



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

CRIMINAL WRIT PETITION NO. 1026 OF 2024

Vaibhav @ Swapnil Balasaheb Shelke
Age: 22 years, Occu.: Business,
R/o Chakradhar Nagar, Beed,
Tq. & Dist. Beed

..PETITIONER

VERSUS

1. State of Maharashtra
Through Principal Secretary,
Home Department, 2nd Floor,
Mantralaya, Madam Kama Road,
Hutatma Rajguru Chowk, Mumbai
2. The District Collector
Collector Office, Beed
3. Police Superintendent
Office of the Superintendent of Police,
Beed, Tq. & Dist. Beed
4. The Sub-Divisional Police Officer
Officer of SDPO, Beed,
Tq. & Dist. Beed
5. The Police Inspector
Shivaji Nagar Police Station, Beed
Tq. & Dist. Beed

..RESPONDENTS

....
Mr. N.K. Tungar, Advocate for petitioner
Mr. N.R. Dayama, A.P.P. for respondents
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : 02nd AUGUST, 2024
PRONOUNCED ON : 14th AUGUST, 2024

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 writ petition, under Article 226 of the Constitution of India, is to order dated 30th April, 2024 passed by Respondent No.2 - District Collector, Beed in exercise of power 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 maintenance of public order. The order of detention has been confirmed by Respondent No.1 - State of Maharashtra in Ministry of Home on 24th June, 2024.

3. The challenge to the order impugned herein is mainly on the ground of delay in passing the order i.e. no proximity between the last crime registered against the petitioner and the order of detention. According to learned counsel for the petitioner, the so called in-camera statements have been recorded only with a view to bridge the said gap. Those statements even though accepted as it is, are as vague as it could be. The petitioner's acts against those persons were individual centric. Although total six crimes were registered against the petitioner, only last two crimes have been relied

on. Reference to earlier four crimes would, therefore, indicate the detaining authority to have been influenced thereby. According to learned counsel, the petitioner was merely present at the spot while the last two crimes took place. Not less than 200 persons were involved in commission of said crimes. Those crimes have political overtures. According to learned counsel, the petitioner is behind the bars for about four months. He is just twenty-two years of age. He, therefore, urged for allowing the writ petition.

4. Learned A.P.P. would, on the other hand, took us through the affidavit-in-reply filed by the detaining authority to submit that graph of criminal activities of the petitioner was ascending. Victims of the petitioner's criminal activities even do not come forward to report against him, so is the terror of him. Last two crimes relied on would indicate that public properties were damaged. Hotels and shops were set on fire. Those crimes necessarily have ramification of causing disturbance to maintenance of public order. Even a preventive action taken against the petitioner under Section 110 of the Cr.P.C. did not yield result. It was, therefore, found incumbent to take action against the petitioner impugned herein. Learned A.P.P. relied on the judgment of Apex Court in case of ***Phulwari Jagdambaprasad Pathak Vs. R.H. Mendonca, 2000 AIR (SC) 2527*** to submit that in-camera statements could be relied on for passing of detention order. According to him, the grounds of detention were separable. He, therefore, referred to Section 5A of the MPDA Act. Even one of the grounds was found to be not fit to have resort thereto for passing the impugned order,

the order is sustainable on other grounds. He, therefore, urged for dismissal of the petition.

5. Considered the submissions advanced. Perused the order impugned herein and the affidavit-in-reply filed by the detaining authority.

6. Detention order dated 30th April, 2024 refers six crimes registered against the petitioner (Para 3.1) and one preventive action taken under Section 110 of Cr.P.C. (Para 3.2). In paragraph no.4 of the said order, the detaining authority has specifically observed that last two crimes, C.R. Nos. 341 of 2023 and 577 of 2023 were registered on 31st October, 2023 for the offences punishable under Sections 307, 308, 120-B, 353, 332, 435, 436, 427, 143, 147, 148, 149, 506, 151 and 152 of the I.P.C., Section 7 of Criminal Law Amendment Act, Sections 3 and 4 of Prevention of Damage to Public Property Act, Section 37(1)(3) read with Section 135 of Maharashtra Police Act and Sections 4 and 5 of Explosive Substances Act, have been considered besides two in-camera statements for detaining the petitioner for a period of twelve months. The order then records averments in the F.I.R. lodged by the police officer/s in relation to those crimes.

7. We have perused the F.I.R. and the related papers in relation to both the crimes to find in first crime, the persons involved were not less than 200. Most of them were unknown. While in the second crime, those were not less than 1500. Those, who could be identified, have been named in the

charge-sheet. Both the crimes took place on one and the same day. The cause of commission of those crimes indicate that there was *Andolan* for demand of reservation for members of *Maratha* community. Necessarily, those crimes appear to have political overtures. To point out the query made by this Court to learned A.P.P. as to whether similar action has been taken against those who have been identified as culprits, it was informed that the police authorities are in process of initiating such action. Same indicates that the present action has been taken selectively. The informant did not know name of the petitioner. It was only when a video shoot of the incident was watched, involvement of the petitioner was surfaced. It is true, this Court is less concerned with the sufficiency or insufficiency of the material relied on for passing of the impugned order. The record, however indicates that the petitioner was involved in one of those two crimes as he was seen running from the mob. He was not attributed with any of the overt acts in relation to the said crime.

8. Both those crimes took place on the last day of October 2023, whereas the proposal for detention of the petitioner was moved on 20th April, 2024 i.e. about six months after those crimes were registered. Same indicates that there was no live link between the order of detention and those two crimes registered against the petitioner.

9. Learned counsel for the petitioner was, therefore, right in submitting that the in-camera statements of the witnesses recorded in

between the said period were recorded only with a view to bridge the gap and make out a case of live link. We have perused those in-camera statements. The first one is recorded on 05th April 2024. The witness 'A' therein stated that on one day in February 2024 at 01:00 p.m. the petitioner met him at Rajiv Gandhi Chowk and made a demand of Rs.50,000/-. When the witness informed the petitioner to have no money with him, the petitioner robbed the witness of Rs.4,500/- at knife point. The petitioner threatened the said witness of dire consequences if he disclosed said incident to the police. According to the witness, having seen the incident, shop owners downed the shutters due to the petitioner's fear and terror.

10. Witness 'B', in relation to the second in-camera statement dated 07th April, 2024 stated that on one day in March 2024 by 06:00 p.m. he was on his way. In front of Surya Lawns, the petitioner intercepted him and made a demand of Rs.20,000/-. When he told the petitioner to have no money, the petitioner forcibly took out Rs.6,500/- from his pocket. The petitioner raised shouts. No one came to his help. The passersby, who witnessed the incident, ran away fearing the petitioner.

11. Learned A.P.P. was right in submitting that the in-camera statements can be relied on for passing the detention order. He even has rightly relied on the judgment of Apex Court in case of Phulwari Pathak (supra) in that regard.

12. On close look at the chart, wherein there is reference to the crimes registered against the petitioner is concerned, we find not a single offence thereof pertain to extortion or robbery punishable under Sections 387 or 392 of the I.P.C. It is, therefore, just difficult to rely on the in-camera statements as it is. When the petitioner had no history of committing such crimes, how come he would intercept two witnesses and rob them of money. Learned counsel for the petitioner, therefore, had every reason to contend that those in-camera statements were recorded only with a view to bridge the gap between last two crimes registered against the petitioner and order of detention. He meant to say that just to create live link between the two, in-camera statements were recorded. We find substance in the submission of learned counsel for the petitioner.

13. The copy supplied to the petitioner of the in-camera statements do not contain day or date of the incident allegedly committed by him. Same appears to have caused the petitioner prejudice in his defence to meet those statements. Be that as it may. We find no live link between the last two crimes registered against the petitioner under I.P.C. and the impugned order. Only with a view to make out a live link, in-camera statements appear to have been recorded. True, the grounds of detention are separable (Section 5A of the MPDA Act). In the order of detention it has not been so observed. In the Marathi version of order of detention, there is reference of a chapter case initiated against the petitioner under Section 110 of Cr.P.C., while in the English version thereof, it is recorded as Section 107 of Cr.P.C. Then it

would be anybody's guess as to whether really chapter case under Section 110 of Cr.P.C. was initiated against the petitioner and the bond of good behaviour obtained from him. No papers relating to the said chapter case were supplied to the petitioner. The same too amounts to non-supply of grounds of detention or all the material relied on for passing of the order impugned herein. For all these reasons, we find interference with the order impugned herein to have been warranted.

14. In the result, criminal writ petition is allowed. Impugned order of detention of the petitioner dated 30th April, 2024 passed by Respondent No.2 - District Collector, Beed and confirmation order dated 24th June, 2024 passed by Respondent No.1 - State of Maharashtra in Ministry of Home are set aside. The petitioner be released forthwith, if not required in any other case. Rule is made absolute.

(NEERAJ P. DHOTE, J.)
SSD

(R.G. AVACHAT, J.)