



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

Criminal Writ Petition No. 1780 / 2023

Chetan @ Gullya Popat Khadse
Age : 29 years, Occu. Labour,
R/o Hanuman Nagar, Bhusawal,
Tq. Bhusawal, District Jalgaon.

...Petitioner

Versus

1. State of Maharashtra
Through Secretary,
Home Department (Special),
Mantralaya, Mumbai.
2. The District Magistrate,
Jalgaon.
3. The Superintendent,
Central Prison,
Mumbai.

..Respondents

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Advocate for the Petitioner : Mr. Rupesh A. Jaiswal h/f
Mr. Harshal Prakash Randhir

A.P.P. for Respondents /State : Mr. V.K. Kotecha

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

DATE : 13 MARCH 2024

ORAL JUDGMENT [Per Shailesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard both the
sides finally with their consent.

2. The petitioner is challenging order of detention dated 29.08.2023 passed by the respondent no.2/District Magistrate, under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience).

3. The petitioner is held to be dangerous person by the detaining authority on the basis of following cases/actions :

Sr.No.	Police Station	C.R. No.	Date of Registration	Sections	Present Status
1	Bhusawal Bazaar Peth	532/2019	29.10.2019	Under Sections 324, 323, 504, 510, 34 of IPC	Pending trial
2	Bhusawal Bazaar Peth	23/2020	19.01.2020	Under Sections 324, 323, 504, 510, 34 of IPC	Pending trial
3	Bhusawal Bazaar Peth	184/2021	07.05.2021	Under Sections 142 of Mumbai Police Act, 1951	Pending trial
4	Bhusawal Bazaar Peth	487/2021	16.12.2021	Under Sections 324, 323, 294, 427 of IPC	Pending trial
DETAILS OF OFFENCE RECENTLY REGISTERED WITHIN SIX MONTHS					
5	Bhusawal Bazaar Peth	334/2023	07.07.2023	Under Sections 435, 34 of IPC	Under Police Investigation
DETAILS OF PREVENTIVE ACTIONS					
1	Bhusawal Bazaar Peth	02/2018	09.01.2018	As per Section 110(e)(g) of the Criminal Procedure Code, 1973	
2	Bhusawal Bazaar Peth	128/2019	10.04.2019	As per Section 107 of the Criminal Procedure Code, 1973	
3	Bhusawal Bazaar Peth	1/2022	10.01.2022	As per Section 110(e)(g) of the Criminal Procedure Code, 1973	
DETAILS OF EXTERNMENT PROCEEDING					
4	Bhusawal Bazaar Peth	As per the order of Superintendent of Police, Jalgaon bearing No.1252/LCB/Extnment/order/2021, dated 02.02.2021 externed from Jalgaon District for a period of one year.			

4. Additionally, detaining authority also considered two in-camera statements of the witnesses. It has been recorded in the impugned ground of detention especially in paragraph no. 11 and 12 that the petitioner caused unnecessary embarrassment by keeping dangerous weapons. He is held to have spread net of his criminal activities. He indulged in the unlawful assemblies. It is further held that he was also involved in attempt to commit murder of ordinary citizens. Considering these activities of the petitioner, impugned order has been passed by the detaining authority.

5. Learned Counsel for the petitioner would make following submissions :

- (i) Delay in forwarding proposal under Section 3(3) of the MPDA Act vitiates impugned action.
- (ii) Extraneous material has been considered and relevant material is overlooked.
- (iii) Old and stale cases have been considered.
- (iv) Subjective satisfaction is patently perverse as the offences pitted against the petitioner do not show any prejudice to the public order as such.

6. Learned APP Mr. V.K. Kotecha vehemently opposes the

submissions. He would submit that there was cogent material before the detaining authority for passing impugned order. He has also referred to affidavit-in-reply to show that there was no delay. According to him, proper procedure was followed and principles of natural justice have also be followed. It is submitted that the subjective satisfaction is plausible and based on relevant factors. It is further submitted that the activities of the petitioner are of the aggravated form as action under Section 56 of the Maharashtra Police Act having been taken against petitioner.

7. We have considered rival submissions advanced across the bar. We have gone through the relevant material to assess the subjective satisfaction and procedure followed by the competent authorities for passing impugned order. Undisputedly, five offences are pitted against him alongwith three preventive actions under Sections 110 and 107 of the Criminal Procedure Code, action of externment passed by order dated 02.03.2021 and in-camera statements of the witnesses.

8. It is relevant to mention that the petitioner was externed by order dated 02.03.2021 for one year from Jalgaon District. The Appellate Authority quashed that order. A copy of order

dated 26.07.2021 has been tendered on record during the course of argument. The detaining authority has not referred to these impugned grounds of detention.

9. Impugned order was passed on 29.08.2023. Thereafter, proposal was submitted on 08.08.2023. According to the petitioner, there is delay of 9 days which remains unexplained. In this regard, our attention is invited to the judgments in the following matters :

- (i) Hetchin Haokip Vs. State of Manipur and Ors.,
2018 ALL SCR (Cri) 1240, (Paragraph Nos. 7 to 12)
- (ii) Akash Annasaheb Hodade Vs. District Magistrate, Latur & Ors., Criminal Writ Petition No.391/2023
(Paragraph Nos. 9 & 13)
- (iii) Aatish Ravindra Kharat Vs. State of Maharashtra and Ors.
Criminal Writ Petition No.1794/2023.
(Paragraph Nos. 11 to 15)

10. Learned APP has invited our attention to paragraph no.7 of affidavit-in-reply. It mentions that on 03.09.2023 detention order was served upon the petitioner. On 04.09.2023, he was committed to Central Prison, Mumbai. On 04.09.2023, the relevant papers were served on the petitioner and on the same day, the proposal was forwarded to the State Government for

approval under Section 3(3) of the MPDA Act. On 04.09.2023, the proposal was forwarded to the competent authority. A useful reference can be made to paragraph no.16 of judgment rendered by the Supreme Court in the matter of Hetchin Haokip (supra). Paragraph No. 16 reads as follows :

“16. The expression “forthwith” under Section 3(4), must be interpreted to mean within reasonable time and without any undue delay. This would not mean that the detaining authority has a period of twelve days to submit the report (with grounds) to the State Government from the date of detention. The detaining authority must furnish the report at the earliest possible. Any delay between the date of detention and the date of submitting the report to the State Government, must be due to unavoidable circumstances beyond the control of the authority and not because of administrative laxity.”

11. In the present matter, date of detention is 03.09.2023. The date of submitting the report to the State Government is 04.09.2023. Therefore we do not accept the submission of the petitioner that there is delay in forwarding proposal to the State Government. The judgments cited by the learned Counsel for the petitioner in this regard, are distinguishable on facts and do not enure to the benefit of the petitioner. In those judgments, there was unexplained delay and therefore the orders of detention were quashed.

12. Now turning to the subjective satisfaction arrived at by the detaining authority, the order passed by the Appellate Authority in Externment Appeal No.33/2021 on 26.07.2021, quashing the

order of externment has not been considered. We find that in paragraph no.7 of the impugned order, there is a reference of action of externment, still there is no reference to order passed by the Appellate Authority. The Appellate Authority had quashed the externment order even before the proposal was received by him. In fact, even the Officer forwarding it also was under obligation to disclose this fact. It is evident that the detaining authority was made to believe that the externment order was still in force. This circumstance would vitiate the subjective satisfaction. We, therefore, have no doubt that the subjective satisfaction of the detaining authority is faulty.

13. A careful perusal of paragraph no.11 of the impugned order shows that the petitioner was held to be involved in the criminal activities by keeping dangerous weapon by resorting to offences of attempt to commit murder and having resorted to forming unlawful assembly repeatedly so as to cause prejudice to the public peace and tranquility. The subjective satisfaction would be expected to be based on offences pitted against the petitioner. No offences under Section 307 or Sections 143 to 149 have been committed by the petitioner. Therefore the findings recorded in paragraph no.11 do not conform to the record. Only one offence bearing C.R. No.23/2020 pertains to

Section 4/25 of the Arms Act. All other offences are under other provisions of Indian Penal Code. The finding that the petitioner frequently indulged in the criminal activity by keeping dangerous weapons, is also without application of mind. We find merit in the submission of learned Counsel for the petitioner in this regard.

14. Our attention is invited to offences pitted against the petitioner. Learned Counsel for the petitioner would submit that C.R. No. 26/2016 was registered on 10.02.2016 and C.R. No.532/2019 was registered on 29.10.2019. According to learned Counsel, for taking action against the petitioner under the MPDA Act in the year 2023, offences of 2016 and 2019 have been considered by the detaining authority. We find that C.R. No.26/2016 registered on 10.02.2016 is mentioned in the impugned order. Only last five offences starting from C.R. No.532/2019 have been considered. Last offence committed by the petitioner was bearing C.R. No.334/2023 registered on 07.07.2023. Thereafter immediately in-camera statements were recorded, those were verified and the proposal was submitted to the competent authority. The reference to C.R. No.26/2016 is only to show the history and the habitual indulgence of the petitioner in the criminal activity. The detaining authority has

not referred to the offence for arriving at the subjective satisfaction. For subjective satisfaction, last offences committed by the petitioner have been considered. In that view of the matter, we do not find any illegality or perversity in referring to older cases.

15. We have considered the relevant papers of the offences pitted against the petitioner placed on record. We do not find that he has been involved in any offence which would cause prejudice to the public order. All offences pitted against him are personal in nature and said to have been committed against particular individuals. He is not involved in offence under Section 307 or Sections 143 to 149 of IPC. It is useful to refer to the judgment in the matter of **Ameena Begum Vs. State of Telangana and Others**, (2023)9 SCC 587. Supreme Court has explained in paragraph no. 34 to 47, the difference between public order and law and order. We do not find the activities of the petitioner is having impact on community or general public, invoking feelings of fear, panic or insecurity. To some extent the activities can be said to be prejudicial to the public peace or tranquility. However, certainly cannot be said to have any adverse impact on public order.

16. Considering the nature of the offences pitted against the

petitioner, we are of the considered view that the activates of the petitioner can be curbed or controlled by the ordinary penal laws and recourse to the drastic action, is not be warranted.

17. Learned APP would vehemently submit that the petitioner was externed by order dated 02.03.2021 for one year. Though the Appellate authority by judgment dated 26.07.2021 quashed the order of externment, he committed C.R. No.184/2021 in the interregnum when order of externment was in force. It can be seen from record that C.R. No.184/2021 is registered on 07.05.2021 under Section 142 of the Maharashtra Police Act, 1951, for committing breach of the externment order. This cannot be said to be an independent offence under Indian Penal Code or any other Penal Law. Therefore we do not find that indulgence of the petitioner can be branded as aggravated form of misconduct. We are not inclined to accept the submissions of the learned APP.

18. Our above analysis would disclose that the impugned order is unsustainable on the ground that the subjective satisfaction is perverse. The relevant material has been overlooked by the detaining authority and the offences pitted against him are not sufficient to justify the impugned order. We have therefore no alternative but to allow the present petition.

19. The Criminal Writ Petition is allowed.

20. Order of detention dated 29.08.2023 passed by the respondent no.2/District Magistrate, Jalgaon is quashed and set aside.

21. The petitioner shall be set at liberty forthwith.

22. Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE