



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

CRIMINAL WRIT PETITION NO. 1774 OF 2023

Bunty @ Santosh s/o. Dattatray Kothambire
Age. 36 years, Occ. Agri.,
R/o. Autewadi, Tq. Shrigonda,
Dist. Ahmednagar.

....Petitioner

Versus

1. The State of Maharashtra.
2. The District Magistrate,
Ahmednagar, Dist. Ahmednagar.
3. The Secretary,
Advisory Board, Government of Maharashtra,
Mantralaya, Mumbai.
4. The Section Officer,
Government of Maharashtra,
Mantralaya Mumbai.

....Respondents.

....
Advocate for Petitioner : Mr. N.B. Narwade
APP for Respondent : Mr. V.K. Kotecha
....

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

**Judgment reserved on : 29 February 2024
Judgment pronounced on : 06 March 2024**

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

1. Rule. Rule is made returnable forthwith. Heard litigating sides finally with their consent.

2. The petitioner is challenging order of detention dated 07.10.2023, passed by respondent no. 2 – District Magistrate, Ahmednagar, as well as order of confirmation dated 24.11.2023, passed by respondent no. 4 under the provisions 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 Act’ for the sake of brevity and convenience).

3. By impugned orders, the petitioner has been declared to be dangerous person as well as sand mafia and committed for one year. For subjective satisfaction, respondent no. 2 – Detaining Authority considered two offences bearing C.R. No. 325 of 2023, registered on 25.03.2023 and C.R. No. 198 of 2023, registered on 13.04.2023. Additionally, the preventive action taken against the petitioner under Sections 107, 109 and 110 of Code of Criminal Procedure, order of externment dated 20.09.2022 and two in-camera statements of the witnesses with their verification have been considered.

4. The Detaining Authority has recorded as follows :

“8. After going through the record put before me, I personally satisfied that you are a dangerous person for the life of the society, as per the provisions of Sec 2 (B-

1) of 2015 of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Sand Mafia and Video Pirates Act, 1981.

9. I am also satisfied that you are a habitual offender which affects the peaceful life of the society. You are committing crimes, such as sand theft, serious injury with dangers weapon, unlawful assembly due to which public order is now in danger. Preventive actions taken against you as per the provisions of law in force are found insufficient to stop your illegal acts. Due to these illegal acts public order is in danger and day to day life of the society is also affected. As your illegal activities are became danger to the life of the society it is necessary to detain you under the provisions of under Sec 3 (2) of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, sand Mafia and Video Pirates Act, (VV of Maharashtra Act 1981).”

5. Learned counsel for the petitioner would submit that subjective satisfaction is not for intelligible reasons, in view of the offences considered by the Authority. Record reveals that previous offences have also been considered. He would further submit that the finding recorded in above referred paragraph nos. 8 and 9 of the grounds of detention are perverse. It is further submitted that there is unexplained delay from registration of the last offences till passing of the final order.

6. Learned counsel also invited our attention to the judgment and order dated 03.11.2022, passed by the Divisional Commissioner,

Nashik, quashing order of externment dated 20.09.2022. Lastly, it is submitted that there was no material on record to show that activities are detrimental to the public order. A reliance has been placed on *Ameena Begum Versus The State of Telangana and others*, **2023 LiveLaw (SC) 743**.

7. Learned APP supports impugned orders. He seeks to rely upon affidavits-in-reply. He would submit that there is adequate incriminating material against the petitioner which is rightly appreciated by the Detaining Authority. There is no perversity or arbitrariness in arriving at subjective satisfaction. It is further submitted that timeline has been specifically followed by the authorities. The delay as contended by the petitioner has been properly explained in the affidavit-in-reply. By relying on the judgment of *Hasan Khan Versus State of Rajasthan*, passed by Rajasthan High Court – Jodhpur on 05.01.2022, the petition is prayed to be dismissed.

8. We have considered rival submissions advanced across the bar. We have perused relevant material placed on record including affidavits-in-reply. Petitioner is declared to be dangerous person as well as sand mafia by the Detaining Authority. Though, as many as six offences are registered against him only last two offences bearing C.R.

No. 325/2023 and 198/2023 have been taken into account. C.R. No. 325/2023 is under Section 379 read with 34 of IPC and 3/15 of the Environment Protection Act. Another C.R. No. 198/2023 is also under the self same provisions. Though, there is order of externment passed by the Sub Divisional Magistrate, Shrigonda-Parner, on 20.09.2022, subsequently it has been quashed by Appellate Authority on 03.11.2022. No offence has been registered during the period of 20.09.2022 to 03.11.2022.

9. Respondent no. 2 – Detaining Authority has recorded in paragraph no. 8 that the petitioner is a dangerous person. In paragraph no. 9, it is further recorded that he is involved in sand theft, causing grievous injury and unlawful assembly. Considering the offences registered against the petitioner, record does not show that he is involved in any of the offence under the Arms Act. Last two offences pitted against him do not show use of any weapon. Hence, subjective satisfaction of petitioner having used dangerous weapon is perverse. Similarly, both the offences do not show any element of unlawful assembly. There are no allegations of any offence falling under Chapter XVI of IPC. Despite that, he has been brought within the ambit of dangerous person. Findings of subjective satisfaction being dangerous person and sand mafia is perverse.

10. The petitioner is alleged to have committed offence under Section 379 of IPC and under section 3/15 of the Environment Protection Act, on two occasions. We have gone through the substance of the FIR. First offence speaks about illegal transportation of one brass sand. Another offence pertains to illegal transportation of half brass sand, albiet with the use of vehicles. This material in our considered view is scanty to hold him as sand mafia. Besides that we do not find any element of prejudice to public order. The material pitted against the petitioner does not show any compelling circumstance to resort to drastic draconian action against him under the Act. Ordinary penal law would have been resorted to for curbing his activities.

11. Our attention is invited to judgment of the Supreme Court in the matter of *Ameena Begum* (supra), to demonstrate difference between law and order and public order, from paragraph nos. 39, 40 and 50. By applying those principles to the present matter, we have no hesitation to hold that activities of the petitioner cannot be said to be detrimental to public order.

12. We have noticed that the Detaining Authority has recorded in paragraph nos. 8, 9 and 10 that the petitioner is a habitual offender and his activities are prejudicial to the public order. In-camera statements of both the witnesses have also been taken into account to record the

findings. We have considered paragraph no. 10 of the affidavit-in-reply of the respondent which refers to the serious offences having been committed by the petitioner namely sand smuggling, wrongful restraint, causing hurt by endangering life, rioting, violation of environment Rules, criminal intimidation, etc. This demonstrates that not only last two offences but previous four offences have also been taken into account. We find that earlier material is extraneous. On one hand it is projected that only last two offences are considered and on other hand previous record has also been considered. We are of the considered view that subjective satisfaction is arbitrary and unsustainable.

13. The last offence was registered on 13.04.2023. Impugned order was passed on 07.10.2023, after delay of five months. Learned APP has drawn our attention to paragraph no. 7 of affidavit-in-reply to demonstrate that delay has been explained. On 08.06.2023 and 09.06.2023, in-camera statements were recorded. On 20.06.2023, they were verified by the Sub Divisional Police Officer. On 07.08.2023, respondent no. 2 – Detaining Authority received proposal. Impugned order was passed on 07.10.2023.

14. It reveals that there is unexplained delay of about 54 days from 13.04.2023 (registration of the last offences) till 08.06.2023 in recording of statements. We further find unexplained delay of two

months from receipt of proposal on 07.08.2023 till final order of detention was passed on 07.10.2023. Unexplained delay in the matter is fatal. In this regard, we are guided by the principles laid down in the following matters :

1. *Pradeep Nilkant Paturkar Versus. S. Ramamurthi and Others*, **AIR 1994 SCC 656 ;**
2. *Austin William Luis Pinto Versus Commissioner of Police, Greater Mumbai and Others*, **2005 ALL MR (Cri.) 28 ;**
3. *Jaggu Sardar @ Jagdish Tiratsingh Labana Versus Commissioner of Police Thane*, **in Criminal Writ Petition Stamp No. 15876 of 2023 ;**
4. *Digambar @ Digambar Vitthal Dagdade Versus District Magistrate, Latur*, **in Criminal Writ Petition No. 1736 of 2023.**

15. We find substance in the submissions of learned counsel in respect of subjective satisfaction and delay. The impugned order is liable to be quashed being arbitrary. We, therefore, pass the following order :

ORDER

- i. Criminal Writ Petition is allowed.
- ii. Order dated 07.10.2023, passed by respondent no. 2 and order dated 24.11.2023, passed by respondent no. 4, are quashed and set aside.

iii. The petitioner shall be set at liberty forthwith.

iv. Rule is made absolute.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]