



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

CRIMINAL WRIT PETITION NO. 989 OF 2024

Pankaj Shamsunder Parikh
Age: 25 years, Occu.: Agri.,
R/o Bhokramba, Tq. Renapur,
Dist. Latur

..PETITIONER

VERSUS

1. State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai-32
2. The District Magistrate,
Latur, Dist. Latur
3. The Sub-Divisional Police Officer,
Sub-Division Latur City, Dist. Latur
4. The Police Sub-Inspector,
M.I.D.C. Police Station, Latur
5. The Superintendent of Jail
Central Prison, Aurangabad

..RESPONDENTS

....
Mr. V.S. Valse, Advocate for petitioner
Mrs. A.S. Deshmukh, A.P.P. for respondents
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 30th JULY, 2024**

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

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

2. The challenge in this petition is to order dated 21st March, 2024 passed by Respondent No.2 – District Magistrate, Latur under Section 3(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. ('MPDA Act'), detaining the petitioner for a period of twelve months so as to prevent him from indulging in activities prejudicial to the maintenance of public order. The said detention order has been confirmed by Respondent No.1 – State Government, in Department of Home on 15th May, 2024.

3. The challenge is mainly on the ground of non-subjective satisfaction by Respondent No.1 in passing the order impugned herein. According to learned counsel for the petitioner, the proposal for detention of the petitioner put up by the sponsoring authority was actuated with malafides. He took us through the relevant materials on record to substantiate his submissions. The order has also been challenged on the ground of delay of fifty six days in passing the order post date of proposal. Learned counsel, therefore, urged for allowing the petition.

4. Respondent No.2 filed her affidavit-in-reply reiterating the grounds of detention and the reasons for arriving at subjective satisfaction. It has been averred in the affidavit-in-reply that the graph of criminal activities of the petitioner was ascending. Even preventive measure taken against the

petitioner under Section 107 of the Cr.P.C. proved futile. Even aggrieved persons did not come forward to lodge report against him due to apprehension of threat to their lives at the hands of the petitioner. By filing the affidavit-in-reply, delay in passing the order was tried to be explained on the ground that the detaining authority was busy in dealing with the issue of law and order that arise on account of *Maratha* reservation. She was even busy in matters viz. pre Loksabha election work, water scarcity, crop insurance, etc. It has been stated on oath that the delay was not deliberate. All the timelines prescribed in the MPDA Act have been complied with. Dismissal of the petitioner was, therefore, urged for.

5. Learned A.P.P. first read out the entire order of detention and then affidavit-in-reply so as to make out a case of subjective satisfaction by the detaining authority in passing the impugned order. According to her, there can hardly be judicial review of subjective satisfaction in passing the detention order. All the prescribed timelines given in the MPDA Act have been adhered to. The delay has properly been explained. She, therefore, prayed for dismissal of the petition.

6. Considered the submissions advanced. Perused the order impugned herein.

7. The order of detention dated 21st March, 2024 first refers to ten crimes registered against the petitioner during the period from September 2018 to July 2023 and one preventive measure taken under Section 107 of

the Cr.P.C. (paragraph no.3 of the order). The order further reads thus :-

“However said prosecution is not based on the offence mentioned in paragraph 3 of the above. These offences are shown to highlight your previous criminal background and the fact that your activities are causing alarm and insecurity among the general public.”

The aforesaid observations in that order indicate that the order of detention has been passed on the basis of one crime, being C.R. No. 768 of 2023 and two in-camera statements.

8. Crime, C.R. No. 768 of 2023 was registered for the offences punishable under Sections 294, 323, 504 and 506 read with Section 34 of the I.P.C. at the instance of one Rishikesh Bondage. It has been alleged in the said F.I.R. by him that the petitioner made him a call on cell phone and questioned where was he. The petitioner then threatened him of shooting him dead. The complainant then went to a stop at Rubab Pan Stall, Barshi Road. It was 07:00 p.m. of 18th October, 2023. The petitioner alongwith his three companions came there. They manhandled the complainant and abused him in filthy language.

9. In the order of detention, there is reference to a crime, C.R. No. 8 of 2023 registered for the offences punishable under Sections 307, 386, 364(a), 323, 504, 506, 109 read with Section 34 of the I.P.C. The petitioner was arrested in the said crime. The Court, while granting him bail, put up a condition not to enter the city of Latur. The petitioner allegedly breached the said condition and committed the crime, C.R. No. 768 of 2023.

10. Then there are two in-camera statements. First witness – (A) deposed to police on condition of keeping his identity undisclosed, that the petitioner in the second week of September 2023 intercepted him near Khardekar Stop, AUSA Road, Latur. The petitioner's companion was with him. The petitioner threatened him at knife point and made a demand of money for consumption of alcohol. He robbed the witness of Rs.1,200/-. The petitioner also abused him in filthy language.

11. Second witness – (B) on the same condition i.e. non-disclosing his identity, gave a statement to the sponsoring authority that in the third week of October 2023 the petitioner intercepted him at Rubab Pan Stall, Barshi Road, Latur and robbed him of Rs.2,000/- at knife point for consumption of alcohol.

12. A responsible statement made by learned counsel for the petitioner before us that the petitioner had been to Latur to attend the concerned police station as a condition imposed by the Court while granting bail to him in one crime. According to him, the sponsoring authority was after him. He took us through a complaint given by one Jayprakash Mashalkar to the Superintendent of Police, Latur on 17th July, 2023 alleging therein that his son – Ganesh was forced by Mr. Lokhande (sponsoring authority) to lodge a false report against the petitioner. A copy of the said communication has been placed on record (Exh.R-1). The sponsoring authority did not file affidavit-in-reply to traverse the said averment.

13. There is quite a difference between concept of maintenance of law and order and maintenance of public order. Although, the petitioner has criminal history, the same has not been taken into consideration for passing the order of detention. The only crime, C.R. No. 768 of 2023, registered against the petitioner suggests he manhandled the informant therein and abused him in filthy language. The said offence, in our view, is individual centric. When we perused the criminal history of the appellant, except one crime, C.R. No. 126 of 2022 dated 24th February, 2022, no other crime was registered against him alleging him to have robbed and/or committed offence of extortion/robbery. Learned counsel for the petitioner has, therefore, every reason to contend that both the in-camera statements were stereotype and recorded only with malafide intention to ensure the petitioner is detained for twelve months. We have reason to say so in view of the affidavit-in-reply by father of one of the informant viz. Jayprakash Mashalkar and one more affidavit filed by Sushant Kanse before the Sessions Court during hearing an application for bail moved by the petitioner in connection with some other crime.

14. The petitioner is twenty-five years of age. Crime, C.R. No. 768 of 2023 is individual centric. The same has no ramification of causing disturbance to maintenance of public order. The in-camera statements were vague. No date or day has been given by both the witnesses therein. The same necessarily caused prejudice to the petitioner in defending himself

against those statements. All in all, we find every reason to interfere with the order impugned herein. Hence, the following order :-

ORDER

[i] Criminal Writ Petition is allowed in terms of prayer clauses – [B], [C] and [C-1].

[ii] Petitioner be released forthwith, if not required in any other case.

(NEERAJ P. DHOTE, J.)

SSD

(R.G. AVACHAT, J.)