



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

CRIMINAL WRIT PETITION NO. 1077 OF 2024

Samadhan Baburao Khindkar
Age: 27 years, Occu.: Contractor,
R/o Belwadi, Beed,
Tq. & Dist. Beed

..PETITIONER

VERSUS

1. State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai-32
2. The District Magistrate,
Beed, Tq. & Dist. Beed
3. The Superintendent of Jail,
Central Jail Harsool, Aurangabad
Dist. Aurangabad

..RESPONDENTS

....
Mr. S.S. Gangakhedkar, Advocate for petitioner
Ms. V.N. Patil Jadhav, A.P.P. for respondents
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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : 31st JULY, 2024
PRONOUNCED ON : 05th 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 petition is to an order dated 09th January, 2024 passed by Respondent No.2 – District Magistrate, Beed 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 of Maharashtra, in Department of Home vide order dated 29th February, 2024.

3. Learned counsel for the petitioner would submit that only two crimes and two in-camera statements were relied on to pass the detention order. The first crime, being C.R. No. 250 of 2023, was registered against not less than 200 persons. The incident was a fall out of *Maratha Arakshan Andolan*. Even mere presence of the petitioner in the group would in no way could be termed him to have indulged in arson and rioting. In one similar crime, the petitioner had been to the police station and police authorities had assured him of removing his name from the charge-sheet since his involvement in the said crime was not surfaced. The police authorities went back on the said statement. According to learned counsel, these specific averments in the petition have not been traversed by the sponsoring authority in affidavit-in-reply. The other crime, being C.R. No. 263 of 2023 was registered by none other than real brother of the petitioner. It was individual centric. The allegations of the report lodged by the petitioner's brother would indicate the petitioner to have abused him and threatened with

a pistol. It was arising out of a family dispute. So far as regards in-camera statements are concerned, learned counsel would submit that there was no live link. The in-camera statements are nothing but got up witnesses in justification for putting up the proposal for detaining the petitioner. One of the in-camera statements pertains to the incident which had allegedly happened with the petitioner's brother, who lodged the F.I.R. Those statements have not been verified by the competent authority. According to learned counsel, interference with the impugned order is, therefore, warranted.

4. Learned counsel for the petitioner relied on the Apex Court judgment in case of **Ameena Begum Vs. State of Telangana & Ors., 2023 LiveLaw (SC) 743** to observe thus :-

“52. In Vijay Narain Singh v. 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.”

5. Learned A.P.P. would, on the other hand, took us through the order of detention to submit that there was rise in the criminal activities of the

petitioner. Not less than six crimes were registered against him, besides preventive action taken under Section 110 of the Cr.P.C. Thereafter, again the petitioner indulged in criminal activities. Due to his threats, aggrieved persons do not come forward to lodge report against him. The order of detention and reasons given therein are self speaking. Same suggests the detaining authority to have passed the impugned order on subjective satisfaction. According to her, threatening the persons with the revolver would necessarily spread panic in the society. The crime, C.R. No. 250 of 2023 indicates that public property was indiscriminately damaged. Houses of particular political figures were targeted. The petitioner was taken into custody on the spot. The sponsoring authority had every reason to put up a proposal apprehending the petitioner to be likely to revert back to similar activities which would be prejudicial to the maintenance of public order. According to her, the order impugned herein is flawless. She, therefore, urged for dismissal of the petition.

6. Considered the submissions advanced. Perused the order of detention and material in the nature of in-camera statements relied on.

7. Paragraph no.3.1 of the impugned order gives a chart of five crimes registered against the petitioner during the period from 24th March, 2017 to 02nd December, 2023. While paragraph no.3.2 speaks of final bond to have been obtained from the petitioner regarding his assurance to maintain peace and not to indulge in criminal activities. It was a bond for a

period of twelve months. The period thereof came to an end on 28th March, 2024. The first three crimes in the chart were committed during 2017 to 2023. The same has no proximity with the order of detention. Those crimes were pending against the petitioner and he is on bail therein. The law would take its own course in regard to those crimes.

8. Only last two crimes viz. C.R. No. 250 of 2023 registered on 30th October, 2023 for the offences punishable under Sections 143, 147, 148, 149, 151, 152, 120(b), 307, 308, 353, 332, 336, 337, 338, 342 and 436 of the I.P.C. r/w Sections 3 and 4 of Prevention of Damage to Public Property Act, Section 7 of Criminal Law Amendment Act r/w Section 135 of Maharashtra Police Act and C.R. NO. 263 OF 2023 registered on 02nd December, 2023 for the offences punishable under Sections 341, 504 and 506 of the I.P.C. and under Section 3/25 of Arms Act have proximity or live link with the impugned order. It has been specifically mentioned in paragraph no.3.1 of the detention order that the offences mentioned below (in the chart in paragraph no.3.1) were referred only to show the petitioner's criminal history. It has specifically been observed therein that those crimes have not been relied on for passing the order of detention, but are only referred to show his habituality.

9. Paragraph no. 4 of the impugned order speaks of petitioner's involvement in the commission of crimes that took place in the immediate past which triggered the sponsoring authority to put up the proposal for

petitioner's detention. Those are the two crimes which have in fact been referred to at serial nos. 5 and 6 (last two crimes) in the chart given in paragraph no.3.1. The detaining authority herself has observed in the very paragraph that all the crimes listed in the said chart have not been relied on for passing the order of detention. Reference to those crimes is only made to show the petitioner's past history. While, on the other hand, the order of detention is passed on the last two crimes given in the said chart. Be that as it may. Let us advert to those two crimes to find whether the detaining authority was really justified in exercising her subjective satisfaction in passing the order.

10. In paragraph no.5.1.2 it has been observed that the complaint was lodged by one Kiran Pawar, the Police Sub-Inspector attached with Beed City Police Station. It was lodged on 31st October, 2023 pertaining to the incident that took place on the previous evening. The gist of the F.I.R. indicates that the group of 200-250 persons assembled in Beed city. The group members were holding flags, sticks, stones and were giving slogans favouring one community and a leader, who was demanding *Maratha* reservation. It has further been averred that the said mob pelted stones on various shops and the hospitals. The mob members indulged in arson, damaged public properties as well. Members of the mob pelted stones at police personnel, who were on *bandobast* duty. Name of the petitioner figures at Sr.No.15 as one of the members. It has also been mentioned in the F.I.R. that CCTV footages were examined to find the petitioner

indulged in the said criminal activity. It has been specifically averred in the petition that the petitioner himself has surrendered before the police authorities and even he has not been arrested therein. The petitioner, therefore, did not press his application for bail. If same is the case stated by the petitioner on oath, it indicates the law and order enforcing authorities have not resorted to the ordinary law of land by not arresting the petitioner in the said crime.

11. The next crime i.e. C.R. No. 263 of 2023 was lodged by the petitioner's real brother alleging him that on 02nd December, 2023 the petitioner had intercepted him while he was returning from his village in his car. The petitioner allegedly threatened his real brother with pistol. The reason of giving threats was that he would give information to the Local Crime Branch of Beed as regards petitioner's criminal activities. In our view, allegations in the said F.I.R. appears to be individual centric. The petitioner allegedly threatened his real brother. Considering the nature of offence allegedly committed by the petitioner against his brother, it even appears that he was not arrested in the said crime.

12. Then there are two in-camera statements recorded on 04th December, 2023 and 06th December, 2023 respectively. The witness (A) stated that on one day in December 2023 the petitioner intercepted and threatened him with a pistol. The reason for threatening was the witness used to inform the police about the petitioner's criminal activities. The

witness further testified that the passers by ran away on having seen the incident. The second in-camera statement is pertaining to the petitioner to have threatened the witness (B) and robbed him of Rs.5,500/- for consumption of alcohol. It was 01:00 p.m. of a day in the month of December 2023. The witness testified that on having seen the incident, the nearby shop owners downed the shutters and went home.

13. In our view, both these statements are as vague as could be. The witnesses did not give date or day of the incident. The same necessarily caused prejudice to the petitioner in his defence, since he could have come with a case of alibi, if any. If we look at the criminal history of the petitioner, except one crime registered in January 2023, we do not find any crime to have been registered against him for extortion or robbery.

14. In short, in all the crimes relied on, the petitioner has not even been arrested. The same appears to be the case in relation to the crime, being C.R. No. 263 of 2023 registered at the instance of his real brother. The said crime was individual centric. The first crime was fall out of a political issue. When the concerned police station officer could have arrested the petitioner in both the crimes, said exercise has not been carried out. Then what remains is the two in-camera statements which do not give exact day or date of the incident which materially caused prejudice to the petitioner in his defence. We, therefore, find the order impugned herein to have not been passed with the subjective satisfaction by the detaining authority. We are,

therefore, inclined to allow the petition. Criminal writ petition, therefore, succeeds, in terms of following order :-

Impugned order of detention of the petitioner dated 09th January, 2024 passed by Respondent No.2 – District Magistrate, Beed in file no. 2024/RB-DESK-1/POL-1/MPDA-01 and confirmation order dated 29th February, 2024 passed by Respondent No.1 – Home Department (Special), State of Maharashtra in file no. MPDA-0124/CR.21/Spl-3B are hereby set aside. The petitioner be released forthwith, if not required in any other case.

(NEERAJ P. DHOTE, J.)
SSD

(R.G. AVACHAT, J.)