



THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1505 OF 2023

Devanand @ Sonu s/o Shivaji Jadhav,
Age: 23 years, Occ.: Business
R/o Siddharth Nagar, Javla Palshi Road,
Tq. Dist. Hingoli.

... **Petitioner**

Versus

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

... **Respondents**

...
Mr. Amar V. Lavte, h/f Mr. S. G. Ghongade, Advocate for Petitioner.
Mr. A. R. Kale. APP for Respondents.
...

CORAM : **R. G. AVACHAT and
SANJAY A. DESHMUKH, JJ.**

RESERVED ON : 12th December, 2023.

PRONOUNCED ON : 16th January, 2024.

J U D G M E N T : (Per Sanjay A. Deshmukh, J.)

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The petitioner is challenging the order dated 7th August, 2023 passed by Respondent No.2/District Magistrate under Section 3(1) 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 (for short "MPDA Act").

3 The petitioner is resident of Siddhartha Nagar, Hingoli. It is alleged that he is dangerous person. The detaining authority alleged that the petitioner is involved in serious crimes committed under Chapter XVI and XVII of the Indian Penal Code and Chapter V of the Arms Act. It is alleged that because of the crimes committed by the petitioner, the people residing in that vicinity are under fear, which affected the public order. The following offences are registered against the petitioner.

Sr No	Police Station	C.R. No. & FILED ON	Under Section	RCC/SCC NO.	Arrest Date	Bail Date	Present status
1	Hingoli Shahar	161/2021 09.01.2021	324, 323, 504, 506, 34 IPC	259/2021 03.09.2021	17.06.2021 Notice		Court pending
2	Aundha Nagnath	263/2021 14.10.2021	186, 188 IPC & 36, 37(1)(c) BP ACT & 51(b) Disaster Management Act	---	14.10.21 Notice		Police Investigation
3	Hingoli Shahar	115/2022 19.03.2022	324, 323, 504, 506, 34 IPC	165/2023 20.05.2023	23.03.2022 Notice		Court pending
4	Basamba	17/2023 15.01.2023	307, 326, 452, 427, 143, 144, 146, 147, 148, 149, 506, 323 IPC	127/2023 13.04.2023	22.03.2023		Court pending
5	Hingoli Shahar	651/2023 28.07.2023	326, 452, 147, 148, 149, 427 IPC & 4/25 Arms Act	---	29.07.2023		Police Investigation

4 The detaining authority is relying upon Crime No.17 of 2023, registered on 15th January, 2023 at Basamba Police Station, District Hingoli and Crime No.651 of 2023 registered on 28th July, 2023, at Hingoli City Police Station, as well as, in-camera statements of two witnesses.

5 The petitioner has challenged the impugned order on the ground that there is no subjective satisfaction that he was acting in any prejudicial manner to the maintenance of public order as contemplated by the MPDA Act. The stale crimes are taken for consideration by the detaining authority. There is no live link between

these two crimes to have subjective satisfaction. The learned counsel for petitioner submits that the in-camera statements of the witnesses are not properly verified. Bail was granted to the petitioner, which was not considered by the authority.

6 The learned counsel for petitioner submitted that the order passed by the detaining authority is not based on the reliable material of alleged two crimes. He pointed out that Crime No.17 of 2023 is registered on 15th January, 2023 about the incident of attack dated 8th December 2022. Bail was granted in this crime on 16th March, 2023 by the learned Additional Sessions Judge-3, Hingoli. He further pointed out that in Crime No.651 of 2023 bail was also granted to the petitioner on 31st July, 2023 by the learned Judicial Magistrate First Class, Court No.1, Hingoli. Thus, there is no satisfactory material to proceed against the petitioner. It is lastly prayed to allow the writ petition by quashing and setting aside the impugned order.

7 The learned counsel for petitioner relied upon the authority in the case of ***Ashokrao s/o Uttamrao Pawar and another Vs. State of Maharashtra and others***, (Criminal Writ Petition No.738 of 2022) decided by the Division Bench of this Court at Nagpur Bench on 8th February, 2023, in which it is also held that every criminal act

alleged against the Detenu would therefore not be such as to prejudice the maintenance of public order, until it is so demonstrated.

In paragraph 11, the Division Bench of this Court held as under:

“11. The Authority would assume jurisdiction and would be authorised to issue a detention order under this provision only if it comes to a subjective satisfaction on the material before it that the acts referred to in such material as alleged against the Detenu would be acts, which would be prejudicial to the maintenance of public order, and not otherwise. The expression “acting in any manner prejudicial to the maintenance of public order” under the MPDA Act, has been interpreted and dealt with by the Hon'ble Supreme Court in Hasan Khan Ibne Haider Khan ..V/s.. R. H. Mendnoca and Ors., reported in (2000) 3 SCC page 511, as held at para 7 thereof.

“7. This Court in Amanulla Khan Kudeatalla Khan Pathan v. State of Gujarat MANU/SC/0396/1999 : 1999CriLJ3504 considered the expression “acting in any manner prejudicial to the maintenance of public order” and referring to earlier decision of this Court in Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police MANU/SC/0659/1995 : (1995) 3SCC237 held that the fallout and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him on to prevent his subversive activities affecting the community at large or a large section of society and it is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of “law and order” or it amounts to breach of “public order”

Every criminal act alleged against the Detenu would

therefore not be such as to prejudice the maintenance of public order, until it is so demonstrated.”

8 The learned APP for the State submitted that the impugned order was passed on 7th August, 2023 after considering these two crimes and statements of two in-camera witnesses, which show that the petitioner is dangerous person and due to him, there was issue of public order. He further submitted that the order was confirmed by respondent No.1 on 14th August, 2023, within reasonable time. He prayed to reject the writ petition.

9 Admittedly, Crime No.651 of 2023 was registered on 28th July, 2023 and the bail was granted in that case to the petitioner on 31st July, 2023 by the learned Judicial Magistrate First Class, Court No.1, Hingoli. The learned Trial Court held that *prima-facie* material is not available to show that the injured sustained injury as there was no medico legal certificate on record and bail was granted.

10 As far as Crime No.17 of 2023 is concerned, the attack as alleged by the informant took place on 8th December, 2022 and the report was lodged on 15th January, 2023 and the bail was granted to the petitioner in this crime on 16th March, 2023 by the learned Additional Sessions Judge-3, Hingoli. Admittedly, these bail orders

are not challenged by the respondents. It means there was no such threat to the public order on the part of this petitioner. The detaining authority while passing the order did not give reasons as to what way there was live link between these crimes and the necessity of detention order to hold that the petitioner is dangerous person and that there was issue of public order because of these crimes, which were admittedly occurred in the month of January, 2023 and July, 2023. It is because the proposal was forwarded and final order of detention was passed on 7th August, 2023. Thus, there was no such any overt act on the part of petitioner to show that he acted prejudicial to the maintenance of public order as contemplated under the provisions of the MPDA Act.

11 If the aforesaid two crimes are considered alongwith the two in-camera statements of the witnesses, certainly it does not establish that the petitioner is a dangerous person and that there was issues of public order. This shows that the detaining authority failed to apply its mind and did not come to the subjective satisfaction on facts in issue. The interference is therefore, warranted in it.

12 The impugned order therefore, deserves to be quashed and set aside. Hence, the following order:

ORDER

- I. The writ petition is allowed in terms of prayer clauses (B) and (C).
- II. The petitioner be released forthwith, if not required in any other crime.
- III. Rule is made absolute in above terms.

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]

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