



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

CRIMINAL WRIT PETITION NO. 1642 OF 2023

Ajay S/o. Raju Dahatonde

....Petitioner

Versus

1. The State of Maharashtra

2. The Commissioner of Police, Aurangabad.

3. The Superintendent,
Harsul Central Jail, Aurangabad.

....Respondents

....

Advocate for Petitioner : Mr. Dhanraj S. Ingole

h/f. Mr. Nilesh S. Ghanekar and Mr. S.P. Waghchaure

APP for Respondents : Mr. M.M. Nerlikar

...

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

Judgment reserved on : 02 APRIL 2024

Judgment pronounced on : 10 APRIL 2024

JUDGMENT (PER : SHAILESH P. BRAHME, J.) :

1. Rule. Rule is made returnable forthwith with the consent of the parties. Heard both the sides finally at the admission stage.

2. Petitioner is challenging order dated 21.07.2023 passed by respondent no. 2 – Commissioner of Police 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, (hereinafter referred to as 'the MPDA Act' for the sake of brevity and convenience).

3. Respondent no. 2 – Commissioner of Police arrived at subjective satisfaction on the basis of following material :

- i. C.R. No. 224 of 2023 registered on 25.03.2023 for the offences punishable under Section 4/25 of Arms Act, under Section 135 of the Maharashtra Police Act read with Section 34 of the Indian Penal Code ;
- ii. C.R. No. 264 of 2023 registered on 11.04.2023 for the offences punishable under Sections 307, 323, 504 read with 34 of the Indian Penal Code ;
- iii. Two in-camera statements.

4. It has been recorded by the Detaining Authority that though the petitioner was on bail, considering his past conduct he was likely to revert to similar activities prejudicial to the maintenance of the public order. It is further recorded that he being at large is prejudicial to the maintenance to public order and the normal laws are not sufficient to curb his dangerous activities. He has created a terror in the society.

5. Learned counsel for the petitioner places on record written submissions along with judgments. Following submissions are pressed into service :

- i. In-camera statements of witnesses are unreliable and there is no verification ;
- ii. Petitioner was on bail in furtherance of last offence and there is no subjective satisfaction for detaining him ;
- iii. Detaining Authority failed to consider reasons enlarging petitioner on bail ;
- iv. Illegible documents were furnished causing prejudice to right to make effective presentation ;
- v. Extraneous material has been considered ;
- vi. There is no sufficient material for arriving at subjective satisfaction.

6. Learned APP Mr. Mahendra Nerlikar supports impugned order on the basis of affidavits already filed in the matter. He would submit that petitioner has indulged in serious offences and there are in-camera statements to demonstrate disturbance to public order. There is

due verification of in-camera statements by the competent authorities. It is vehemently submitted that Detaining Authority has rightly recorded subjective satisfaction considering the criminal tendencies and potential of the petitioner to continue notorious activities. It is further submitted that the petitioner has been already supplied with translated copies of legible documents. It is further submitted that order of bail has been taken into account by the Detaining Authority.

7. Learned APP would further submits that the Detaining Authority has independently applied mind to the material on record. Granting or refusing of the bail and the reasons thereof would not be the deciding factors. He would submit that by implication of Section 5 A of the MPDA Act, impugned order is sustainable. He has placed on record few judgments with which we propose to deal at appropriate places.

8. Having heard both the sides and having gone through the relevant papers few undisputed facts emerge from record. Only C.R. No. 224 of 2023 and 264 of 2023 are pitted against the petitioner along with a preventive action under Section 110 of Code of Criminal Procedure and two in-camera statements. The proposal was submitted by the sponsoring authority to the Detaining Authority on 23.06.2023. Order of detention was passed on 21.07.2023. It was approved under Section 3 (3)

of the MPDA Act on 31.07.2023. Lastly, it was confirmed on 14.09.2023.

9. In-camera statements were recorded on 19.06.2023 and 21.06.2023. Those were verified by Deputy Commissioner of Police on 21.07.2023. In-camera statements bear verification indicating authenticity of witnesses was considered. The spot inspection was done. We find that satisfaction was reached about truthfulness of the statements.

10. Learned counsel for the petitioner relies on judgment of *Digambar @ Digambar Vitthal Dagdade Versus The District Magistrate, Latur and others*, passed by this High Court in Criminal Writ Petition No. 1736 of 2023. In those matters, there was no verification of the in-camera statements by the competent higher authority at all. Such is not the case in the present matter. Petitioner cites judgment of *Zabin Salim Hamja Shaikh Versus A.N. Roy and others*, **MANU/MH/0678/2006**. In that matter verification was silent about truthfulness of the incident which was covered by in-camera statements. The judgment is distinguishable on facts. Similar is the case of *Lakhan Rohidas Jagtap Versus The Commissioner of Police, Pune and others*, **2019ALLMR (Cri) 5261**. All the three judgments would not enure to

the benefits of the petitioner. We do not find any substance in the submission in this regard.

11. Petitioner was arrested on 04.05.2023 in furtherance of C.R. No. 264 of 2023. He was in police custody till 08.05.2023. Later on he was enlarged on bail on 30.06.2023. By that time, the proposal for the detention of the petitioner forwarded on 23.06.2023 was under consideration before the Detaining Authority. The grounds of detention specifically refer to the situation in paragraph no. 10. The Detaining Authority considered antecedents and the tendencies of the petitioners. It further records satisfaction of the potential of the petitioner to indulge in the criminal activities prejudicial to the maintenance of public order in future. We find that the Detaining Authority has applied mind to the relevant record and proceeded to pass impugned order for plausible reasons.

12. Learned counsel for the petitioner seeks to rely upon *Gousiya Firoz Khan Versus The Commissioner of Police and others*, passed by this High Court in Criminal Writ Petition No. 3789 of 2022. In that matter Division Bench was considering a case of a detainee who was in custody and his application for bail was pending when order of detention was passed. In that case no subjective satisfaction was recorded as to why the order of detention was necessary. We have

already recorded that in present case the Detaining Authority in paragraph no. 10 has expressly recorded reasons for passing impugned order. Therefore, on facts the ratio laid down by the Division Bench is not applicable. Similar is the case of the Division Bench in the matter of *Jayesh Damodar Koli Versus The Commissioner of Police and others*, passed by this High Court in Criminal Writ Petition No. 2967 of 2022. We do not find substance in the submissions of learned counsel in that regard also.

13. Two offences are pitted against the petitioner. In C.R. No. 224 of 2023 he was served with notice under Section 41 (1) (B) of Cr.P.C. and there was no arrest. In another offence, C.R. No. 264 of 2023, he was arrested and released on bail by order dated 30.06.2023. The order of detention does not reflect consideration of reasons assigned for enlarging him on bail. Learned counsel for the petitioner has rightly relied upon following judgments :

- i. *Rushikesh Tanaji Bhoite Versus State of Maharashtra and others*, **2012 Bom CR (Cri) 325 ;**
- ii. Lakhan Rohidas Jagtap (supra) ;
- iii. Abdul Sathar Ibrahim Manik and others Versus Union of India (UOI) and others, AIR 1991 SC 2261 ;

iv. Vishal Waman Mhatre Versus The Commissioner of Police and others, 2013 ALL MR (Cri.) 42 ;

v. Digambar Vitthal Dagdade (supra).

14. Let's examine as to whether impugned order can be vitiated on this submission. Learned APP strenuously argued that the subjective satisfaction would not depend upon granting or refusing of bail or reasons thereof. A close scrutiny of the record shows that two offences were pitted against him. In the earlier offence, there was no occasion to arrest him. By applying the settled legal position subjective satisfaction of the Detaining Authority to the extent of latter offence bearing C.R. No. 264 of 20223 would be defective. But, when simultaneously one more offence is pitted against him, entire order of detention cannot be vitiated.

15. Learned counsel for the petitioner has drawn our attention to illegible documents namely order dated 26.03.2023 and two injury certificates. It is being submitted that petitioner was unable to make effective representation, violating his right under Article 22 (5) of the Constitution of India. Learned APP in this regard invites our attention to record to indicate translated and legible copies were served on the

petitioner. The translated and typed legible copies have already been furnished to the petitioner.

16. The petitioner relies upon the judgment of Chandra *Shekhar Ojha Versus A.K. Karnik and others*, **1982 MH.L.J. 43**, *Mrs. Jayshree Rajendra Waghmare Versus Commissioner of Police, Pune City and others*, passed by High Court (Principal Seat) in Criminal Writ Petition Stamp No. 10685 of 2023 and *Shadab Versus Mendonca and others*, **1999 (1) Mh.L.J. 63**. In the cited matters number of illegible documents considered by Detaining Authorities were furnished to detainee. Whereas in the present matter, translated and typed copies of illegible documents were furnished to the petitioner. We, therefore, reject the submission of petitioner.

17. Next submission is regarding consideration of extraneous material. The sponsoring authority referred four offences registered against the petitioner. However, Detaining Authority considered only last two offences. We have gone through paragraph no. 4 of the grounds of detention. It refers to consideration of last two offences. We have also gone through paragraph nos. 6 to 11 which is in respect of subjective satisfaction. We do not find that earlier two offences were actually considered by the Detaining Authority. Earlier offences would be quoted

to show track record of the petitioner. Learned APP has rightly submitted that the Detaining Authority has not exceeded his discretion.

18. Learned counsel for the petitioner lastly assails subjective satisfaction. We have considered relevant papers of investigation of last two offences pitted against petitioner. In the first offence he was found to be in possession of a sword. He was accompanied by co-accused armed with a knife. Both of them fled from the spot by seeing the police. The last offence is a case of road robbery with knife. Petitioner is allegedly assaulted victim by knife on head. As the injury is on the vital part, *prima facie*, serious offence under Section 307 of IPC is registered against him. In-camera statements also corroborate the notorious activities. Those were also instances of road robberies. In view of material pitted against him, we are of the considered view that the Detaining Authority has rightly arrived at the subjective satisfaction. The reasons assigned in that regard are plausible and reasonable. We have no iota of doubt that activities are prejudicial to the maintenance of public order.

19. None of the submissions on behalf of the petitioners have any merit. Though, the Detaining Authority has not considered the reasons for releasing the petitioner on bail in one of offences but no

benefit can be given to petitioner. There is incriminating material to indicate that he is a dangerous person. Hence, we are not inclined to quash the impugned order.

20. We find that learned APP has rightly pressed into service Section 5 A of the MPDA Act. The petition cannot succeed although it is presumed that one of the grounds fails. For the reasons stated above, we pass following order :

ORDER

- i. Criminal Writ Petition is dismissed.
- ii. Rule is discharged.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]