



CORRECTED JUDGMENT
IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.476 OF 2024

Omkar Umakant Kasbe
Age 21 years, Occ. Education,
R/o Mahatma Gandhi Nagar,
Taluka and District Latur

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through its Secretary,
Advisory Board, Government of
Maharashtra, Home Ministry,
Mantralaya, Mumbai
2. District Magistrate, Latur
3. Superintendent of Police, Latur.

(Copy to be served on
Public Prosecutor, High Court of
Bombay, Bench at Aurangabad)

... **RESPONDENTS**

.....
Mr. S.S. Nade, Advocate for petitioner
Mr. G.A. Kulkarni, A.P.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**

Date of reserving judgment : 25th June, 2024

Date of pronouncing judgment : 4th July, 2024

JUDGMENT (PER R.G. AVACHAT, J.) :

This Writ Petition, under Article 226 of the
Constitution of India, is filed for the following relief :-

“(C) By issuing appropriate writ or direction, to quash and set aside the action under Section 3(1)(2) of MPDA Act, 1981 by order dated 27/10/2023 as 2023/MAG/MPDA/Desk-2/Kavi-488 by respondent No.2 which is confirmed by respondent No.1 on dated 06/11/2023 as bearing No.MPDA-1023/CR.568/Spl.3B and the petitioner kindly be immediately released from jail.”

2. The petitioner claims to be 21 year old student. He is resident of Latur. He claims to have secured distinction in 12th Standard and secured admission for Diploma in Pharmacy. He, however, could not complete the course since the respondent No.2 – District Magistrate, Latur detained him for a period of 12 months vide order dated 27/10/2023, passed in exercise of powers under Section 3(3) 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 (MPDA Act for short). The order of detention has been approved by the Department of Home, Government of Maharashtra. The action of detention has been taken considering the petitioner to be a ‘dangerous person’ and his activities were likely to disturb public peace.

3. Learned Advocate for the petitioner took us through

the order of detention impugned in this petition. According to him, a crime vide C.R. No.389/2023, registered for offence punishable under Section 392 read with Section 34 of the Indian Penal Code and two in-camera statements have only been relied upon to pass the order of detention. The crimes registered prior thereto have only been referred as a history of criminal activities. Most of the crimes thereof do not get covered by the definition of 'dangerous person' within the meaning of Section 2(b-1) of the MPDA Act. He would further submit that, the in-camera statements were as vague as could be. Those were recorded way back in June and July 2023. According to him, there was a gross delay in passing of the order of detention and the proposal moved by the sponsoring authority in that regard. According to the learned Advocate, the petitioner has been on bail in the crime relied on for passing the impugned order. The First Information Report (F.I.R.) registered in relation to the said crime was against unknown person. The victim, on the following day, changed his version. In short, according to the learned Advocate, the material relied on was not sufficient to reach to a subjective satisfaction by the detaining authority for passing of the impugned order. According to him, the petitioner has been

languishing in jail for about 8 months in just 21 years of age.

The learned Advocate relied on the following set of authorities :

- (1) Sushanta Kumar Banik Vs. State of Tripura & ors.
2022 SCC OnLine SC 1333
- (2) Yaduraj @ Bacchi s/o Ramnaresh Arak Vs. The
State of Maharashtra & ors. (Criminal W.P. No.536 of
2023, Nagpur Bench, decided on 5/1/2024)
- (3) Gajanan Udhadavrao Tirpude Vs. State of Maharashtra
& ors. (Criminal W.P. No.859 of 2023, Nagpur Bench,
decided on 10/4/2024
- (4) Alakshit s/o Rajesh Ambade Vs. The State of
Maharashtra & ors. Criminal W.P. No.626/2022, Nagpur
Bench, decided on 20/12/2022)
- (5) Vaibhav @ Jaharila s/o ambadas Jambhulkar Vs. The
Government of Maharashtra 9Criminal W.P. No.867 of
2023, Nagpur Bench, decided on 15/4/2024)
- (6) Baban Shamrao Pawar Vs. The District Magistrate, Beed
& ors. (Criminal W.P. No.643/2024, Aurangabad Bench,
decided on 6/5/2024.
- (7) A.K. Kraipak & ors. Union of India & ors.
(1969) 2 SCC 262

The learned Advocate for the petitioner urged for
allowing the petition.

4. The learned A.P.P. would, on the other hand,
submit that, graph of criminal activities of the petitioner was
ascending. Latur, whereat the petitioner has committed
various crimes, is an educational hub. Students from various

parts of Maharashtra and even outside come to Latur and stay in hostels for taking education. The petitioner took disadvantage thereof. The crimes registered against the petitioner would undoubtedly indicate that his activities were prejudicial to maintenance of public order. Subjective satisfaction of the detaining authority could not be a subject of judicial review. On the ground of delay in passing the order, he relied on the additional affidavit filed by the detaining authority and submitted that the proposal was in fact moved by the sponsoring authority on 19th September and not 1st July. A short time was consumed by Dy. Superintendent of Police in verification of in-camera statements. The proposal was received by the detaining authority (District Magistrate, Latur) on 25/9/2023. The order of detention was passed on 27/10/2023 i.e. about 32 days after the receipt of the proposal. Our attention was adverted to the additional affidavit to submit that the delay in passing the detention order was occurred since in those days the authority concerned was engaged in maintenance of law and order and public order as well and on account of Maratha reservation issue. The affiant was engaged in Pre – Lok Sabha election duties besides work relating to water scarcity and crop insurance. The delay, if any,

therefore, could not be said to be deliberate and intentional. The same has been satisfactorily explained. The learned A.P.P. ultimately urged for dismissal of the petition.

5. Considered the submissions advanced. Perused the order impugned herein. Before advertng to address the grounds of challenge to the order of detention, we need to have a look at certain definitions given in Section 2 of the MPDA Act. Section 2(a) of the MPDA Act reads :-

“2. In this Act, unless the context otherwise requires, –

(a) “acting in any manner prejudicial to the maintenance of public order” means –

.....

(iv) in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.

Explanation :- For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health or disturbance in

public safety and tranquility or disturbs the day to day life of the community by black-marketing in the essential commodities which is resulting in the artificial scarcity in the supply of such commodities and rises in the prices of essential commodities which ultimately causes inflation or disturbs the life of the community by producing and distributing pirated copies of music or film produces, thereby resulting in a loss of confidence in administration.”

Sub-section (b-1) of section defines ‘dangerous person’ to mean a person who, either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI of Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.

6. The relevant part of the order of detention, impugned herein, reads thus :

“Whereas the District Magistrate, Latur, is satisfied with respect to the person known as Omkar Umakant Kasbe, Age 21 yrs., R/o Mahatma Gandhi Nagar, Latur, Taluka District Latur that which a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order directing him to be retained under section 3 (1) (2) 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 (Amendment, 1996, 2009 and 2015)

Now, therefore, in exercise of the powers conferred by subsection (1)(2) of Section 3 of the said Act read with Maharashtra Government Order, Home Department (Special) No.एमपीडीए-०५२३/प्र.क्र.२०८/विशा-३ब, दिनांक २६ जून २०२३, the District Magistrate, Latur hereby directs that the said Omkar Umakant Kasbe, Age 21 yrs., R/o Mahatma Gandhi Nagar, Latur, Tal.Dist. Latur be detained under the said Act.”

7. Para No.3 of the order gives a chart of the past criminal activities of the petitioner. The same reads thus :

Serious Offences –

Sr. No.	Police Station	Cr.No.	Sections	Registration Date	Status of case
1.	Shivaji Nagar, Latur	Cr.No. 303/2021	u/s 392, 34 IPC	01/08/2021	Pending for adjudication
2.	Shivaji Nagar, Latur	Cr.No. 408/2021	u/s 393, 34 IPC	17/10/2021	Pending for adjudication
3.	Shivaji Nagar, Latur	Cr.No. 77/2022	u/s 122(C) of Maha. Police Act, 1951	02/02/2022	Pending for adjudication
4.	Shivaji Nagar, Latur	Cr.No. 113/2022	u/s 122(C) of Maha. Police Act, 1951	02/03/2022	Pending for adjudication
5.	Shivaji Nagar, Latur	Cr.No. 503/2022	u/s 354, 354(D), 506 of IPC with Sec. 8, 12 of POCSO Act	15/12/2022	Pending for adjudication
6.	Shivaji Nagar, Latur	Cr.No. 126/2023	u/s 392, 323, 504, 506, 34 IPC	15/03/2023	Pending for adjudication

7.	Vivekanand Chowk, Latur	Cr.No. 183/2023	u/s 4, 254, of Indian Arms Act, 1959	15/03/2023	Pending for adjudication
8.	Gandhi Chowk, Latur	Cr.No.130/2023	u/s 324, 323, 504, 506 IPC	14/03/2023	Pending for adjudication

Preventive Action

Sr. No.	Police Station	Chapter Case	Section
1.	Shivaji Nagar, Latur	08/2022 Dtd. 07/06/2022	u/s. 110 of Cr.P.C.
2.	Gandhi Chowk	32/2023 Dtd. 15/03/2023	u/s. 107 of Cr.P.C.

8. It has, however, been specifically observed in the order itself that, the detention order was not based on the crimes listed in the aforesaid chart. Only the crime vide C.R. No.389/2023 registered on 4/8/2023 and two in-camera statements recorded in June and July have been relied on.

9. It is true that the past criminal activities could be considered as a criminal history of the proposed detainee to consider whether he is likely to revert back to such activities. First two crimes in the chart date back to the months of August and October 2021. Those were pending adjudication. The next two crimes (Sr.Nos.3 and 4) were registered under Section 122(C) of the Maharashtra Police Act. By no stretch of

imagination, those crimes could be taken into consideration to term the petitioner to be a dangerous person in view of the definition of the term referred to hereinabove. The crime registered at Sr.No.7 is under Section 4 read with Section 25 of the Indian Arms Act. The same was registered since the petitioner was found to have possessed a Katti. The facts of the said case indicate the petitioner had neither wielded nor brandished the said Katti to create terror in the society. Needless to mention, Katti could be used for very many lawful purposes as well. These observations are restricted in deciding the present petition and the Trial Court shall not be influenced thereby. The crime at Sr.No.8 pertains to the offence punishable under Section 324 of the Indian Penal Code. The same indicates to be individual centric. True, 3 of the 8 crimes mentioned in the chart were punishable under Section 392 read with Section 34 of the Indian Penal Code. Since those are pending trial, the law would take its own course in that regard.

10. The facts of the crime, C.R. No.389/2023 relied on by the detaining authority pertain to the F.I.R. lodged by a 17 year old student, who was studying at Latur for education purpose. In the F.I.R. lodged by him, it was alleged that, by

3.00 p.m., while he was returning from tuition class, two unknown persons in the age group of 19-20 intercepted him. One of them threatened him at a knife point. He was relieved of Rs.9700/- and Oppo Company cell phone. The money he was robbed of were to be deposited as hostel fees.

11. It is reiterated that, the F.I.R. was registered against two unknown persons. Description of the clothes on the person of the culprits was given in the F.I.R.

12. On the following day, i.e. on 5th August, the informant himself approaches the police station and informs that he knew the names of the culprits, one of them was the petitioner herein. He, however, did not name them in the F.I.R. on account of fear of them. To this extent, we may understand his plight. He, however, changed his version and submitted to have wrongly informed the police authorities to have been robbed of Rs.9700/-. According to him, he was only relieved of his cell phone. The same suggests the informant to have lied before the police. The learned A.P.P. drew our attention to the arrest panchanama of the petitioner and another panchanama whereunder the cell phone of a particular number was shown to have been seized from the petitioner. Close reading of the

seizure panchanama indicates that, although it was drawn on 5th August i.e. on the next day of registration of the crime, it even does not bear the time at which it was drawn. We are conscious of the fact that the order of detention is an administrative action and could rarely be subject of judicial scrutiny on the ground of subjective satisfaction. The F.I.R. was silent to state IMEI Number of the cell phone of which the informant was robbed of. The same was given by him in his supplementary statement recorded on the following day and that too after arrest of the petitioner and seizure of the cell phone. We do not propose to make further observations about the merits of the said case. Suffice it to say that the said material should not have found basis of subjective satisfaction for detaining the petitioner for a period of 12 months.

13. The petitioner has been granted bail in the said crime. We have closely perused the proposal put up by the sponsoring authority and the impugned order of detention. There is no whisper in both, the proposal and the detention order as regards grant of bail to the petitioner and the reasons therefor. The said fact shall be taken to have been suppressed from the detaining authority in the writ petition.

14. Although the learned Advocate for the petitioner initially strongly harped upon the delay in passing the detention order, the detaining authority filed additional affidavit, explaining the delay of little over one month in passing of the order post receipt of the proposal from the sponsoring authority.

15. In the Writ Petition itself the petitioner has, in paragraph No.5 of the petition, averred that, even considering the nature of involvement of the petitioner the learned Courts pleased to grant him bail. While in paragraph No.8, it has been averred that, in previous crimes he was given notice under Section 41-A of the Cr.P.C. These grounds of challenge appear to have not been addressed in the affidavit-in-reply.

16. In case of **Ichhu Devi Choraria Vs. Union of India & ors. (1980 AIR 1983)**, the Apex Court observed :-

“Where large masses of people are poor, illiterate and ignorant and access to the courts is not easy on account of lack of financial resources, it would be most unreasonable to insist that the petitioner should set out clearly and specifically the grounds on which he challenges the order of detention and make out a prima facie case in support of those grounds before a rule is issued or to hold that the detaining authority

should not be liable to do anything more than just meet the specific grounds of challenge put forward by the petitioner in the petition. The burden of showing that the detention is in accordance with the procedure established by law has always been placed by this Court on the detaining authority because Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law. This is an area where the court has been most strict and scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detainee even though the detention may have been valid till the breach occurred. The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade.”

The same view has been reiterated by the Apex Court in case of **Ameena Begum (supra) Vs. The State of Telangana & ors. (Criminal Appeal No. . . . of 2023, arising out of SLP (Criminal) No.8510 of 2023).**

17. Learned Advocate for the petitioner has relied on

the judgment in the case of Sushanta Kumar Banik (supra). In paragraph No.29 of the said judgment, it has been observed as under :-

“29. The preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in preventive detention jurisprudence whatever little safeguards the Constitution and the enactment authorising such detention provide assume utmost importance and must be strictly adhered to .”

In paragraph Nos.24 and 25 of the judgment, it has been observed :-

“24. A plain reading of the aforesaid provision would indicate that the accused arrested under the NDPS Act, 1985 can be ordered to be released on bail only if the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. If the appellant herein was ordered to be released on bail despite the rigours of Section 37 of the NDPS Act, 1985, then the same is suggestive that the Court concerned might not have found any prima facie case against him. Had this fact been brought to the notice of the detaining authority, then it would have influenced the mind of the detaining authority one way or the other on the question

whether or not to make an order of detention. The State never thought to even challenge the bail orders passed by the special court releasing the appellant on bail.

25. In [Asha Devi v. Additional Chief Secretary to the Government of Gujarat and Anr.](#), 1979 Cri LJ 203, this Court pointed out that:

“... if material or vital facts which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal.”

18. In case of Rushikesh Tanaji Bhoite Vs. State of Maharashtra (2012 CRI.L.J. 1334), the Apex Court observed :-

“10. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have affected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority.”

Moreover, a useful reference can be had to the judgment of the Apex Court in case of Ameena Begum (supra), in which it has been observed in paragraph No.39 :

“39. . . . The investigating agency not having

elected to have such order quashed by a higher forum, the facts have their own tale to tell. Even otherwise, the gravity of the offences alleged in **Arun Ghosh** (supra) was higher in degree, yet, the same were not considered as affecting ‘public order’. The only other offence that could attract the enumerated category of “acting in any manner prejudicial to the maintenance of public order” and an order of preventive detention, if at all, is the stray incident where the Detenu has been charged under Section 353, IPC and where the police has not even contemplated an arrest under Section 41 of the Cr.P.C.”

(emphasis supplied)

Moreover, paragraph No.47 of the said judgment reads thus :

“47. It would not be out of place to examine, at this juncture, whether the Commissioner as the detaining authority formed the requisite satisfaction in the manner required by law, i.e., by drawing inference of a likelihood of the Detenu indulging in prejudicial activities on objective data. Here, we would bear in mind the caution sounded by this Court in **Rajesh Gulati vs. Govt. of NCT of Delhi (2002) 7 SCC 129** that a detaining authority should be free from emotions, beliefs or prejudices while ordering detention as well as take note of the judgment and order dated 16th August, 2021 of the High Court on the previous writ petition, instituted by the Detenu’s father. On such writ petition, the High Court held as follows :

“Under these circumstances, the apprehension of the detaining authority that

since the detenus were granted bail in all the crimes, there is imminent possibility of the detenus committing similar offences which are detrimental to public order unless they are prevented from doing so by an appropriate order of detention, is highly misplaced. [...]

In the instant cases, since the detenus are released on bail, in the event if it is found that the detenus are involved in further crimes, the prosecution can apprise the same to the Court concerned and seek cancellation of bail. Moreover, the criminal law was already set into motion against the detenus. Since the detenus have allegedly committed offences punishable under the Indian Penal Code, the said crimes can be effectively dealt with under the provisions of the Indian Penal Code. The detaining authority cannot be permitted to subvert, supplant or substitute the punitive law of land, by ready resort to preventive detention.”

19. It has not been alleged by the respondents herein that the petitioner has breached the conditions of bail. In paragraph No.51 of the judgment in case of Ameena Begum (supra), it has been observed thus :-

51. . . . It is neither the case of the respondents that the Detenu had not complied with the terms of the notice issued under section 41-A of the Cr.P.C., nor has it been alleged that the conditions of bail had been violated by the Detenu. It is pertinent to note that in the three criminal proceedings where the Detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an

extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned Detention Order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention.”

Paragraph No.52 in the case of Ameena Begum (supra) reads thus :

“52. In *Vijay Narain Singh vs. State of Bihar* (1984) 3 SCC 14, Hon’ble E.S. Venkataramiah, J. (as the Chief Justice then was) observed :

32. ... It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an Accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal Court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge

which is to be tried by the criminal Court.”

(underlining ours, for emphasis)

20. Paragraph No.57 in the case of Aameena Begum (supra) reads :-

“57. It requires no serious debate that preventive detention, conceived as an extraordinary measure by the framers of our Constitution, has been rendered ordinary with its reckless invocation over the years as if it were available for use even in the ordinary course of proceedings. To unchain the shackles of preventive detention, it is important that the safeguards enshrined in our constitution, particularly under the ‘golden triangle’ formed by Articles 14, 19 and 21, are diligently enforced.”

21. At the cost of repetition, it is observed that, the sponsoring authority in its proposal for detention made no whisper about the petitioner to have been granted bail in the last crime on which reliance was placed for passing the order impugned herein nor the detaining authority appears to have called upon the sponsoring authority about the grant or refusal of bail in the said case.

22. So far as regards two in-camera statements relied

on for passing of the impugned order are concerned, the first one pertains to dated 25/6/2023. The same reads thus :-

“यातील साक्षीदार यांचा दिनांक 25/6/2023 रोजी जवाब नोंद केला असता ते त्यांच्या जबाबाबत सांगतात की, ते मिळेल तेथे मजुरीचे काम करून उपजीविका चालवितात. मी ओमकार उमाकांत कसबे यास त्याच्या जन्मपासून ओळखतो. ओमकार हा बिनकामाचा त्याच्या मित्रांसोबत कनेरी रोडच्या बाजूला असलेल्या पान पट्ट्यांवर व मोकळ्या मैदानात नेहमी हत्यारासह थांबलेला असतो. तो मागील 5 ते 6 वर्षांपासून रोडवरून जाणाऱ्या मुलींची छेड काढणे, त्यांचा पाठलाग करणे, टॉन्ट मारणे अशी कृत्ये करतो.

तसेच रोडवरून जाणाऱ्या लोकांना अडवून त्यांची मोटार सायकल, मोबाईल, पैसे जबरीने हिसकावून घेणे, दमदाटी करणे त्याला विरोध करणाऱ्याला त्याच्या मित्रांना बोलावून तो स्वतः आणि मित्रांकडून बेदम मारहाण करणे अशी गुंडगिरी नेहमी करत असतो. ओमकारची दहशत इतकी झाली आहे की, लोक त्याच्या विरुद्ध पोलिसांकडे तक्रार देण्यास भितात व तसाच अत्याचार सहन करत जगतात. ओमकारच्या कोणीच नादी लागत नाही.

जून 2023 च्या पहिल्या आठवड्यात मी एकटा पायी मार्केट यार्डकडे जात असताना ओमकार त्याच्या एका साथीदारासह माझ्यासमोर आडवा उभा राहिला ओमकारने त्याच्या कमरेचा चाकू हातात घेऊन "बेट्या खर्चासाठी हजार रुपये दे" ओमकारचा अवतार पाहून मी खूप घाबरलो होतो. माझ्याकडे पैसे नाहीत असते तर तुला दिले असते असे मी त्याला विनवत असताना ओमकारने माझी गच्ची पकडली. दुनिया मला ओम कसबे म्हणून ओळखते आणि तू मला पैसे नाहीत म्हणतो का, असे म्हणून मोठमोठ्याने ओरडून शिवीगाळ करून तुला माज आलाय, तुला मी गडप केल्यावर तुझ्या घरच्यांना तुझी बाँडी पण मिळणार नाही. असे म्हणून मला खेचू लागला.

रोडवरून जाणारे लोक जमा होऊ लागले. ते माझ्या मदतीकरिता माझ्याकडे बघत होते. तेव्हा ओमकारने डोळे मोठे करून काय बघताय, जाता का ह्या चाकून तुमचं काम संपवू, तुम्हाला टाका घालताना डॉक्टर पण घाबरलं, असे

हातातला चाकू लोकांना दाखवत लोकांवर ओरडला. जमलेले लोक भीतीने पळून गेले. ओमकारने माझ्या खिशातील पैसे काढून घेतले आणि तुला ढगात कायमचा जायचा असेल तर पोलिसात तक्रार कर, अशी धमकी देऊन निघून गेला. त्याच्या भीतीने मी पोलिसात तक्रार दिली नाही.”

23. While the in-camera statement of second witness is dated 1/7/2023, which too reads thus :

“यातील साक्षीदार यांचा दिनांक 01/07/2023 रोजी जबाब नोंद केला असता ते त्याच्या जबाब सांगतात की, ते मार्केट यार्ड जवळ राहण्यास आहेत. मी ओमकार उमाकांत कसबे यास बऱ्याच वर्षांपासून ओळखतो. ओमकार कसबे काही एक काम धंदा करत नाही. कनेरी रोडने बरेच विद्यार्थी, पालक, लोक ट्युशन एरियामध्ये नेहमी जातात. ओमकार कसबे हा नेहमी त्याच्या मित्रांसोबत हत्यार जवळ बाळगून रोड कडेला थांबलेला असतो.

रोडवरून ये जा करणाऱ्या महिलांची, विद्यार्थिनींची छेड काढणे, त्यांचा पाठलाग करणे, लोकांना अडवून हत्यार दाखवून, धमकावून, जबरिने मोबाईल, पैसे, मोटरसायकली हिसकावून घेणे अशी गुंडाची कामे करून दहशत पसरवून त्यातून मिळणाऱ्या पैशावर ऐश करतो. त्याच्याविरुद्ध कोणीही पोलिसात तक्रार देत नाही.

जून 2023 च्या 3 आठवड्यात दुपारी मी दुकानात असताना ओमकार माझ्या दुकानात आला. मोठमोठ्याने ओरडून हातातील चाकू दाखवत ए माझ्या हप्तात दे, असे म्हणाला. मी खूप घाबरलो होतो. ओ माझ्याकडे पैसे नाहीत मी तुम्हाला हप्ता कसा देऊ. अशी मी त्याला विनवणी करत होतो. रोडवरून जाणारी लोक जमले होते. मी लोकांना मदतीसाठी बोलवत असताना ओमकार खूप चिडला. मला शिवीगाळ करत अख्या जिल्हा मला ओम कसबे म्हणून ओळखतो असे म्हणत हातातला चाकू लोकांना दाखवत "चाकू तुमच्या पोटात घुसवून आतडी वाळू घालीन" अशी धमकी लोकांना दिली. जमलेले लोक खूप घाबरले होते. ते पळून गेले. तुला काम दाखवतो असे म्हणत ओमकारने काउंटर मध्ये हात घालून पैसे काढून घेतले. हा माझा हप्ता हाय, पुढच्या बारीला चेक

तयार ठेव, जर तुला जिवंत राहायचे नसेल तर तू माझी तक्रार पोलिसांकडे करचील असे म्हणत माझ्या छातीवर हाताने मारून ढकलून दिले. मी खूप घाबरून आणि ओमकारच्या दहशतीमुळे सदर बाबत पोलिसात तक्रार दिली नाही.”

24. None of the witnesses give specific date, date or time of the alleged incidents. The same materially prejudices the petitioner to meet with the same. As such, in our view, both the in-camera statements are vague. Based on such in-camera statements, there ought not to have been the subjective satisfaction of the detaining authority to pass the impugned order.

25. The petitioner is 21 years of age. It appears that, to curb his activities, the ordinary law of the land is quite sufficient. He is behind the bars for about 8 months. He had in fact secured admission for D. Pharmacy. We have already observed above, relating to the last I.P.C. crime relied upon i.e. C.R. No.389/2024 to indicate that, it was an F.I.R. against unknown persons. On the following day, the informant goes and gives the name of the petitioner, changes his version that he was not robbed of Rs.9700/-. The Oppo Company cell phone he was allegedly robbed of was recovered earlier and thereafter he gave its number. In our view, therefore, such

material could not have been a foundation for passing the order of detention. For all the aforesaid reasons, we find interference with the impugned order is warranted.

26. In the result, the petition succeeds. Hence the order :

ORDER

The Criminal Writ Petition is allowed in terms of prayer clause (C). The petitioner be set at liberty forthwith if not required in any other case.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

fmp/-