



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

Criminal Writ Petition No. 373 / 2024

Mirza Shabbar Baig Mirza Gafar

Age : 33 years, Occ.Labour,

R/o Khadakpura, Nanded,

Taluka & District Nanded.

...Petitioner

Versus

1. State of Maharashtra

Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai.

2. The District Magistrate,
Nanded.

3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad
Dist. Aurangabad.

..Respondents

Advocate for the Petitioner : Mr. Shailendra S. Gangakhedkar

A.P.P. for Respondents /State : Mr. V.K. Kotecha

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

RESERVED ON : 15 APRIL 2024

PRONOUNCED ON : 23 APRIL 2024

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

. Rule. Rule is made returnable forthwith. Heard both the sides finally with their consent.

2. The petitioner is challenging order dated 21.12.2023 passed by the respondent no.2/District Magistrate, Nanded and order dated 29.12.2023 passed by the respondent no.1 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. Respondent no.2/detaining authority has arrived at a subjective satisfaction that the petitioner is a dangerous person. The detaining authority has considered C.R. No.523/2023 punishable under Sections 452, 504, 506, 294 of the Indian Penal Code read with Section 4/25 of Arms Act, four preventive actions under Sections 107 and 110 of the Code of Criminal Procedure, one externment proceeding and two in-camera statements of the witnesses. Although sponsoring authority forwarded material of fifteen offences registered against the petitioner, only last offence was considered.

4. Learned Counsel for the petitioner has tendered on record grounds of objection and the relevant papers served on the petitioner and various judgments in support of his submissions. He submits that the detaining authority failed to consider reasons assigned by the Criminal Courts while releasing petitioner on bail in C.R. No.445/2019; C.R. No. 30/2021; C.R.

No.69/2023; C.R. No.87/2023 and C.R. No.523/2023. He would submit that there is no objective assessment as the petitioner was implicated in last two offences due to animosity and the dispute with then informant.

5. He would submit that the representation dated 25.12.2023 has not been considered by the respondent no.1/State Government before approving order of detention. The petitioner was served with illegible documents and could not make effective representation. Lastly it is submitted that there is no cogent material to justify the subjective satisfaction.

6. Learned APP supports impugned order relying on affidavit-in-reply. He submits that the petitioner is a habitual offender indulging in criminal activities since 2015. Considering track record and the preventive actions initiated against him, detaining authority has rightly passed impugned order. He would submit that there is live link between offences pitted against petitioner and the impugned action. He would submit that due procedure of law has been followed.

7. Having considered rival submissions of the parties and the relevant papers, it is noticed that out of fifteen offences registered against the petitioner, only last offence i.e. C.R. No.523/2023 has been taken into account, alongwith other material, by the detaining authority. Action under Section 56(1)(b) of the Maharashtra Police Act was initiated against

the petitioner, but was not taken to the logical end. It is not the case of the respondents that offence pitted against him was committed when order of externment was in force. Petitioner appears to have made representation on 25.12.2023. Respondent No.1 approved order of detention under Section 3(3) of the MPDA Act vide order dated 29.12.2023.

8. Learned Counsel for the petitioner would strenuously argue that orders of bail granted in C.R. No.445/2019; C.R. No. 30/2021; C.R. No.69/2023; C.R. No.87/2023 and C.R. No. 523/2023 have not been considered by the detaining authority. He would further inform that the petitioner was discharged from offence bearing C.R. No.169/2015 vide order dated 09.12.2021 which was not reported and was not considered. Though the sponsoring authority forwarded proposal with the relevant documents of fifteen offences registered against petitioner, only last offence registered on 17.11.2023 was considered. The previous offences and orders enlarging petitioner on bail cannot be said to be part of enquiry by the detaining authority. In order to show antecedents and the potential, the papers of those offences were forwarded to the detaining authority. Same is the case with C.R. No.169/2015 wherein petitioner was discharged. The orders of bail are not relevant for assessing subjective satisfaction of the detaining authority in the present matter. We are unable to approve the submissions of the petitioner in this regard.

9. The petitioner was arrested in the last offence i.e. C.R. No.523/2023. He was released on bail. The grounds of detention do not reflect that the reasons assigned for enlarging him on bail, have been considered. The detaining authority has not applied his mind to the relevant material. We are doubtful as to whether order of bail was ever forwarded to the detaining authority. Learned Counsel for the petitioner has rightly referred to the law laid down in the matters of **Nilesh Sunil Pendulkar Vs. District Magistrate, Ahmednagar & Ors.**, Criminal Writ Petition No.1820/2023 and **Alakshit s/o Rajesh Ambade Vs. State of Maharashtra and Anr.**; Criminal Writ Petition No.626/2022. We propose to adopt same view. We are of the considered view that the subjective satisfaction is defective.

10. Impugned order was passed on 21.12.2023. Petitioner made representation on 25.12.2023. It reached respondent no.1. Order of detention was approved under Section 3(3) of the MPDA Act by the respondent no.1 vide order dated 29.12.2023. Order/letter dated 29.12.2023 does not reflect that representation is considered. Even affidavit-in-reply is silent in this regard. This amounts to violation of safeguard provided under Article 22(5) of the Constitution of India.

11. Learned Counsel for the petitioner would point out illegible documents which were served upon the petitioner. It is sought to be contended that the petitioner was unable to make

representation effectively. We have carefully considered the grounds of objection of the memo of the writ petition. No such ground is pleaded. Representation dated 25.12.2023 also does not mention anything about illegible documents. The respondent has not dealt with grievance in the affidavit-in-reply which is argued for the first time. We are unable to entertain this submission of petitioner which is without foundation.

12. Learned Counsel for the petitioner has assailed subjective satisfaction. Only offence pitted against the petitioner shows that the petitioner was found to be brandishing a sword and marching towards informant and is alleged to have abused and threatened him. All the family members of the informant were present. We have also gone through in-camera statements. It cannot be overlooked that earlier offence was also registered at the instance of same informant. It has been recorded by the High Court in Anticipatory Bail Application No.823/2023 emanating from C.R. No.87/2023 filed by the co-accused that there was previous enmity between informant and accused persons. This aspect has not been considered. We do not find that the subjective satisfaction is based on intelligible grounds.

13. In paragraph no.10 of the ground of detention, it is recorded that the petitioner was acting in a manner prejudicial to the public order. He was on bail in all above cases. On one

hand detaining authority records that only last offence was considered and on the other hand previous offences are also referred to. The subjective satisfaction is self-contradictory and based on extraneous material.

14. Learned APP would refer to proceedings of externment. Admittedly, no order of externment was passed and the proceeding was dropped. Though the petitioner has raised specific ground about dropping of the proceeding for externment, no endeavour is made to place the order on record. Thus, the detaining authority has not properly appreciated the material before it.

15. Considering the reasons assigned above, we find that the subjective satisfaction is perverse and arbitrary. There is violation of article 22(5) of the Constitution of India. We, therefore, propose to quash impugned order as follows :

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