therefore, we reject the submission of the petitioner in this regard.

17. Learned counsel for the petitioner relies on the judgment in the matter of *Avinash @ Balu Atmaram More* (supra). Our attention is invited to paragraph no. 10 which lays down that

Detaining Authority is expected to record a satisfaction that the witnesses were unwilling to launch prosecution. We find that the Detaining Authority has duly exercised the jurisdiction and considered the in-camera statements. He has recorded satisfaction in paragraph no. 11 of the grounds of objection. Therefore, the ratio laid down cannot be made applicable to the present case.

18. In the facts and circumstances as analyzed above, we are of the considered view that no case is made out by the petitioner to cause interference in the impugned order. Criminal Writ Petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]