



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

**CRIMINAL WRIT PETITION NO. 1605 OF 2023**

Shaikh Irfan @ Bablu Shaikh Usman,  
Age : 45 Years, Occu. : Agril.,  
R/o At Post Pirgayabvadi,  
PO Dhakefal, Tq. Ghansavangi,  
Dist. Jalna.

.. Petitioner

**Versus**

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

Shri Pratap B. Vikhe, Advocate for the Petitioner.  
Shri G. A. Kulkarni, A.P.P. for the Respondent Nos. 1 to 3.

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

**CLOSED FOR JUDGMENT ON : 12.03.2024**  
**JUDGMENT PRONOUNCED ON : 18.03.2024**

**JUDGMENT (Per Shailesh P. Brahme, J.) :-**

. Rule. Rule is made returnable forthwith. With the consent  
of both the sides heard finally at the admission stage.

2. The petitioner is assailing order of detention dated 17.08.2023 passed by the respondent No. 2/District Magistrate, Jalna U/Sec. 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred as to the 'M.P.D.A. Act' for the sake of brevity and convenience).

3. It has been recorded by the respondent No. 2 in the impugned order that the petitioner is a dangerous person considering material pitted against him. The subjective satisfaction of the detaining authority is founded on six offences registered against him, two preventive actions U/Sec. 107 of the Code of Criminal Procedure, an action of externment and two in camera statements.

4. Learned counsel for the petitioner, Mr. Pratap B. Vikhe submits that out of six offences considered by the detaining authority, the petitioner has been acquitted in offence bearing CR No. 229/2020 and CR No. 384/2022, which fact has not been considered. The offences pitted against him are not serious, within public view and do not reflect any activity prejudicial to the public order. He would further submit that orders of enlargement on bail have not been considered. According to him the subjective satisfaction is perverse.

5. Learned counsel for the petitioner further submits that there is delay of about five months in passing impugned order

from registration of last offence which is fatal. In camera statements are vague and unreliable.

6. To buttress the submissions, learned counsel for the petitioner tenders on record compilation of judgments and separate compilation comprising of orders of bail and acquittal.

7. Learned Assistant Public Prosecutor opposes the submissions of the petitioner by referring to affidavit in reply. He submits that delay has been properly explained. The detaining authority has arrived at plausible and reasonable conclusion. He would further submit that acquittal in two offences is not honourable one. It is further contended that there are no procedural lapses and violation of principles of natural justice. He would vehemently submit that considering an action of externment passed against the petitioner, he is guilty of aggravated form of misconduct.

8. We have considered rival submissions of the parties advanced across the bar. We have perused relevant record. The petitioner is held to be dangerous person on the basis of six offences and other material. Out of them five offences are registered under Chapter XVI of the Indian Penal Code. The petitioner has suffered action of externment U/Sec. 56 of the Maharashtra Police Act vide order dated 25.02.2020 for two years.

9. Learned counsel for the petitioner refers to communication

dated 26.05.2023 which is at page No. 43, communication dated 17.06.2023 at page No. 38 and communication dated Nil at page No. 53 as representations. These are the proposals forwarded to various authorities for initiating action against the petitioner under the M.P.D.A. Act. Representations under M.P.D.A. Act have definite connotation as contemplated by Section 8(1) and Section 10 of the M.P.D.A. Act. In the scheme of M.P.D.A. Act representations occur after order of detention. A detenu has been provided a safeguard under Article 22(5) of the Constitution of India. In the present case, we do not find that any representation has been made by the petitioner. The communications referred to above are not the representations.

10. Our attention is invited to the FIR and the bail orders passed in each of the offences except two, wherein the petitioner has been acquitted. It is being submitted that offences have been committed within public view and those cannot be said to be causing prejudice to the public order. The offences are as under :

- (i) CR No. 37/2016 is U/Sec. 326, 324, 323 and 504 r/w Sec. 34 of the I. P. Code and Sec. 3(1)(10) of the S.C. and S.T. Act.
- (ii) CR No. 43/2020 is U/Sec. 354, 432 and 506 of the I. P. Code.
- (iii) CR No. 429/2020 is U/Sec. 324, 504 r/w Sec. 34 of the I. P. Code.
- (iv) CR No. 39/2021 is U/Sec. 326, 324, 323, 143, 147, 148 and 504 of the I. P. Code.
- (v) CR No. 384/2022 is U/Sec. 65(a) and (c) of the Maharashtra Prohibition Act r/w Sec. 4 and 25 of the Arms Act.

- (vi) CR No. 98/2023 is U/Sec. 307, 143, 147, 148, 149, 324, 323, 504 and 506 of the I. P. Code.

11. We have considered first information reports of above offences. Except CR No. 384/2022, all other offences are falling under Chapter XVI of the I. P. Code. They are cognizable and non bailable. They are serious. Contents of first information reports indicate that those are not individual centric. He appears to have been persistently engaged in criminal activity. In all the offences charge sheets have been filed. Under these circumstances, we are not inclined to accept submission of the petitioner's advocate that his activities cannot be said to be detrimental to the public order.

12. Though it is pointed out that the petitioner has been acquitted in offence bearing CR No. 429/2000 and CR No. 384/2022 that cannot be said to be a mitigating factor. It is not a case that only two offences in which lateron petitioner has been acquitted are under consideration. When there is other incriminating material on record, acquittal from two offences is inconsequential. We have gone through the orders of acquittal. In R.C.C. No. 716 of 2020 emanating from CR No. 429/2020, the acquittal of the petitioner was due to the settlement with the complainant. It cannot be said to be honourable acquittal on merits. In R.C.C. No. 196 of 2022 arising out of CR No. 384/2022, the petitioner has been acquitted on merits.

13. Learned counsel for the petitioner has taken us through

orders of bail passed in four offences considered by the detaining authority. It is being submitted that the orders of bail are mitigating factor. Normally, we would have accepted this submission. But present case represents aggravated form of misconduct of the petitioner as two offences have been committed violating order of externment. We would be dealing with this point little later. We are not inclined to quash the impugned order on this solitary submission of petitioner.

14. It reveals from record that by order dated 25.02.2020, the petitioner was externed for two years. The orders of bail passed on 03.03.2021 in CR No. 39/2021 and on 05.04.2023 in CR No. 98/2023 do not reflect consideration of order of externment. It is *ex-facie* clear that orders releasing the petitioner were passed in ignorance of order of externment. Therefore, we are not impressed by the submission that detaining authority has erred in arriving at subjective satisfaction.

15. We have considered in camera statements of two witnesses, which were recorded on 11.05.2023 and 14.05.2023. It is being contended that no offence in pursuance of the statements has been registered. Both the statements have been verified by the Sub Divisional Police Officer, Ambad on 15.06.2023. Both the statements have corroborative value and cannot be discarded on technical objections.

16. It reveals from the record that subjective satisfaction of the detaining authority is reasonable and plausible. Relevant papers

of investigation, in camera statements and preventive actions including action of externment have been considered by the detaining authority. We do not find any perversity or illegality in the subjective satisfaction.

17. The petitioner has suffered action of externment U/Sec. 56 of the Maharashtra Police Act vide order dated 25.02.2020 passed by the competent authority. He was externed for two years from Jalna, Aurangabad and Buldhana districts. The order was not been challenged by the petitioner. Order of externment was in force upto 24.02.2022. During this period the petitioner committed CR No. 429/2020 on 16.07.2020 and CR No. 39/2021 on 28.01.2021. Both the offences were committed within territorial limits of Jalna district. Both the offences have been committed by violating order of externment. This conduct amounts to aggravated form of misconduct which in itself demonstrates that the petitioner has been undeterred by normal penal actions. We have taken this view in the matter of **Akash Bhagwat Chonde Vs. The State of Maharashtra and others in Cri. W. P. No. 1810 of 2023 vide judgment dated 31.01.2024.** We are therefore not inclined to exercise discretionary jurisdiction in favour of the petitioner.

18. Last offence bearing CR No. 98/2023 was registered on 22.03.2023. Impugned order was passed on 17.08.2023. According to the learned counsel for the petitioner, this delay is unexplained and fatal. Learned A. P. P. has invited our attention to paragraph No. 6 of affidavit in reply. It contains sequence of

events from stage when the authority proposes to initiate action against the petitioner under M.P.D.A. Act. The time consumed in taking final action against the petitioner has been explained satisfactorily. The petitioner has not challenged the explanation tendered by the respondents. We have no hesitation to hold that there is no delay and the period consumed in passing impugned order has been properly explained.

19. Our attention is also invited to the paragraph Nos. 7 and 8 of the affidavit in reply to demonstrate that due procedure as contemplated under the M.P.D.A. Act has been followed. There is no counter by the petitioner to this aspect of the matter. We do not find that there is violation of principles of natural justice or there are any procedural lapses in passing the impugned order.

20. The learned counsel for the petitioner relies on the judgment of the Division Bench of this Court in the matter of **Balu Waman Patole Vs. The Commissioner of Police, Aurangabad in Cri. W. P. No. 155 of 2019 dated 26.03.2019**. We have gone through paragraph Nos. 33, 34 and 46. The judgment is distinguishable from the case in hand. Case in hand reflects aggravated form of misconduct. This judgment would be of no avail to the petitioner. Next judgment is of **Ashok Uttamrao Pawar Vs. State of Maharashtra and others in Cri. W. P. No. 738 of 2022 dated 08.02.2023**. We have considered its paragraph Nos. 12, 18 and 19. On facts, we are not inclined to follow this either.

21. Learned counsel for the petitioner has also referred to judgment of the Supreme Court in the matter of Ameena Begum Vs. State of Telanga and others reported in *(2023) 9 SCC 587*, which explains difference between public order and law and order. We have already considered material facts of the present matter in the context of the principles laid down by the Supreme Court. Lastly, judgment in the matter of **Jalindar Laxman Jadhav Vs. The District Magistrate, Beed and others in Cri. W. P. No. 1696 of 2023 dated 04.12.2023** of the Division Bench of this Court has been cited to make out a point that in camera statements are unreliable. We have considered paragraph No. 8 of the judgment. Considering peculiar facts and circumstances of the case in hand, we are not prepared to adopt the view taken in that matter.

22. We find that there is no merit in the criminal writ petition. Criminal writ petition is dismissed. Rule is discharged.

[ **SHAILESH P. BRAHME, J.** ]      [ **MANGESH S. PATIL, J.** ]