



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

Criminal Writ Petition No. 1445 / 2023

Sandip s/o Madhukar Nikam

Age : 28 years, Occ.: Labour,

R/o Gendalal Mill, Jalgaon,

Taluka & District Jalgaon.

...Petitioner

Versus

1. State of Maharashtra
Through Deputy Secretary,
Home Department (Special),
Mantralaya, Mumbai.
2. The District Magistrate,
Office of the District Magistrate,
Collectorate, Jalgaon.
3. The Superintendent of Police,
Jalgaon, Dist. Jalgaon.
4. The Sub-Divisional Police Officer,
Sub-Division Jalgaon,
Dist. Jalgaon.
5. The Police Inspector,
Jalgaon City Police Station Jalgaon,
Dist. Jalgaon.
6. The Superintendent,
Central Prison, Nagpur,
Tq. & Dist. Nagpur.

..Respondents

Mr. P.P. Dawalkar, Advocate for the Petitioner.

Mr. G.A. Kulkarni, A.P.P. for Respondents/State.

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

RESERVED ON : 16 FEBRUARY 2024

PRONOUNCED ON : 23 FEBRUARY 2024

JUDGMENT [Per Shailesh P. Brahme, J.] :

. Rule.

2. Rule is made returnable forthwith. Heard both the sides finally with their consent.

3. The petitioner is challenging order dated 28.04.2023 passed by the respondent no.2/District Magistrate, detaining him under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience). The petitioner is recorded to be a 'dangerous person'.

4. The impugned order is based on criminal antecedents of the petitioner in the nature of five offences registered mostly under the provisions of the Indian Penal Code, two preventive actions under Section 107 of the Code of Criminal Procedure and two orders of externment passed under Sections 55 and 56 of the

Maharashtra Police Act. The detaining authority has also taken into consideration in-camera statements of two witnesses. A subjective satisfaction has been arrived at to declare the petitioner as a dangerous person as the activities of the petitioner are found to be detrimental to the public order.

5. Learned Counsel for the petitioner has assailed the impugned order on following submissions :

(i) Out of five offences, four were registered against unknown person. Petitioner's name has not been disclosed in FIR.

(ii) The overacts alleged against the petitioner, are not detrimental to the public order.

(iii) In-camera statements are not reliable.

(iv) The subjective satisfaction is perverse as it is not founded on cogent and reliable material. The petitioner has undergone sufficient incarceration of more than half period. He has three daughters to be looked after. A lenient view needs to be taken.

(v) No reasons are assigned for awarding maximum period of detention. Last offence was registered on 25.02.2023 and impugned order was passed on 28.04.2023 without explaining delay.

6. Learned Counsel for the petitioner seeks to rely upon the judgment rendered by the Supreme Court in the matter of

Ameena Begum Vs. The State of Telangana, 2023 LiveLaw (SC) 743. He would further submit that the petitioner was released on bail to attend the delivery of his wife. He punctually reported to the prison authorities. This conduct would enure to the benefit of the petitioner.

7. Learned APP has opposed the petition by filing affidavit-in-reply. It is submitted that there is no delay in taking action against the petitioner. The subjective satisfaction has been arrived at on the basis of cogent incriminating material against the petitioner. It is vehemently submitted that on two occasions, orders of externment were passed against the petitioner. When the externment order dated 26.06.2021 was in force, petitioner committed offence bearing C.R. No.370/2021 on 17.12.2021 which is aggravated form of misconduct.

8. Learned APP would further submit that the petitioner has not raised ground pertaining to maximum period of detention and the submission in that regard cannot be entertained. Our attention is invited to paragraph no.6 and 8 to demonstrate timely steps taken by the authorities. According to the learned APP, there is no perversity or illegality in the impugned order.

9. We have considered rival submission of both the parties. With the assistance of learned Counsel, we have perused the relevant papers.

10. The detaining authority examined the proposal on the basis of five offences, two preventive actions, two externment orders and two in-camera statements. Out of five offences, four are registered under the Indian Penal Code namely C.R. No.156/2020 under Sections 394, 294, 506 read with 34 of the IPC; C.R. bearing CCTNS. No.33/2020 (15/2020) under Section 394 read with 34 of IPC; C.R. No.332/2021 under Sections 452, 447, 448, 504, 506, 510 read with 34 of the IPC; C.R. No. 50/2023 under Section 392 read with 34 of IPC. Only one offence bearing C.R. No.370/2021 is under Section 142 of the Maharashtra Police Act.

11. We find that all four offences are under Chapter XVI and XVII of IPC. They are serious in nature. The petitioner appears to have indulged in the criminal activities openly and within public view. Pertinently he has indulged in dacoity and robbery repetitively.

12. With this type of criminal antecedents having placed before the detaining authority, we are not prepared to accept the submission that the petitioner's name having not been disclosed in the FIR, it would be a ground to invalidate impugned order. The detaining authority has to examine involvement of the petitioner on the basis of the police papers of the respective crime. It would not be examining the merits of the respective prosecution against him. Therefore, we find that no mistake has been committed by the respondent /detaining authority in this regard.

13. In-camera statements are being criticized by the petitioner. These statements are corroborative in nature. Impugned order is not based upon the statements only. Their probative value cannot be examined in isolation.

14. The material pitted against the petitioner unequivocally demonstrates prejudicial activities against the public order. When the petitioner has already suffered two preventive actions and two distinct orders of externment, the detaining authority is justified in holding that drastic action is necessary because the petitioner is not deterred by normal penal laws.

15. The material on record indicates that the petitioner is habitual and has created terror in the society. In-camera statements substantiate the action taken against the petitioner. Our attention is invited to order of externment dated 07.10.2019 passed under Section 56(1)(b) of the Maharashtra Police Act and order dated 26.06.2021 passed under Section 55 of the Maharashtra Police Act externing him for one year. The orders have not been challenged by him. Last order of externment was flouted by him leading to C.R. No.370/2021 under Section 142 of the Maharashtra Police Act. Additionally, C.R. No.50/2023 under Section 392 read with 34 of IPC was registered on 25.02.2023, when the order of externment dated 26.06.2021 was in operation. Learned APP has rightly contended that the petitioner has indulged in aggravated form of misconduct.

16. We are not inclined to exercise discretion in his favour when a case is made out for aggravated misconduct. We are consistent in our view and for that, we prefer to rely upon the judgment in the matter of Akash Bhagwat Chonde Vs. State of Maharashtra and Others in Criminal Writ Petition No.1810/2023. Paragraph Nos. 20 and 21 are as follows :

"20. We find substance in the submissions of the learned Addl.P.P. This conduct of the petitioner is detrimental to the ground being taken by the petitioner and the submissions made on his behalf against the impugned order. This aspect of the matter has also been considered by the detaining authority. Committing an offence by violating orders of externment is aggravated form of criminal antecedents. We find that there is no illegality or perversity committed by the detaining authority in appreciating the material on record to come to the conclusion that the petitioner is a dangerous person.

21. Considering the material produced against the petitioner, criminal antecedents and his conduct, we are not inclined to exercise the jurisdiction in favour of the petitioner to uphold the submissions of the learned counsel for the petitioner in respect of delay or non consideration of orders of bail. The petitioner has not tendered any explanation for violation of orders of externment. Rather this circumstance would substantiate the impugned order to demonstrate that ordinary law of the land has been falling short to prevent the activities of the petitioner."

17. Learned Advocate for the petitioner has prayed for leniency as for more than eight months, he is in jail. It is a matter of record that for the purpose of delivery of his wife, the petitioner was granted bail temporarily. We have already recorded findings upholding the findings in the impugned order. It is a case of aggravated form of misconduct. The petitioner is involved in serious offences affecting public order. It is not possible for us to adopt any lenient approach.

18. Learned Counsel for the petitioner has relied upon the judgment in the matter of Ameena Begum (supra). Our attention is invited to paragraph no.70 to buttress a submission that the impugned order is invalid for not assigning specific reasons for awarding maximum period of detention. This particular ground has not been raised by the petitioner in the memo of Writ Petition. Considering the supervening circumstances, we are not prepared to invalidate order of detention even if the petitioner succeeds on this submission. By implication of Section 5A of the Act, we are of the considered view that the impugned order is sustainable.

19. We find that the petition is devoid of merits. The Criminal Writ Petition is dismissed. Rule is discharged.

(SHAILESH P. BRAHME J.)

(MANGESH S. PATIL J.)