



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

CRIMINAL WRIT PETITION NO. 1804 OF 2023

Angad Khandu Kaluse

....Petitioner

Versus

1. The State of Maharashtra

2. The District Collector, Beed.

3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad.

....Respondents

....

Advocate for Petitioner : Mr. P.P. More

APP for Respondents : Mr. V.K. Kotecha

...

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

Judgment reserved on : 28 MARCH 2024

Judgment pronounced on : 04 APRIL 2024

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

1. Rule. Rule is made returnable forthwith with the consent of the parties.

2. Petitioner is assailing order of detention passed 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 'MPDA Act')

for the sake of brevity and convenience). Considering two offences and in-camera statements, the Detaining Authority has passed impugned order of detention, holding petitioner as a dangerous person.

3. Learned counsel for the petitioner submits that previously also on self same record order of detention was passed which was quashed by High Court in Writ Petition No. 980 of 2020. On same material present action is taken. The subjective satisfaction of the Detaining Authority is faulty and reflects non application of mind. In-camera statements were recorded on 19.05.2023 and 22.05.2023, in which the witnesses cited incidents of April 2023. The delay of more than one months is indicative of the fact that there was no imminent danger even if petitioner was at large.

4. Learned counsel for the petitioner has placed on record a compilation of papers which was served upon his client. He relies upon judgment rendered on 28.09.2020 in Criminal Writ Petition No. 980 of 2020 quashing previous order of detention. Reliance is also placed on judgment rendered in *Shivkumar Madeshwaran Devendra Versus State of Maharashtra and others*, 2022 (3) **Bom.C.R. (Cri.)** 241.

5. Per contra, learned APP opposes the submissions of the petitioner. He submits that criminal antecedents show involvement in

serious offences. In-camera statements also disclose criminal activities at the public places. It is further submitted that despite earlier detention and the preventive action, petitioner continued with his notorious behaviour. Learned APP would support subjective satisfaction.

6. We have considered rival submissions of parties. We have gone through the relevant papers of criminal antecedents. It transpires from record that on 23.05.2020, the Detaining Authority had passed order of detention, considering C.R. No. 35 of 2019 and C.R. No. 16 of 2020. It was challenged before High Court in Writ Petition No. 980 of 2020. Criminal Writ Petition was allowed by quashing the order of detention vide judgment dated 28.09.2020. Learned counsel for the petitioner has placed the judgment on record. It has bearing over merits of the matter in hand. Reasons assigned by High Court for quashing order of detention in earlier round of litigation have not been considered. The affidavit-in-reply also does not refer to any reasons assigned by High Court.

7. In the present matter in all nine offences and their records were placed before the Detaining Authority. Out of them C.r. No. 03 of 2023 punishable under Sections 452, 323, 504, 506 read with 34 of the Indian Penal Code and C.R. No. 52 of 2023 punishable under Sections 394, 427, 504 read with 34 of IPC along with two preventive actions and

in-camera statements were considered by the Detaining Authority. As the criminal antecedents of the petitioner was being considered by the Detaining Authority, it was incumbent to consider judgment rendered by High Court in Writ Petition 980 of 2022 that would have guided the Detaining Authority for arriving at subjective satisfaction. It was recorded by High Court that in-camera statements recorded on 07.03.2020 in that matter referred to the incident occurred on 21.02.2020. There was delay of more than one month in recording the statement which led High Court to draw adverse inference. The in-camera statements were criticized for lacking potential to arrive at subjective satisfaction. Further reason for quashing detention order was non consideration of order of bail.

8. In the case in hand in-camera statements were recorded on 19.05.2023 of witness 'A'. He refers to incident occurred in month of April 2023 in which petitioner is stated to have assaulted. After more than one month the sponsoring authority proposes to take action against petitioner. Same is the position with witness 'B' who refers to incidence dated 05.04.2023 in his statement recorded on 22.05.2023. It has not been explained by the respondents as to why prompt action was not taken. Only inference from this delay is that the activity of the petitioner and his being at large was not eminent danger to public order.

9. Learned counsel for the petitioner refers to order of bail passed by C.R. No. 52 of 2023. The reasons assigned by the Court in its order dated 26.03.2023 have not been dealt with in the impugned order. This relevant aspect of the matter is escaped from consideration of Detaining Authority. This creates doubt for the subjective satisfaction. There is consistent view of our High Court in this regard, in the matters of *Nilesh Bansilal Gaywal @ Ghaywal Versus State of Maharashtra*, passed by Bombay High Court at Principal Seat in Criminal Writ Petition No. 1768 of 2021 and *Hanif Karim Laluwale Versus State of Maharashtra and others*, passed by High Court at Nagpur Bench, in Criminal Writ Petition No. 75 of 2022. We find merit in the submission of the learned counsel for the petitioner in this regard.

10. Learned counsel for the petitioner would invite our attention to FIR in C.R. No. 03 of 2023. Petitioner is alleged to have assaulted and abused informant who happened to be his relative. It appears to be a family dispute between the informant and accused persons. Another offence C.R. No. 52 of 2023 pitted against him is an offence against informant who was a shopkeeper. Criminal antecedents considered by the Detaining Authority do not appear to be adequate to resort to a drastic action against the petitioner under the MPDA Act. The activities of the petitioner could have been curbed by regular criminal laws. The subjective satisfaction of the Detaining Authority is defective.

11. Learned counsel for the petitioner relies on judgment of *Shivkumar Madeshwaran Devendra* (supra) which highlights consequences of unexplained delay in the detention matters. In the present matter also the witnesses disclosed confrontation with the petitioner in the month of April 2023 and the detention order is passed on 30.10.2023, after about six months. Further there is no plausible explanation given for delay in recording statements of the witnesses from April 2023. We hold that impugned order is unsustainable.

12. For the reasons stated above, we are inclined to allow Writ Petition by passing following order :

ORDER

- i. Criminal Writ Petition is allowed.
- ii. Order of detention dated 30.10.2023, passed by respondent no. 2 is quashed and set aside.
- iii. The petitioner shall be set at liberty forthwith.
- iv. Rule is made absolute in the above terms.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]