



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

CRIMINAL WRIT PETITION NO. 1860 OF 2023

Arjun Khushal Dhabade,
Age : 36 years,
R/o Gondhawani Ward No. 1,
Shrirampur, Dist. Ahmednagar,
Dist. Ahmednagar. .. Petitioner

Versus

1. District Magistrate,
Ahmednagar.
2. The State of Maharashtra,
(Through the Secretary Home
Department (Spl.) Mantralaya,
Mumbai.
3. The Superintendent,
Nashik Central Prison, Nashik. .. Respondents

Ms. Jayashree Tripathi, Advocate a/w Shri Rupesh A. Jaiswal,
Advocate for the Petitioner.
Shri K. N. Lokhande, A.P.P. for the Respondent Nos. 1 to 3.

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

**CLOSED FOR JUDGMENT ON : 14.02.2024
JUDGMENT PRONOUNCED ON : 23.02.2024**

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

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

2. The petitioner challenges order dated 07.10.2023 passed

U/Sec. 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred as to the 'M.P.D.A. Act' for the sake of brevity and convenience) directing his detention for a term of one year, passed by respondent No. 1/District Magistrate. He is committed to prison on 07.10.2023.

3. The grounds of detention are founded on registration of an offence with Shrirampur Taluka Police Station bearing CR. No. 183/2023 for the offences punishable U/Sec. 379 r/w Sec. 34 of the Indian Penal Code and Section 3 and 15 of the Environment Protection Act, in camera statements of two anonymous witnesses, preventive action U/Sec. 110(e)(g) of the Code of Criminal Procedure and an order of externment passed U/Sec. 55 of the Maharashtra Police Act. Though there were other offences registered against the petitioner only offence stated above being last offence has been considered for arriving at the subjective satisfaction. The detaining authority has found the petitioner to be dangerous person and sand mafiya. He is recorded to be indulging in illegal activities, prejudicially affecting public order.

4. The respondents have filed affidavit in reply disclosing the sequence of events, incriminating material pitted against the petitioner and the manner in which the subjective satisfaction has been arrived at. It transpires that in camera statements were recorded on 03.06.2023. They were verified by the Sub

Divisional Police Officer, Shrirampur on 21.06.2023. Report to that effect was submitted on 08.07.2023. On 14.08.2023 the proposal was submitted to the respondent/detaining authority. On 07.10.2023 the impugned order was passed. It was approved U/Sec. 3(2) of the M. P. D. A. Act by order dated 17.10.2023. The proposal was presented to the advisory board on 17.10.2023. The petitioner was heard on 08.11.2023. Impugned order was confirmed on 24.11.2023.

5. Ms. Jayashree Tripathi, learned counsel for the petitioner has placed on record synopsis, written submissions and some judgments. She has also placed on record photo copy of vehicle particulars, supplementary statement and first information report in CR No. 183/2023 registered with Shrirampur Taluka Police Station. She advanced following submissions, to challenge the impugned order :

I. Only offence pitted against the petitioner is CR. No. 183/2023 which cannot be said to be disturbance to public order. Normal law of land would have been sufficient to deal with the activity of the petitioner.

II. There is nothing incriminating against the petitioner in CR. No. 183/2023 which is a solitary incidence considered by the detaining authority. The vehicle involved in the offence in question does not belong to the petitioner.

III. The petitioner has been shown to be absconding in CR. No.

183/2023, whereas, he is regularly attending the proceedings of Sessions Case No. 40 of 2022 pending before the Additional Sessions Judge, Shrirmapur which is emanating from CR No. 254/2017.

IV. The subjective satisfaction of the detaining authority is shrouded with doubt and there is non application of mind. The petitioner was neither arrested, nor served with notice U/Sec. 4(1-A) of the Code of Criminal Procedure.

V. There is unexplained delay of 75 days in considering representation dated 31.10.2023 which was done on 24.01.2024. Further there is delay of six months from April 2023, when last instance occurred as cited in in camera statement.

VI. There is unexplained delay from forwarding proposal on 10.08.2023 to passing of impugned order.

6. The learned counsel for the petitioner seeks to rely upon following judgments :

- (i) Rekha Vs. State of Tamilnadu and another reported in 2011 CJ (SC) 700.
- (ii) Ammena Begum Vs. State of Telangana reported in 2023 Live Law (SC) 743.
- (iii) Harish Pahwa Vs. State of U. P. reported in (1981) 2 SCC 710.
- (iv) Mahesh Kumar @ Banti Vs. Union of India and others

reported in (1990) 3 SCC 148.

- (v) Rajamal Vs. State of T. N. reported 1999 (1) LJ (SC) 265.
- (vi) Judgment in the case of Akash Hodade in Criminal Writ Petition No. 391 of 2023.
- (vii) Ranbir Singh Vs. S. T. George Joseph reported in 1988 CJ (SC) 490.
- (viii) Prakash Chandra Yadav Vs. State of Jharkhand reported in 2023 Live Law (SC) 529.
- (ix) Pradeep Nilkant Paturkar Vs. S. Ramamurthi and others reported in AIR 1994 SCC 656.
- (x) Judgment in the matter of Jaggu Sardar J. T. Labana Vs. Comm. Of Police Thane and others in Cri. W. P. (S.T.) No. 15876/2023.
- (xi) Austin William Luis Pinto Vs. Commissioner of Police Greater Bombay reported in 2005 All MR Cri. 28.
- (xii) Judgment dated 08.02.2024 passed in Criminal Writ Petition No. 1736 of 2023 in the matter of Digambar @ Digambar Vitthal Dagdade Vs. The District Magistrate Latur and others.

7. The learned Assistant Public Prosecutor has referred to affidavit in reply to support his submissions. Additionally, three documents are placed on record to substantiate the case of the state. They are, viz minutes of meeting dated 20.10.2023 held by the advisory board, communication dated 24.01.2024 made by the respondent No. 1 and the letter dated 29.01.2024.

8. We have considered rival submissions of the litigating

sides. We have gone through the papers placed on record and the judgments cited.

9. It reveals from record that the detaining authority has considered solitary offence bearing CR. No. 183/2023 punishable U/Sec. 379 r/w Sec. 34 of the I. P. Code and Sec. 3, 15 of the Environment Protection Act, though five more offences were registered against the petitioner earlier. In camera statements of two witnesses, preventive action U/Sec. 110 of the Cr. P. C. and externment order U/Sec. 55(1) of the Maharashtra Police Act have also been considered.

10. The learned counsel for the petitioner has vehemently criticized subjective satisfaction based upon solitary offence registered against the petitioner. An endeavour is made by referring to first information report, supplementary statement and vehicle particulars collected in pursuance of CR. No. 183/2023 to show that vehicle involved in the offence belongs to one Sanjay Garsal and not the petitioner. However, in our view, the detaining authority is not expected to embark upon an enquiry into merits of the offence or prosecution. Criminal antecedents would be considered for the subjective satisfaction. The offence in question shows involvement of the detainee. It is for the competent Court to consider the plea of the petitioner regarding innocence and ownership of the vehicle in question.

11. Our attention is invited to the roznama of Sessions Case No. 40 of 2022. Roznama dated 18.08.2023, 29.08.2023 and

08.09.2023 is shown to us to point out that the petitioner was present before the Court. It is submitted that the petitioner was not absconding as such, which is wrongly recorded against him. It is contended that his presence could have been secured either by arresting him or by resorting to Section 41(1-A) of the Cr. P. C. But to our mind just because of the fact that presence of the petitioner could have been secured or recourse could have been taken to notice U/Sec. 41(1-A) of the Cr. P. C. cannot be a ground to find fault with the subjective satisfaction.

12. A solitary instance showing criminal activity or tendency of a detainee is also sufficient along with supervening circumstances to take drastic action against the detainee. There are in camera statements, the preventive action in Chapter Case No. 102/2021 U/Sec. 110(e)(g) of the Cr. P. C. and an order of externment dated 09.06.2022 which weighs over the detaining authority to arrive at a subjective satisfaction against the petitioner. We do not find any defect in subjective satisfaction or any inherent illegality. We, therefore, do not approve the submission of the petitioner on the count of impugned action having been based on only on one criminal case.

13. It is a matter of record that the petitioner was externed by order dated 09.06.2022 for fifteen months from Ahmednagar district. Order of externment was final and operative. During its operation, on 16.04.2023 the petitioner has committed offence bearing CR. No. 183/2023 punishable U/Sec. 379 r/w Sec. 34 of the I. P. Code and Sec. 3 and 15 of the Environment Protection

Act. This was committed in breach of order of externment within the limits of Shrirampur Taluka. This indicates that even preventive action against the petitioner was not adequate to curb his activities. This conduct fortifies the subjective satisfaction of the detaining authority that the petitioner is habitual offender and has no respect for law and the orders of the competent authority.

14. We have been consistently holding that if detenue indulges in the criminal activities by violating the terms of order of externment, then that in itself amounts to aggravated form of misconduct. We have declined to exercise our discretion in such cases. We would like to refer to our **judgment dated 31.01.2024 in the matter of Aakash Bhagwad Chonde Vs. The State of Maharashtra and others**. Following are the relevant paragraphs :

“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.”

15. The impugned order was passed on 07.10.2023. Representation was made by the petitioner on 31.10.2023. The learned A. P. P. would rely upon letter dated 24.01.2024 issued by the Section Officer of the respondent No. 2 intimating the petitioner rejection of his representation. In letter dated 29.01.2024 issued by the self same authority giving instruction to the learned A. P. P. of this Court, shows that the representation of the petitioner was received on 02.11.2023. Remarks were called for from the respondent No. 1/District Magistrate on 03.11.2023 and those were received on 20.01.2024. The proposal travelled from Section Officer to Joint Secretary. It was ultimately rejected on 24.01.2024. The consumption of time for arriving at a final decision has been properly explained by the learned A. P. P. We are of the considered view that there is no inordinate delay in deciding the representation, so that it can be said that Article 22(5) of the Constitution has been complied with.

16. The petitioner has placed reliance upon the judgment of the Supreme Court in the matter of Harish Pahwa Vs. State of Uttar Pradesh (supra). Paragraph No. 3 of the judgment is shown to us. The facts are distinguishable. Further, judgment of the

Supreme Court in the matter of **Mahesh Kumar @ Banti Vs. Union of India and others** (supra) is referred to. We have gone through the principles laid down in paragraph Nos. 16 to 19 of the judgment. In the case in hand, we have already recorded that there is explanation tendered by the learned A.P.P. and we have accepted the same. This judgment is also of no avail to the petitioner.

17. The learned counsel for the petitioner has further relied upon the judgment of the Supreme Court in the matter of **Rajamal Vs. State of Tamilnadu** (supra). We have considered the principles laid down in paragraph Nos. 8 to 11 of the judgment. The judgment underlines the purport of Article 22(5) of the Constitution of India, which cannot be disputed. We have taken care to examine whether there is adherence to the constitutional provisions in the case in hand.

18. Next judgment referred by the learned counsel for the petitioner is in the matter of **Akash Annasaheb Hodade Vs. The District Magistrate, Latur** in Cri. W. P. No. 391 of 2023 (supra). Relevant paragraphs are paragraph Nos. 14 to 16. We have also gone through the judgment of the Supreme Court in the matter of **Ranbir Singh Vs. T. George Joseph District Magistrate Meerut** (supra). We are shown the latest judgment of the Supreme Court in the matter of **Prakash Chandra Yadav @ Mungeri Yadav Vs. The State of Jharkhand and others** (supra). These judgments are based on the fact situations containing in those individual cases, which according to us are conspicuously absent in the matter in hand.

19. In camera statements were recorded on 03.06.2023. The impugned order was passed on 07.10.2023. The delay of about six months has not been explained, is the contention of the petitioner. We have gone through paragraph No. 8 of the affidavit in reply. The statements of the witnesses were verified on 21.06.2023. Thereafter report was submitted on 08.07.2023 to the respondent No. 1 through Additional Superintendent of Police. On 10.08.2023 the proposal was submitted to the detaining authority through the Superintendent of Police. The proposal appears to have been reached on 14.08.2023. Thereafter the impugned order was passed. The explanation appears to be convincing. Authorities have adhered to the procedural safeguards.

20. The learned counsel for the petitioner would refer to the judgment in the matter of **Rekha Vs. State of Tamilnadu through Sec. To Government and another** (supra). We are shown paragraph Nos. 5, 7, 9 to 11 of the judgment to buttress that there would be meticulous compliance of the procedural safeguards in the matters of preventive detention. We have considered the principles laid down by the Supreme Court and carefully examined the matter in hand. On facts we have recorded that there is subjective satisfaction arrived at by following timely compliances. Importantly, present case is example of aggravated form of misconduct, which needed to be tackled sternly.

21. The applicant has also referred to judgment of the Supreme Court in the case of **Ameena Begum Vs. The State of**

Telangana and others (supra) to buttress that there is difference between law and order and public order and present case would be at the most that of disturbance to law and order. We are also shown relevant paragraph Nos. 45, 47 and 51 of the judgment. We reiterate that the case in hand reflects aggravated form of misconduct of the petitioner which disqualifies the petitioner to claim any discretion.

22. It is contended by the petitioner that there is unexplained delay from 10.08.2023 to 07.10.2023. For that purpose reliance is placed on the judgment of the Supreme Court in the matter of **Pradeep Nilkanth Paturkar Vs. S. Ramamurthi** (supra). We have considered paragraph Nos. 3, 4, 9 and 13 of the judgment. The case in hand shows that there was active consideration of the proposal at various stages. The time consumed has been properly explained in para (7) of the affidavit in reply. We have not noticed any indifferent attitude of any authority in the process. Therefore, the judgment is not helpful to the petitioner.

23. Next judgment cited on this point is in the matter of **Jaggu Sardar @ Jagdish Tiratsingh Labana Vs. Commissioner of Police Thane and others** (supra). Our attention is invited to paragraph Nos. 15 to 20. We have already recorded that the delay has been explained in the present matter. Therefore, we are not prepared to follow the decision cited. On this point next judgment cited is in the matter of **Austin William Luis Pinto Vs. Commissioner of Police, Greater Mumbai and others** (supra). We are of the considered view that this judgment also would be of no avail to

the petitioner. Lastly, our judgment in the matter of **Digambar @ Digambar Vitthal Dagdade Vs. The District Magistrate Latur and others** (supra) is brought to our notice. In that matter representation was neither rejected nor was it conveyed to the detinue. In case in hand there is communication dated 24.01.2024 to show rejection of representation and its communication. In the judgment cited there was no explanation for delay of six months, which is not fact in the case in hand. We are not inclined to follow the decisions cited by the learned counsel for the petitioner.

24. The respondents have referred to implication of Section 5A of the Act. Even if it is presumed that the petitioner would succeed on the point of defective subjective satisfaction on some other ground, still the entire impugned order will not get vitiated. The offence pitted against the petitioner has been demonstrably committed in breach of order of externment. There is no explanation tendered by the petitioner in this regard. On this solitary ground order of detention is sustainable by implication of Section 5-A of the MPDA Act.

25. For the reasons stated above, we do not find any merit in the criminal writ petition. We, therefore, dismiss the criminal writ petition. Rule is discharged.

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

bsb/Feb. 24