



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

CRIMINAL WRIT PETITION NO. 1093 OF 2024

Shaikh Arbaaz @ T Baba Jafar Shaikh
Age: 23 years, Occu.: Labour,
R/o Valimamu Dargah, Jalna,
Tq. & Dist. Jalna

..PETITIONER

VERSUS

1. State of Maharashtra
Through Section Officer,
Home Department (Special),
2nd Floor, Mantralaya, Mumbai

2. The District Magistrate,
Collector Office, Jalna

3. The Superintendent
Central Prison, Harsool,
Aurangabad

..RESPONDENTS

....
Mr. R.V. Gore, Advocate for petitioner
Mr. G.A. Kulkarni, A.P.P. for respondents
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : 26th JULY, 2024
PRONOUNCED ON : 22nd 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, under Article 226 of the Constitution of India, is to order dated 27th December, 2023 passed by Respondent No.2

– District Magistrate, Jalna directing detention of the petitioner for a period of twelve months, 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'). The petitioner came to be detained with effect from 01st January, 2024. The order of detention has been approved by Respondent No.1 – State Government in Department of Home on 04th January, 2024 and then after receipt of report of the Advisory Board confirmed the same on 21st February, 2024. The detention order is passed to prevent the petitioner, as a dangerous person, from indulging in activities, causing disturbance or breach of maintenance of public order.

3. Learned counsel for the petitioner would submit that although ten crimes were registered against the petitioner, seven cases are triable by the Court of J.M.F.C. Only two cases are serious, being punishable under Section 307 of the I.P.C. Those are pending adjudication. Law will take its own course in regard to those crimes. He would further submit that crime, C.R. No. 324 of 2021 was registered against 150 persons. The petitioner was not the main accused therein. While another crime, C.R. No. 319 of 2022 was registered against not less than 80-90 unknown persons. The petitioner again has been falsely implicated therein. Same is the submission of learned counsel as regards crime, C.R. No. 343 of 2023. According to him, it was registered against four unknown persons. He would further

submit that an offence under the Arms Act has been registered against the petitioner, falsely implicating him on the basis of secret information. The petitioner was released on bail in all the cases pending against him.

4. Learned counsel would further submit that order impugned herein was passed without there being subjective satisfaction on the part of the detaining authority. He would further submit that the petitioner received a notice from the Secretary, Advisory Board communicating him the case to have been referred to the board. The date of hearing was fixed and hearing was to be held through video conferencing. According to learned counsel, the petitioner did not understand in what way he would represent himself before the Advisory Board. He could not file his representation nor has he been given hearing. He even did not understand the charges levelled against him. He was, therefore, deprived of a fair trial before the fact finding committee i.e. the Advisory Board. The order impugned herein is challenged mainly on the following grounds :-

(I) Not offered an opportunity to represent himself before the Advisory Board and/or failure to grant him opportunity of hearing.

(II) Non-compliance of provisions of Section 10 of the MPDA Act, and therefore, it constituted violation of Article 22(5) of the Constitution of India.

(III) This ground in the writ petition has been given up on receipt of information from the Department of Home, Mantralaya, Government of Maharashtra. The said ground pertains to non-adherence of timeline given in the MPDA Act.

(IV) The in-camera statements of witnesses – ‘A’ and ‘B’ indicate them to have been recorded just to fill up the gap between the alleged last crime registered against the petitioner and the proposal for his detention.

(V) Both the in-camera statements are vague. Even if those are accepted as it is, would indicate them to be the cases of maintenance of law and order and not public order.

(VI) No live link between the old cases and the order of detention. Old cases have been considered for passing the order of detention.

(VII) Copies of police papers have not been served on the petitioner in relation to the crimes listed in paragraph no.2 of the order of detention. The same materially caused prejudice in making effective representation against the order of detention.

Learned counsel, therefore, ultimately urged for allowing the petition.

5. Learned A.P.P. would, on the other hand, submit that the order of detention is self speaking. All the ten crimes registered against the petitioner are referred to in paragraph no.2 of the order have been considered. Although the first crime is dated 29th March, 2021, there is a live link between/among each and every crime registered against him thereafter. Moreover, two chapter proceedings, one under Section 107 and the other under Section 110 of the Cr.P.C. did not yield result. Even proceeding for externment of the petitioner was required to be resorted to. Learned A.P.P.

took us through the order of detention wherein gist of each and every crime registered against the petitioner has been recorded. He then adverted our attention towards two in-camera statements of witnesses – ‘A’ and ‘B’ and submitted that the persons did not come forward to lodge report against the petitioner in view of his terror in the vicinity. According to him, sufficiency or insufficiency of the material cannot be a subject of judicial review. He then took us through the affidavit-in-reply filed by the detaining authority and urged for dismissal of the petition.

6. Considered the submissions advanced. Perused the order of detention and the affidavit-in-reply. Before turning to the factual matrix, we need to refer to certain provisions of the MPDA Act, which read thus :-

“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 preparation 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 products, thereby resulting in a loss of confidence in administrations ;

(b-1) “dangerous person” means 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 or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.”

7. The order of detention impugned herein reads thus :-

“1) That upon perusal of the documents produced before me, you have created terror and had caused public nuisance within the limits of Sadar Bazar, Jalna Police Station and within nearby vicinity. You are habitual of committing crimes such as attempt to murder, obstructing government work, rioting by gathering persons with illegal means, damaging public property, violating government orders, creating terror by possessing illegal weapons, voluntarily causing hurt, obscene abuse and giving death threats etc.

In order to prevent you from committing crimes, preventive action has already been taken as per CRPC Section-107, 110 and externment action per section 56 of Bombay Police Act, but the said preventive action are in vain, on the contrary, you have committed crimes in ascending order. You have created terror and are disturbing the public order by creating fear in the minds of public and causing damage to their lives and property. By committing crimes such as attempt to murder, obstructing government work, rioting by gathering persons with illegal means, damaging public property, creating terror by possessing illegal weapons, voluntarily causing hurt and by using threats you have disturbed the Public peace and order and have disrupted the Public life. Due to your criminal and dangerous activities, terror has been created in Sadar Bazar, Jalna Police Station and nearby areas and public life in that area has been disrupted.

2) The details about the recent crimes registered against you at Sadar Bazar, Jalna Police Station, and the preventive actions carried out against you are as follows -

Sr. No.	Police Station	C.R. No.	Sections	Filing Date	Current Status
1	Sadar Bazar, Jalna	235/2021	324, 504, 34 of IPC	29.03.2021	Pending adjudication
2	Sadar Bazar, Jalna	324/2021	307, 353, 333, 143, 145, 147, 148, 149, 427, 188, 269, 270 of IPC r/w Section 4/25 of Indian Arms Act, Section 51(b) of Disaster Management Act and Sections 3 and 4 of Public Property Damage Act	11.05.2021	Pending adjudication
3	Sadar Bazar, Jalna	325/2021	324, 504, 506, 34 of IPC	11.05.2021	Pending adjudication
4	Sadar Bazar, Jalna	984/2021	324, 323, 504, 506, 143, 147, 148, 149 of IPC	23.07.2021	Pending adjudication
5	Sadar Bazar, Jalna	319/2022	143, 145, 146, 147, 149, 153, 120(b) of IPC r/w Section 135 of Bombay Police Act	15.04.2022	Pending adjudication
6	Sadar Bazar, Jalna	801/2022	143, 147, 148, 149, 427, 504, 506 of IPC r/w Section 4/25 of Indian Arms Act	08.10.2022	Under investigation
7	Sadar Bazar, Jalna	343/2023	324, 323, 34 of IPC	03.05.2023	Pending adjudication
8	Sadar Bazar, Jalna	408/2023	324, 34 of IPC	20.05.2023	Pending adjudication
9	Sadar Bazar, Jalna	685/2023	307, 34 of IPC	27.08.2023	Under investigation
10	Sadar Bazar, Jalna	687/2023	143, 147, 148, 149, 324, 294, 336, 337 of IPC r/w Section 4/25 of Indian Arms Act	28.08.2023	Under investigation

Preventive actions :

Sr. No.	Police Station	Chapter Case No. and Section	Filing Date
1	Sadar Bazar, Jalna	121/2022 Section 107 Cr.P.C.	28.04.2022
2	Sadar Bazar, Jalna	39/2022 Section 110(e)(g) Cr.P.C.	27.05.2023

Externment action :

Sr.No.	Police Station	Externment Order No.	Section	Disposal
1	Sadar Bazar, Jalna	12/2022 Dt.16/07/2022 Sent to SDM Jalna vide Out. No. 3686/2022 dtd.16.07.2022	56 of Bombay Police Act	Stayed

8. Paragraph no.3 of the order records that all the ten crimes have been considered for passing the order of detention. The order of detention was served on the petitioner in *Marathi* language as well. Service of the detention order alongwith a bunch of documents containing 719 pages is a fact admitted by the petitioner in the petition itself. He did not place on record those documents so as to find which of the material documents is missing therefrom and the same caused prejudice in not preferring effective representation against the order of detention. In the order of detention itself, the petitioner was apprised of his right first to make representation to the detaining authority and then to make a representation to the State Government. Averments in the petition are axiomatic that the petitioner to have been aware of the matter to have been referred to the Advisory Board. He even received a notice of hearing. The hearing appears to have taken place through video conferencing. He, therefore, cannot be heard to say that he was not offered fair opportunity of hearing before the Advisory Board.

9. The definition of 'dangerous person' itself indicates habituality of the concerned indulging in the offences falling under Chapter XVI and XVII of the I.P.C. In the first blush it may appear that the crimes registered in the month of March and May 2021 are stale and have no bearing on passing of the impugned order. List of the offences registered against the petitioner would go a long way to indicate that he went on committing those offences one after the other, with a short interval. One of the crimes registered against the petitioner pertains to indulging in communal violence. True, the

other three crimes pertain to offences punishable under Section 324 read with Section 34 of the I.P.C. The fact is, however that the victims of this crime are different. Two of the ten offences are punishable under Section 307 of I.P.C. Even two chapter proceedings were initiated against him, one under Section 107 and another under Section 110 of Cr.P.C. The same too appears to have not yielded any result. When every time the victim is different, it would be difficult to assume that each and every offence is individual centric and it has no bearing on the question of maintenance of public order. At the cost of repetition, it needs to be observed that five of the ten crimes registered against the petitioner were allegedly committed in prosecuting the common object of unlawful assembly. True, the petitioner was on bail in all the crimes registered against him.

10. Moreover, there are two in-camera statements of the witnesses 'A' and 'B'. They gave their statements on the condition of anonymity. Witness 'A' refers to the incident that took place in the second week of July 2023, while witness 'B' speaks of the incident that took place in the first week of August 2023. Close reading of the judgment of Apex Court in case of ***Phulwari Jagdambaprasad Pathak Vs. R.H. Mendonca, 2000 AIR (SC) 2527*** would indicate that the in-camera statements therein also did not contain day, date and time of the incident allegedly committed against the witnesses.

11. In case of ***Ameena Begum Vs. State of Telangana & Ors., AIR 2023 SC 4273***, it has been observed in paragraph no.17 as under :-

“17. In a different context, we may take note of the decision in *Sama Aruna v. State of Telangana* (2018) 12 SCC 150 where, S.A. Bobde, J. (as the Chief Justice then was) while construing the provisions of the Act, held:

“16. There is little doubt that the conduct or activities of the detenu in the past must be taken into account for coming to the conclusion that he is going to engage in or make preparations for engaging in such activities, for many such persons follow a pattern of criminal activities. But the question is how far back? There is no doubt that only activities so far back can be considered as furnish a cause for preventive detention in the present. That is, only those activities so far back in the past which lead to the conclusion that he is likely to engage in or prepare to engage in such activities in the immediate future can be taken into account.”

12. So far as ground of time gap between the last crime registered against the petitioner and the order of detention is concerned, it has been observed in case of ***The Collector & District Magistrate, W.G. Dis. Eluru, Andhra Pradesh Vs. Sangala Kondamma, 2005 AIR (SC) 1165*** as under :-

“Last activity 3 months prior to order of detention – No illegality if the facts placed before the detaining authority are proximate to each other and the last of the fact mentioned is proximate to the order of detention then the early incidents cannot be treated as stale and detention order cannot be set aside.”

13. The writ petition is silent to take exception to the impugned order on the ground of delay in passing the same, post receipt of proposal in that regard. For want of pleading, the same cannot be addressed since the detaining authority loses his right to respond thereto and explain the delay, if any, occurred in passing the order. Needless to mention, the order of detention is an administrative action.

14. So far as regards the petitioner was on bail in the crimes registered against him is concerned, we propose to rely on the following decisions of the Apex Court:-

(i) ***Vijaykumar Vs. Union of India and Others, (1988) 2 SCC 57***

has observed :

“Whether the offence for which detenue was jailed was bailable or not immaterial for the purpose of preventive detention.”

(ii) ***Mohd. Salim Khan Vs. Shri.C.C.Bose, Deputy Secretary to the Government of West Bengal and Anr., 1972 AIR (SC) 1670***, wherein it is observed thus:-

“A. West Bengal (Prevention of Violent Activities) Act, 1970 (President's Act 19 of 1970), Sections 3(1) and 3(3) - Detention order after discharge of petitioner in criminal case - A valid order of detention could be passed against him in connection with those very incidents.”

(iii) ***Nenavath Bujji etc. Vs. The State of Telangana and Ors., AIR 2024 SC 1610***, observed thus:-

“25. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution. [See: Haradhan Saha Vs. the State of W.B., 1974 Cri. L.J. 1479]”

15. For all the aforesaid reasons, we are of the considered view that registration of not less than ten crimes against the petitioner and the preventive measures, such as chapter cases initiated against him, proved futile, the detaining authority, in the facts and circumstances of the case, was justified in passing the order impugned herein. We do not find the authority concerned to have not been subjectively satisfied in passing the order.

16. In our view, therefore, criminal writ petition lacks merit. Same is, therefore, dismissed. Rule stands discharged.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)