



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 504 OF 2024

Nishikant @ Babbi S/o Raju Shirke
Age : 25 years,
R/o. Ashwin residency, Flat No. 1,
Nandanwan Colony,
Dist. Chhatrapai Sambhajnagar

.. Petitioner

Versus

1] Police Commissioner,
Chhatrapati Sambhajnagar

2] The State of Maharashtra
(Through the Secretary)
Home Department (Spl)

3] The Superintendent,
Chhatrapati Sambhajnagar,
Central Prison

.. Respondents

...
Advocate for petitioner : Mr. Rupesh A. Jaiswal
Addl. PP for the respondent – State : Mr. M.M. Nerlikar
...

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

**RESERVED ON : 07 MAY 2024
PRONOUNCED ON : 10 MAY 2024**

ORDER (MANGESH S. PATIL, J.) :

By way of this petition under Article 226 of the Constitution of India, the petitioner is challenging the order of preventive detention passed under section 3(2) and approved and confirmed by respondent no. 2 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, 1982 (hereinafter the '**MPDA Act**').

2. The impugned order brands the petitioner as a 'dangerous person' as defined under section 2(b-1) of the MPDA Act.

3. Respondent no. 1 has reached the subjective satisfaction on the basis of petitioner's involvement in several crimes falling under Chapter XVI and XVII of the Indian Penal Code and the preventive actions in the form of externment proceedings under the Maharashtra Police Act. He has also relied upon the statements of couple of anonymous witnesses. He has based his subjective satisfaction *inter alia* on the ground that in breach of the externment orders passed under the Maharashtra Police Act, he committed the crimes under Chapter XVI and XVII of the Indian Penal Code by illegally entering into the prohibited limits.

4. The learned advocate Mr. Jaiswal would first submit that the petitioner was served with the papers together with the grounds of detention, however, some of the pages were illegible, which prevented him from making an effective representation and the lapse would go to the root of the order being violative of Article 22(5) of the Constitution of India.

5. Mr. Nerlikar, learned Additional Public Prosecutor would controvert this submission by pointing out the stand in the affidavits in reply of respondent no.1 and by adverting our attention to the relevant pages.

6. Mr. Jaiswal tendered across the bar a compilation of the papers served upon him commensurate with a specific averment in the petition and its denial by respondent no. 1. We have perused the specific pages bearing no. 87, 93, 95, 105, 106, 108 and 110. True it is that some portion of these pages are blur to some extent.

7. Page no. 87 is the operative part of the order passed by the Deputy Commissioner of Police Aurangabad City dated 07-02-2023 under section 56(1)(a)(b) of the Maharashtra Police Act, thereby externing the petitioner from the limits of Aurangabad city and district, for a period of two years. The order though blur at some places, cannot be said to be illegible.

8. Page no. 93 is the first page of the FIR no. 0555 of 2023 of Cantonment Police Station of Aurangabad city. Again, though some portion regarding the sections of the Indian Penal Code are blur, those can easily be read as 452, 354(A), 323, 504 and 506.

9. Page no. 95 is the third page of the same FIR. Some portion of clause no. 12 wherein the allegations in the complaint have

been reproduced, are blur but cannot be said to be absolutely illegible. Besides, page no. 97 which is a copy of the statement of the informant on the basis of which the crime was registered, also clearly bear the crime number, date, time and the sections of the IPC.

10. Page no. 105 is the reverse page of the statement of the same informant recorded by the concerned Magistrate under section 164(5) of the Code of Criminal Procedure. Though, few words are blur, those cannot be said to be illegible. Same is the case with the statement of one Rahul Devidas Wagh at page no. 106 recorded under section 161 of the Code of Criminal Procedure on 03-11-2023 in respect of the same crime.

11. Page no. 108 is a report submitted by the Investigating Officer in that crime to the jurisdictional Magistrate dated 25-11-2023 informing that since the offence was committed in breach of the externment order by entering into the prohibited limits, section 142 of the Maharashtra Police Act was being added.

12. Page no. 110 is the first page of the chargesheet submitted in that crime and some blank portion in column no. 5 and 6 are blur which apparently do not contain any writing except printed material in the form of the purpose for which and the information to be filled in those respective clauses.

13. Resultantly, though it is trite that not supplying legible documents is a breach of the constitutional principle recognized under Article 22(5) of the Constitution of India and there are several case laws on the point cited by the learned advocate Mr. Jaiswal, the ground is not sustainable on facts.

14. Mr. Jaiswal would further submit that respondent no.1 has taken into consideration five crimes, however, three of which are under section 142 of the Maharashtra Police Act which is not covered by the definition of 'dangerous person' under section 2(b-1) of the MPDA Act, not being a crime under Chapter XVI or Chapter XVII of the IPC or under the Arms Act. He would rely upon the decision in the matter of ***Nenavath Bujji V. State of Telangana; 2024 SCC OnLine SC 367.***

15. A careful reading of the impugned order and the grounds of detention would make it abundantly clear that though respondents have been banking upon five crimes, three of which are under section 142 of the Maharashtra Police Act, the subjective satisfaction is based on the fact that the two crimes which were taken into consideration i.e. crime no. 555 of 2023 of the Cantonment Police Station and crime no. 28 of 2024 of the same Police Station registered on 09-11-2023 and 16-01-2024 respectively, which were the offences under Chapter XVI and Chapter XVII of the IPC, were committed by entering into the prohibited limits in breach of the externment order passed under the

Maharashtra Police Act which in itself were crimes under section 142 of that Act. Meaning thereby that though the definition of 'dangerous person' contemplates commission of offences under Chapter XVI and XVII of the IPC and the offences under the Arms Act, reference to the offences under section 142 of the Maharashtra Police Act is merely to substantiate the subjective satisfaction by demonstrating that ordinary law of the land was not enough to prevent petitioner's dangerous activities who could commit crimes under Chapter XVI and XVII of the IPC in breach of the externment order. It cannot, therefore, be said that the subjective satisfaction about the petitioner being a 'dangerous person', is based on unsustainable material on this count.

16. Mr. Jaiswal's third argument is to the effect that there was nothing before respondent no.1 to reach a subjective satisfaction that being at large, the petitioner had the potential to affect public order. The offences being relied upon by him are against the specific individuals. The statements of the anonymous witnesses were same in verbatim and the order is not based on application of mind. He would rely upon the decisions in the matters of ***Ram Manohar Lohiya V. State of Bihar; AIR 1966 SC 740, Mallada K Sri Ram Vs. State of Telangana; 2022 LIVE LAW (SC) 358, Ameena Begum V. State of Telangana; (2023) 9 SCC 587, Vaddi Lakshmi Vs. State of Telangana and others; 2024 SCC OnLine SC 425.***

17. It is trite that mere commission of an offence *ipso facto* cannot be the ground to reach a subjective satisfaction in the normal circumstances. However, as is observed herein-above, the very fact that the petitioner had repeatedly breached the externment order passed under the Maharashtra Police Act and not only that but committed crimes under Chapter XVI and XVII of the IPC, in our considered view, is eloquent enough to support the subjective satisfaction arrived at by respondent no. 1.

18. The statements of anonymous witnesses reveal that they had suffered the wrath of the petitioner in January 2024 and February 2024 wherein he is alleged to have accosted them in the night hours demanded money, beaten them and snatched some cash from the person of the witness 'A' and from the cash box of witness 'B' and threatened them. There is no dispute about the fact that these statements were verified before being relied upon by respondent no.1. Merely because there is some similarity in the version of both these witnesses, there is nothing to disbelieve them, more so when the aforementioned facts and circumstances are clearly indicative of the fact that the petitioner had suffered externment order which was passed on 07-02-2023, for a period of two years and still repeatedly committed crimes under the IPC and that too in spite of he being charged under section 142 of the Maharashtra Police Act. These circumstances would

clearly justify the apprehension expressed by these witnesses and we find no fault in appreciating the stand of respondent no.1 in the impugned order to reach the subjective satisfaction. We, therefore, discard this ground being relied upon by the petitioner as well.

19. Mr. Jaiswal would then submit that the ailment with which the petitioner was suffering from and even the FIR lodged by him pursuant to an assault carried out on him, were not disclosed by respondent no. 3 who is the sponsoring authority and these facts being vital and having been suppressed by him would vitiate the subjective satisfaction reached at by respondent no.1. We fail to understand as to how this could be the relevant consideration much less would vitiate the subjective satisfaction reached by respondent no.1.

20. True it is, as is being pointed out by Mr. Jaiswal, on few occasions with previous permission of the concerned authority, the petitioner had obtained concession from the externment order in order to undergo medical treatment. However, simultaneously, as is observed herein-above, many a times he had not bothered to seek such concession and committed breach of the order and committed crimes under the IPC. Even the offences registered at his instance were committed within the prohibited limits that too in breach of the externment order. We, therefore, do not find any substance on this line of argument of Mr. Jaiswal.

21. As a last resort, Mr. Jaiswal would submit that the timeline and the mandatory provisions which are required to be complied with, have not been obeyed before passing of the impugned order and approving and confirming it.

22. Mr. Nerlikar would point out meticulously that respondent no. 3 had submitted the proposal on 14-02-2024 which was preceded by the statements of witnesses 'A' and 'B' recorded on 12-02-2024 and 13-02-2024, respectively and were verified on 17-02-2024. The proposal was initially received by the ACP, Cantonment Division on 15-02-2024. DCP, Zone – 1 forwarded it on 17-02-2024. Respondent no. 1 examined it on 20-02-2024 and even the impugned order was passed on the same day. The order of detention was served as contemplated under section 4 on 22-02-2024. The grounds of detention were conveyed to the petitioner on 23-02-2024 in compliance of section 8(1). A report was forwarded to the State government, as is contemplated under section 3(3) on 22-02-2024 which was approved by the state on 28-02-2024. The papers were placed before the Advisory board under section 10 on the same day i.e. 01-03-2024 within three weeks of the actual date of detention i.e. 22-02-2024. The petitioner was heard on 04-04-2024 by the Advisory board which submitted its opinion under section 11 on 05-04-2024 within seven

weeks and respondent no. 2 confirmed the order under section 12 on 18-04-2024.

23. Mr. Nerlikar would also point out that petitioner submitted representation on 09-03-2024. It was forwarded by the jail authority on the same day by E-mail. There were holidays on 09-03-2024 and 10-03-2024 being Saturday and Sunday. The remarks were called from respondent no. 2 on 11-03-2024 and were received on 15-03-2024. Since 16-03-2024 and 17-03-2024 were holidays on account of Saturday and Sunday, the Section Officer examined it and endorsed and forwarded it to the Joint Secretary on 10-03-2024. The Joint Secretary again endorsed and forwarded it to the Additional Chief Secretary, Home on 13-03-2024. The Additional Chief Secretary, Home considered the remarks and rejected the representation on 20-03-2024 and it was communicated to the Jail authority on 21-03-2024 and it is not the version of the petitioner and Mr. Jaiswal that it was not communicated to him immediately.

24. In the result, none of the grounds raised by the petitioner for assailing the impugned order, is sustainable in law.

25. The petition is dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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