



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

CRIMINAL WRIT PETITION NO. 1781 OF 2023

Vishal S/o Bhika Koli (Sonwane),
Age : 24 Years, Occu. : Labourer,
R/o Pimprala Koli Wada,
Jalgaon, Tq. & District Jalgaon
Through his Brother
Prashant S/o Bhika Sonwane,
Age : 21 years, Occu. : Labour.

.. Petitioner

Versus

1. The State of Maharashtra,
(Through Secretary,
Home Department (Special),
Government of Maharashtra,
Mantralaya, Mumbai – 32.
2. The District Magistrate
Jalgaon, Dist. Jalgaon.
3. The Superintendent of Jail,
Nagpur Central Prison, Nagpur.
4. The Secretary,
Advisory Board (MPDA),
Mantralaya, Mumbai.

.. Respondents

Shri Deepak D. Choudhari, Advocate for the Petitioner.
Shri V. K. Kotecha, A.P.P. for the Respondent Nos. 1 to 4.

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

**CLOSED FOR JUDGMENT ON : 02.02.2024
JUDGMENT PRONOUNCED ON : 13.02.2024**

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

. Rule. Rule is made returnable forthwith. Heard both sides finally at the admission stage.

2. The petitioner is assailing the order of detention passed by the respondent No. 2/District Magistrate, Jalgaon on 31.07.2023 holding him to be a 'dangerous person' U/Sec. 3(2) of the 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 the sake of brevity and convenience hereinafter referred as "Act").

3. The impugned action against the petitioner is founded on criminal antecedents of the petitioner comprising of eleven offences, an order of externment, preventive action U/Sec. 110 of the Code of Criminal Procedure and six non cognizable cases registered against him. Additionally, in camera statements of anonymous witnesses have also been relied upon. On 13.07.2023 the proposal was forwarded to the respondent No. 2/District Magistrate. On 31.07.2023 the impugned order was passed by him. On 07.08.2023 the proposal for approval was forwarded to the respondent No. 1. On 10.08.2023 order of detention was approved by the respondent No. 1. Advisory board confirmed the order of detention by order dated 13.09.2023.

4. The petitioner seeks to challenge order of detention on following grounds :

(i) The orders of enlarging the petitioner on bail in various offences registered against him have not been considered by the detaining authority.

(ii) The report of chemical analysis collected during the investigation of CR. No. 247/2022 does not spell out that consumption of contraband would be hazardous to the public health.

(iii) Latest offence bearing Cr. No. 129/2023 was registered on 25.04.2023 and order of detention was passed on 31.07.2023, after a gap of three months, which is not explained.

(iv) The petitioner was not apprised of the proceedings U/Sec. 56(1)(b) of the Maharashtra Police Act and he was surprised to learn order of externment dated 15.12.2022. It is recorded behind back and cannot be pitted against him.

(v) There is no subjective satisfaction and there is no need to take drastic action under the Act as the activities are not prejudicial to maintenance of public order.

5. The respondents have filed affidavit in reply. To repel the submissions of the petitioner, learned Assistant Public Prosecutor would make following submissions :

- (a) There is cogent material against the petitioner comprising of criminal antecedents, externment order and in camera statements.
- (b) Last offence was committed by the petitioner when order of externment was in force. This aggravates his case.
- (c) There is no undue delay to take action against the petitioner.
- (d) The respondent No. 2 arrived at subjective satisfaction considering all the aspects of the matter. The petitioner has repetitively indulged in serious offences.
- (e) The grounds of detention show that detaining authority considered orders enlarging the petitioner on bail.
- (f) There is no perversity or patent illegality in passing the impugned order and confirming the same.

6. With the assistance of the learned counsel for both the sides, we have gone through the papers. There are in all eleven offences registered against the petitioner under the Indian Penal Code, the Maharashtra Prevention of Gambling Act and the Maharashtra Prohibition Act.

7. The record reveals that on 15.12.2022 an order of

externment was passed U/Sec. 56(1b) of the Maharashtra Police Act, operative for a period of two years. It is speaking order externing petitioner from the districts of Jalgaon, Dhule and Buldhana. This has not been challenged by the petitioner. Order records that he was duly served with a notice and extended adequate opportunities to defend the proceedings. We are, therefore, not inclined to accept the submissions of the petitioner that he was not aware of the externment order or he was not heard.

8. The petitioner was externed from 15.12.2022 to 15.12.2024. The record shows that offence bearing CR. No. 1091/2022 was registered against him on 21.12.2022 with Ramanand Nagar Police Station, Jalgaon U/Sec. 323, 427, 504 and 506 r/w Sec. 34 of the Indian Penal Code. Not only this, but more serious offence was registered on 25.04.2023 bearing Cr. No. 129/2023 U/Sec. 395, 504 and 506 r/w Sec. 34 of the I. P. Code with self same police station. The petitioner has indulged in criminal activities by flouting orders of externment. Last offence bearing CR. No. 129/2023 is U/Sec. 395 of the I. P. Code for which punishment prescribed is imprisonment for life.

9. We have no hesitation to hold that the petitioner has indulged in criminal activities when externment order was in force. This conduct itself is incriminating factor. It corroborates the finding recorded by the detaining authority that he is frequently involved in serious criminal activities and ordinary law would not be adequate to deal with him.

10. We prefer to follow our view taken vide **judgment dated 31.01.2024** in the matter of **Akash Bhagwat Chonde Vs. The State of Maharashtra and others in Criminal Writ Petition No. 1810 of 2023** and more particularly in para Nos. 20 and 21, which read thus :

“20. We find substance in the submissions of the learned Addl. P. P. This conduct of the petitioner is detrimental to the ground being taken by the petitioner and the submissions made on his behalf against the impugned order. This aspect of the matter has also been considered by the detaining authority. Committing an offence by violating orders of externment is aggravated form of criminal antecedents. We find that there is no illegality or perversity committed by the detaining authority in appreciating the material on record to come to the conclusion that the petitioner is a dangerous person.

21. Considering the material produced against the petitioner, criminal antecedents and his conduct, we are not inclined to exercise the jurisdiction in favour of the petitioner to uphold the submissions of the learned counsel for the petitioner in respect of delay or non consideration of orders of bail. The petitioner has not tendered any explanation for violation of orders of externment. Rather this circumstance would substantiate the impugned order to demonstrate that ordinary law of the land has been falling short to prevent the activities of the petitioner.”

11. It is the grievance of the petitioner that orders enlarging him on bail have not been considered by the detaining authority.

The grounds of detention do not reflect the consideration of the reasons assigned for releasing the petitioner on bail. We are aware of the legal position that this can be a good ground to quash order of detention, as is laid down in the matter of Akash Rajesh Vs. State of Maharashtra in Criminal Writ Petition No. 626 of 2022 and in the matter of Avinash Vs. The State of Maharashtra in Criminal Writ Petition No. 1745 of 2022. But we are unable to invalidate impugned order for our further analysis.

12. It is further submitted by the petitioner that the report of chemical analysis collected in the offence bearing Cr. No. 247/2022 does not spell out any opinion that the contraband would be hazardous to public health or human consumption. The detaining authority has not recorded any finding relying upon the report of chemical analysis. The offence bearing Cr. No. 247/2022 is considered as one of the instances of criminal antecedents. We are not impressed by the submissions of the learned counsel for the petitioner.

13. The learned counsel for the petitioner submitted that there is delay and want of live link. Last offence was registered on 25.04.2023. Thereafter on 16.06.2023 in camera statements were recorded. They were verified by Sub Divisional Police Officer, Bhusawal on 29.06.2023. On 13.07.2023 the proposal was forwarded to the respondent No. 2/Detaining Authority. Thereafter on 31.07.2023 order of detention was passed. The time consumed in taking action against the petitioner has been properly explained by the respondents. We do not find that delay

is inadequate so as to snap the live link. We find no merit in the submissions of the learned counsel for the petitioner.

14. The detaining authority has thoroughly considered the criminal antecedents and in camera statements of the witnesses. The petitioner appears to have indulged in variety of criminal activities. There is material on record to suggest that he has created terror in the vicinity. We find no illegality or perversity in the findings recorded by the detaining authority that notorious activities cannot be curbed without there being order of detention. The detaining authority as well as approving authority have rightly exercised the jurisdiction.

16. We have recorded a finding that the petitioner has indulged in aggravated form of criminal misconduct. It is not out of context to refer to Section 5A of the Act. Even if the order of detention is not sustainable on the ground of non consideration of orders of bail, it has not been founded solely on that ground. If the criminal antecedents of the petitioner are looked into, action impugned cannot be invalidated. The petitioner is found to be involved in serious offences under the provisions of the I. P. Code, the Maharashtra Prevention of Gambling Act and the Maharashtra Prohibition Act. The offences are cognizable and serious. Additionally, in camera statements would support the action. The case in hand is squarely covered by Sec. 5A of the Act.

17. In the wake of above analysis, we find no merit in the petition. The criminal writ petition is dismissed. Rule is discharged.

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

bsb/Feb. 24