



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

CRIMINAL WRIT PETITION NO. 1506 OF 2023

Sunil @ Sonu Muralidhar Magar
Age. 27 years, Occ: Labour
R/o. Ganesh Nagar, Garkheda Parisar
Pundaliknagar, Aurangabad.

... Petitioner

Versus

1. The State of Maharashtra
Through The Secretary,
Home Department [Special],
2ND floor, Main Building,
Mantralaya, Mumbai.
2. The Section Officer,
Home Department [Special],
2ND floor, Main Building,
Mantralaya, Mumbai.
3. The Commissioner of Police,
Aurangabad.
4. The Superintendent
Aurangabad Central Prison,
Aurangabad.

... Respondents

...
Mr. A. K. Bhosle, Advocate for Petitioner.
Mr. A. R. Kale. APP for Respondents.
...

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

RESERVED ON : 22nd 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 This writ petition is filed to challenge the order of detention
dated 28th June, 2023 passed by respondent No.3/Commissioner of
Police, Aurangabad under Section 3 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 Background facts are as under:

The respondents initiated proposal for taking action
against the petitioner under section 3 of the MPDA Act. It was alleged
that activities of this petitioner created terror in the mind of public at
large. He has committed serious offenses like voluntarily causing
hurt, robbery, dacoity, causing death and grievous hurt, for the cases
filed under Chapters XVI and XVII of the IPC. The result of his
activities was that the peoples were remaining under his constant fear
and terror. The list of the offenses committed by this petitioner is as
under:

Sr. No.	Police Station	C.R. No. & U/s	Date of Registration	Present Status
1	Pundaliknagar	107/2021 u/s 324, 323, 504, 506, 34 IPC	29/03/2021	Pending trial
2	Harsul	27/2022 u/s 394, 395 IPC.	23/02/2022	Pending trial
3	MIDC Cidco	83/2023 u/s 397, 394, 325, 323, 34 IPC	14/02/2023	Pending Investigation
4	MIDC Cidco	90/2023 u/s 394, 34 IPC.	18/02/2023	Pending trial

4 The authority further relied upon the in-camera statements of two witnesses recorded on 7th June, 2023 and 9th June, 2023, which were verified by the concerned police officer. After considering Crime No.83 of 2023, dated 14th February, 2023, registered for the offences punishable under Sections 397, 394, 325 and 323 read with 34 of the IPC and Crime No.90 of 2023, dated 18th February, 2023, registered for the offences punishable under Section 394 read with 34 of IPC and the in-camera statements of two witnesses, the detaining authority recorded its subjective satisfaction that the petitioner is a dangerous person and action taken against him under normal law of the land is found to be insufficient and ineffective to deter him from indulging in criminal activities prejudicial to the maintenance of public order. Thus, it was observed that criminal activities of the petitioner are disturbing the normal tempo of life of citizens of Aurangabad city.

5 The learned counsel for petitioner pointed out that alleged crimes took place on 14th February, 2023 and 18th February, 2023 with MIDC Cidco Police Station. However, the name of the petitioner is not mentioned in the reports. Bail was granted in both the crimes on 3rd April, 2023 and 24th April, 2023. The bail orders are not challenged by the respondents. The proposal was not thereafter, immediately moved for taking action under the provisions of the MPDA Act against this petitioner. Therefore, the impugned order vitiates, as it is illegal and bad in law. The in-camera statements of the witnesses are vague in nature, which are relied upon by the authority. The representation was sent by the petitioner on 25th August, 2023 to Respondent No.3. It was decided on 6th September, 2023. The delay caused for deciding said representation is not properly explained. There is no live link for subjective satisfaction to pass such order of detention. The report was not promptly sent as per Section 3(3) of MPDA Act to the State Government. The learned counsel for petitioner submitted that the fundamental rights of the petitioner to move freely as contemplated under Article 19 of the Constitution of India is affected by said illegal order. The detention order is not legal and correct. It is lastly prayed to quash and set aside the said order.

6 In the affidavit in reply submitted on behalf of respondent

No.3, it is submitted that the petitioner is a dangerous person and after subjective satisfaction, considering his criminal activities on the basis of Crime No.83 of 2023 and Crime No.90 of 2023, as well as, the in-camera statements of the witnesses, the detention order is passed by giving sufficient reasons. The grounds raised by the petitioner are misleading. Considering ground of detention, the writ petition deserves to be dismissed.

7 The Joint Secretary, Government of Maharashtra, Home Department (Special) submitted affidavit and contended that the impugned order is passed on 28th June, 2023. The report under Section 3(3) of the MPDA Act was received by the Home Department on 30th June, 2023. The State Government approved the order on 7th July, 2023. The representation of the petitioner was received on 29th August, 2023 and it was decided on 6th September, 2023 by applying the mind. It is also submitted that when the representation of the petitioner was received on 29th August 2023 by the Central Prison, Aurangabad, remarks were called from the Commissioner of Police, Aurangabad by email dated 29th August, 2023 sent by Special Branch-3B Desk of Home Department. The remarks of the detaining authority were received on 4th September, 2023, late evening by e-mail. The remarks were placed before respondent No. 2 on 5th September, 2023

and it was forwarded to the Joint Secretary on same day. On 6th September, 2023, the Joint Secretary forwarded it to the Additional Chief Secretary (Home). On 6th September, 2023, the Additional Chief Secretary considered the remarks of the detaining authority and rejected the said representation.

8 According to the respondents there is no delay caused for considering and deciding representation of the petitioner. The material, particularly, two crimes and in-camera statements were rightly considered and relied upon for passing the said order. It is lastly prayed to reject the writ petition.

9 The learned APP for the State submitted that delay caused for considering the representation of the petitioner is properly explained. There was subjective satisfaction of the detaining authority. There is live link between the commission of these two crimes and passing of the impugned order. It is lastly prayed to reject the writ petition.

10 Perused the impugned order and all the relevant papers.

11 The learned counsel for petitioner submitted the case of ***Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and ors., 1994 AIR***

(Supreme Court) 656), in which the law is laid down that detention order passed after 5 months and 8 days from the date of registration of the last crime, taking into consideration the unexplained delay, whether short or long, the order of detention was quashed. The Honourable Supreme Court in paragraph 13 and 14 held as under:

“13. Coming to the case on hand, the detention order was passed after 5 months and 8 days from the date of the registration of the last case and more than 4 months from submission of the proposal. What disturbs our mind is that the statements from the witnesses A to E were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him, that too in the later part of March, 1991. These statements are very much referred to in the grounds of detention and relied upon by the detaining authority along with the registration of the cases under the Act:

14. Under the above circumstances, taking into consideration of the unexplained delay whether short or long especially when the appellant has taken a specific plea of delay, we are constrained to quash the detention order. Accordingly we allow the appeal, set aside the judgment of the High Court and quash the impugned detention order. The detenu is directed to be set at liberty forthwith.”

12 In the present case, Crime No.83 of 2023 was registered on 14th February, 2023 and Crime No.90 of 2023 was registered on

18th February, 2023. There is delay of 4 months and 10 days for passing the detention order from the date of registration of last crime.

13 As far as the two in-camera statements of the witnesses are concerned, these two statements are recorded on 7th June, 2023 and 9th June, 2023, in which the incidents in the month of May, 2023 and first week of June, 2023 are alleged to have been occurred.

14 It is an admitted fact that in these two crimes, bail is granted by the learned Additional Sessions Court to this petitioner on 3rd April, 2023 and 24th April, 2023, but those orders are not challenged by the respondents, in which it is ordered that there is no substance and concrete *prima-facie* material against the petitioner. Thus, there is insufficient material to proceed against the petitioner. Further, there is no live link between these two crimes and passing of the detention order, when there is four months span. There is no justification on the part of the respondents as to why stale crimes of four months prior to the detention order were taken into consideration for arriving at subjective satisfaction. The impugned order does not show that reasons recorded by the learned Additional Sessions Judge, Aurangabad while granting bail, were considered by the detaining authority as held in the case of ***Pradeep Nilkanth Paturkar***

(supra). Thus, the detaining authority failed to apply its mind while recording subjective satisfaction.

15 Considering these two grounds that there is no subjective satisfaction by application of mind on the part of the detaining authority, we hold that there is no material to justify the conclusion that the acts of the petitioner are detrimental to the maintenance of public order. Also there is no proper explanation on the part of the respondents as to why the representation dated 25th August, 2023 was not decided within reasonable time. Therefore, we hold that the impugned order is not legal and sustainable, which is passed contrary to the provisions of Section 3 of the MPDA Act.

16 The writ petition deserves to be allowed. The impugned order deserves to be quashed and set aside. Hence, the following order:

ORDER

- I. The writ petition is allowed in terms of prayer clause (c).
- II. The order dated 28th June, 2023 passed by respondent No.3, is hereby quashed and set aside.

III. The petitioner be released forthwith, if not required in any other crime.

IV. Rule is made absolute in above terms.

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]

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