



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

CRIMINAL WRIT PETITION NO. 422 OF 2024

Sachin @ Bedkya Shyam Kale
Age : 20 years, Occu. Labour
R/o Pardhiwada, Hingoli
Tq. and Dist. Hingoli.

...Petitioner

~ Versus ~

1. **The State of Maharashtra,**
through the Additional Chief
Secretary, Home Department
Mantralaya, Mumbai 400 032.
2. **The District Collector**
Collector Office, Hingoli,
Dist. Hingoli.
3. **Sub-Divisional Police Officer,**
Sub-Division Hingoli (Rural)
Dist. Hingoli.
4. **Police Inspector,**
Police Station Hingoli (City)
Tq. & Dist. Hingoli.
5. **The Superintendent of Jail,**
Harsul Central Prison,
Aurangabad.

...Respondents

APPEARANCES

Advocate for the
petitioner

Mr. Shashikant E. Shekade

APP for the Respondent Mr. Amar V. Lavte
Nos. 1 to 5/State

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

DATE : 5 APRIL 2024

ORAL JUDGMENT

(Per Shailesh P. Brahme, J.) :

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

2. The petitioner is assailing order dated 15.09.2023 passed by the respondent no.2/District Magistrate 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).

3. The respondent no.2/District Magistrate recorded that the petitioner is a dangerous person and his activities are prejudicial to the public order. Though sponsoring authority forwarded papers of eight offences registered against him alongwith orders of preventive action, only last two offences were considered. The subjective satisfaction has been arrived at on following material :

i. Offence bearing C.R. No. 678/2023 registered on 07.08.2023 under Sections 457 and 380 of the Indian Penal Code.

ii. Offence bearing C.R. No.709/2023 registered on 20.08.2023 under Sections 457 and 380 of the Indian Penal Code.

iii. Preventive action in Chapter Case No.184/2021 of 19.07.2021 under Section 107 of the Code of Criminal Procedure.

iv. Externment Proceeding No.10/2022 decided on 31.03.2023, externing the petitioner for one year under Section 56 of the Maharashtra Police Act.

v. Two in-camera statements.

4. Learned Counsel for the petitioner submits that the detaining authority committed patent illegality in arriving at subjective satisfaction based on two offences. There is no material to indicate that the activity of the petitioner was detrimental to public order. Orders enlarging petitioner on bail have not been considered by the detaining authority. In-camera statements are unreliable, improperly verified and liable to be discarded. It is further submitted that the petitioner is not involved in offences pitted against him. Those were registered against unknown person. There is nothing incriminating against him.

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

- i Nilesh Sunil Pendulkar Vs. District Magistrate, Ahmednagar and Others. 2024 SCC onLineBom 694.
- ii Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Ors.(2012) 2 SCC 72
- iii Ameena Begum Vs. State of Telangana and Ors. (2023) 9 SCC 587
- v Ashokrao Vs. State of Maharashtra and Ors. (2023) SCC OnLine Bom 347

6. Learned APP Mr. Amar V. Lavte vehemently opposes the submission of the petitioner and supports impugned order.

He submits that the petitioner has indulged into aggravated form of criminal activity which is evident from order of externment. It is further submitted that there is cogent material against the petitioner to arrive at subjective satisfaction and no fault can be found in the impugned order. It is further submitted that in both offences pitted against him, stolen articles have been recovered at his instance. Veracity of the crime cannot be gone into in the proceeding of detention. He would further submit that in-camera statements have been properly verified and reliable. Lastly it is submitted that the criminal activities of the petitioner, indicate disturbance to the public order.

7. Learned APP seeks to rely on following judgments :

- i. Smt. Phulwari Jagadambaprasad Pathak Vs. R.H. Mendonca and Others, 2000 AIR SCW 2727
- ii. Borjahan Gorey Vs. State of W.B. AIR 1972 SC 2256
- iii. Vinod Vithal Rane and Others Vs. R.H. Mendonca and Others, 2001 Bom.C.R.(Cri) 537

8. We have considered rival submissions advanced across the bar. We have also gone through relevant papers of the material pitted against petitioner by the detaining authority. We have also considered affidavit-in-reply filed by the respondent no.2. Glaring feature of the case in hand is that the petitioner has suffered order of externment passed under Section 56 of the Maharashtra Police Act on 31.03.2023. He was externed for one year from Hingoli City. This order has not been challenged by him. During the operation of the order, he indulged in offences pitted against him on 22.08.2023 and 29.08.2023 committing breach of the order.

9. It reveals from record that on 12.09.2023, in-camera statements of the witnesses were recorded. Those were verified on 13.09.2023. The proposal was forwarded by the sponsoring authority on 14.09.2023. The impugned order was passed on 15.09.2023. It was approved under Section 3(3) of the MPDA Act on 25.09.2023. The Advisory Board tendered its opinion on 28.10.2023. It was confirmed on 31.10.2023.

10. We have gone through the relevant papers of the investigation of C.R. No.678/2023 and 709/2023. Both the offences are punishable under Sections 457, 380 of IPC. First Information Reports do not disclose name of the petitioner as those were against unknown person. But on investigation, involvement of the petitioner surfaced. Interestingly, in both the offences the Investigating Officer recorded memorandum under Section 27 of the Indian Evidence Act and recovery panchnama. The stolen articles have been discovered by the petitioner. Investigation in both the offences is in progress. The petitioner has been released on bail in both the offences.

11. We propose to examine the submission of subjective satisfaction in above backdrop. Both the offences fall under Chapter XVI and XVII of IPC which is *sine qua non* to declare detainee as a dangerous person as defined under Section 2 (b-1) of MPDA Act. Though complaints were lodged against unknown persons, during the course of investigation involvement of the petitioner is transpiring. Incriminating material has been collected against him. There is recovery of stolen articles at his instance. Although both the offences are

individual centric, however, if cumulative effect on the basis of the material pitted against the petitioner is considered, there is every reason to believe that his activities are detrimental to the public order. In-camera statements, prevention action taken against the petitioner under Section 107 of Cr.P.C. and order of externment would definitely disclose the gravity of the notorious activity of the petitioner. The detaining authority is justified in holding that the petitioner has indulged in activities prejudicial to the public order.

12. Learned APP relies on judgment of Supreme Court in the matter of Phulwari Jagadambaprasad Pathak (supra). Following is the relevant paragraph :

16. Then comes the crucial question whether 'in-camera' statements of persons/witnesses can be utilised for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. Our attention has not been drawn to any provision of the Act which expressly or impliedly lays down the type of material which can form the basis of a detention order under section 3 of the Act. Preventive detention measure is a harsh, but it becomes necessary in larger interest of society. It is in the nature of a precautionary measure taken for preservation of public order. The power is to be used with caution and circumspection. For the purpose of exercise of the power it is not necessary to prove to the hilt that the person concerned had committed any of the offences as stated in the Act. It is sufficient if from the material available on record the detaining authority could reasonably feel satisfied about the necessity for detention of the person concerned in order to prevent him from indulging in activities prejudicial to the maintenance of public order. In the absence of any provision specifying the type of material which may or may not be taken into consideration by the detaining authority and keeping in view the purpose the statute is intended to achieve the power vested in the detaining authority should not be unduly restricted. It is neither possible nor advisable to catalogue the types of materials which can form the basis of a detention order under the Act. That will depend on the facts and situation of a case. Presumably, that is why the Parliament did not make any provision in the Act in that regard and left the matter to the discretion of the detaining authority. However, the facts stated in the materials relied upon should be true and should have a reasonable nexus with the purpose for which the order is passed.

. In view of above ratio, learned APP is right in

contending that veracity of the crime is not a relevant factor. The submission of the learned Counsel for the petitioner that the petitioner is falsely implicated in the offences and there is no incriminating material is unsustainable.

13. The petitioner has already suffered order of externment passed on 31.03.2023. That was in operation for one year. That was not challenged by him. He committed offences registered on 22.08.2023 and 29.08.2023. He has indulged in criminal activities, committing breach of order of externment. This is aggravated form of misconduct. We have already taken a view in the matter of Aakash Bhagwat Chonde Vs. State of Maharashtra and Others, decided on 31.01.2024 in Criminal Writ Petition No.1810/2023 and Vishal Bhika Koli (Sonwane) Vs. State of Maharashtra and Others, decided on 13.02.2024 in Criminal Writ Petition No.1781/2023 that if a detainee indulges in criminal activity in breach of an order of externment in force, the action for detention cannot be faulted with. We find the subjective satisfaction is reasonable and probable. Learned APP has rightly relied upon the judgment of the Division Bench rendered in the matter of Vinod Vitthal Rane. We have considered paragraph no.15 of the judgment which lays down that the Court cannot sit over the subjective satisfaction recorded by the detaining authority. In that matter also, the detainee had suffered order of externment under Section 56 of the Bombay Police Act.

14. Learned Counsel for the petitioner refers to latest judgment of the Supreme Court in the matter of Ameena

Begum (supra). In that judgment, the difference between the 'law and order' and 'public order' has been explained by the Hon'ble Apex Court. We have cautiously gone through the judgment. After following the principles laid down therein, we have assessed the subjective satisfaction. We find no illegality in holding that activities of the petitioner are detrimental to the public order.

15. The petitioner was enlarged on bail in both the offences. Reasons assigned for enlarging him on bail, have not been taken into account by the detaining authority. Learned Counsel seeks to rely upon the judgment of Nilesh Sunil Pendulkar, Rushikesh Tanaji Bhoite and Ameena Begum (supra) in this regard. In all these judgments, position of law has been reiterated. However the case in hand shows a distinguishing feature of commission of the offences when order of externment was in-force. Therefore by implication of Section 5(A) of MPDA Act, even if the submission of learned Counsel for the petitioner has a merit, impugned order would, still, be legally sustainable.

16. In-camera statements are criticized by the petitioner. We have gone through the statements which were verified by additional Superintendent of Police. Verification is endorsed on the statements which reflects authenticity and truthfulness. It is tried to be canvassed by the learned Counsel for the petitioner that the District Magistrate did not verify the statements. We do not find any statutory provision to mandate verification by the detaining authority. There is due verification by higher police personnel. The statements

corroborate material pitted against him to demonstrate terror established by the petitioner in the vicinity. In our considered view statements are reliable and corroborate the subjective satisfaction of the detaining authority.

17. The learned Advocate for the petitioner relies on the judgment in the matter of Ashokrao (supra). He refers to paragraph no.19 and 20. In facts and circumstances of that case, it is recorded as follows :

19. In the present case, though the two In-camera statements refer to acts of the Detenu which might amount to extortion, there does not appear to be any detail of the fear psychosis that might have been created by those acts or that the same were committed at a public place.

20. In fact a reading of the affidavit on the question of verification of the In-camera statements itself would lead us to believe that the In-camera statements are unreliable and need to be discarded for the following reasons. Though there is a reference to the Authority verifying the statements by discussing/interacting with the witnesses, and the concerned Assistant Commissioner of Police and Deputy Commissioner of Police, a perusal of the statements reveals that other than only endorsing that the Authority had done a verification, there is no reference that the content of the statements was verified by the Detaining Authority i.e. the District Magistrate or that the Detaining Authority has verified that the witnesses were unwilling out of fear of the Detenu to depose against him. It is evident that the subjective satisfaction of the Authority was arrived at without complying with verification as was required by law.

18. In the case in hand, in-camera statements have been considered by the detaining authority and in paragraph no.5 satisfaction has been recorded after gist of the statements of each witness. This is adequate exercise of jurisdiction by the detaining authority. Personal verification by the detaining authority is not contemplated. Therefore ratio laid down in the matter of Ashokrao (supra) is not attracted.

19. The impugned order has not been assailed on other grounds like delay, breach of statutory procedure or violation

of principles of natural justice. We have gone through affidavit-in-reply and the relevant record. We do not find any breach of statutory procedure or time line prescribed. We do not find merit in the petition.

20. Criminal Writ Petition is dismissed. Rule is discharged.

(SHAILESH P. BRAHME, J)

(MANGESH S. PATIL, J)

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