



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

CRIMINAL WRIT PETITION NO. 1910 OF 2023

Aniket Balaji Suryawanshi,
Age-23 years, Occu. : Labour,
R/o Dattanagar, New Mondha,
Nanded, Tq. Dist. Nanded. .. Petitioners

Versus

- 1) The State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai – 32.
- 2) The District Magistrate
Hingoli, Dist. Hingoli.
- 3) The Superintendent of Jail,
Central Prison, Aurangabad. .. Respondents

Shri Amar S. Lavate, Advocate h/f Shri S. G. Ghongade, Advocate
for the Petitioner.

Ms. S. S. Joshi, A.P.P for the Respondent Nos. 1 to 3.

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

**CLOSED FOR JUDGMENT ON : 15.02.2024
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 is challenging order dated 25.10.2023 passed
by the respondent No. 2/District Magistrate, Hingoli detaining

him 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) by declaring him to be a dangerous person. The impugned order received approval of the respondent No. 1 U/Sec. 3(2) of the Act on 02.11.2023. After seeking the opinion of the Advisory Board, impugned order was confirmed on 14.12.2023.

3. Following criminal antecedents are taken into account by the detaining authority to declare him as a dangerous person :

Sr. No.	Police Station	CR No. & Date	Under Section	Present Status
01.	A. Balapur, Dist. Hingoli	491/2023 Dt. 12.08.2023	395, 323, 506 of I. P. Code, 4, 25 Arms Act	Police Investigation
02.	A. Balapur, Dist. Hingoli	488/2023 Dt. 11.08.2023	395, 397, 341 of I. P. Code, 4, 25 Arms Act	Police Investigation
03.	Vimantal, Dist. Nanded	469/2023 Dt. 07.08.2023	307, 336, 324, 323, 504, 506, 143, 147, 148, 149 I. P. Code & 4, 25 Arms Act & Cri. Low 7	Police Investigation
04.	Ardhapur, Dist. Nanded	257/2023 Dt. 26.07.2023	307, 336, 324, 323, 504, 506, 143, 147, 148, 149 I. P. Code & 4, 25 Arms Act.	Police Investigation

Preventive Action

Sr. No.	Police Station	Chapter Case No.	Section	Present Status
01.	Vimantal Dist. Nanded	271/2022 Dt. 06.02.2019	107 Cr. P. C.	Case closed.
02.	Vajirabad, Dist. Nanded	45/2022 Dt. 11.09.2022	107 Cr. P. C.	Case closed.
03.	Shivaji Nagar,	120/2023 Dt.	107 Cr. P. C.	Case closed.

	Dist. Nanded	23.03.2023		
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Externment Proceedings

Sr. No.	Police Station	Chapter Case No.	Section	Present Status
01.	Vajirabad, Dist. Nanded	01/2023	44 MPA on Dated 13.04.2023	Case pending for approval.

4. The petitioner challenges the impugned order on following grounds, on which his learned advocate made elaborate submissions.

I. Out of the four offences pitted against the petitioner, in three first information reports his name is not appearing. His involvement is doubtful.

II. There is no subjective satisfaction as it is overlooked that there is no document on record identifying the petitioner as the perpetrator in the offences alleged against him.

III. The orders enlarging the petitioner on bail in two offences are not placed on record. After impugned order he was released on bail from last two offences.

IV. There is no cogent material against the petitioner to disclose his activities as detrimental to the public order.

V. In camera statements are doubtful and unreliable.

VI. The finding of the detaining authority that order of detention was passed as the petitioner was likely to be released on bail in last two registered offences is perverse.

VII. There is delay of 44 days from 11.09.2023 till impugned order which is unexplained and fatal.

5. The learned counsel for the petitioner placed reliance upon the following judgments :

- A. Aameena Begum Vs. State of Telangana and others reported in (2023) 9 SCC 587.
- B. Sushanta Kumar Banik Vs. State of Tripura and others reported in AIR 2022 SC 4715.
- C. Lallan Prasad Chunnilal Yadav Vs. S. Ramamurthi and others reported in 1992 All MR Online 510 (SC).
- D. Judgment dated 12.08.2022 in the case Shri Pandurang @ Panda Narayan Garud Vs. The District Magistrate Pune and others in Criminal Writ Petition No. 454 of 2022.
- E. Pawan Tukaram Kudale Vs. Commissioner of Police, Pune and others reported in 2018 SCC Online Bom. 1468.
- F. Shri Nagesh Laxman Takmoge Vs. The Commissioner of Police, Solapur and others reported in 2018 All MR (Cri) 724.
- G. Judgment dated 08.02.2023 in the case of Ashokrao Uttamrao Pawar Vs. State of Maharashtra and others in Cri. W. P. No. 738 of 2022.

H. Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others reported in 2012 Cri. L. J. 1334.

6. The learned Assistant Learned Counsel Ms. S. S. Joshi would vehemently oppose the submissions. She referred to affidavit in reply filed by the respondents to advance her submissions. She would submit that serious offences under Chapter XVI and XVII of the Indian Penal Code have been registered against the petitioner. The criminal antecedents show that the petitioner is habitual offender and could not be deterred even by the preventive actions initiated against him. It is further submitted that the detaining authority has applied mind and arrived at just conclusion based on the subjective satisfaction.

7. It is further submitted that all the procedural formalities have been meticulously adhered to by the respondents. She would submit that there is no delay in passing the impugned order. It is further submitted that the criminal activities of the petitioner would indicate disturbance to the public order because the offences pitted against him reflect tendency of committing offence not against particular individual but against any member of the society. She prayed to dismiss the petition.

8. We have considered the rival submissions of the parties. We have also gone through the relevant record produced by the petitioner and the affidavit in reply filed by the respondents. It transpires from the record that there were seventeen offences registered against the petitioner under the provisions of the

Indian Penal Code and Arms Act. Out of that only last four offences have been considered by the detaining authority along with other material. Though externment proceedings are undertaken against him, those were not concluded when impugned order was passed.

9. A careful perusal of the criminal antecedents of the petitioner would indicate that the offences are registered against him with various police stations from districts Hingoli and Nanded namely Akhada Balapur, Vimantal, Ardhapur, Markhel, Shivaji Nagar, Limgaon, Vazirabad and Bhagya Nagar. Though all the offences registered against him were not taken into consideration, but those offences indicate tendency of the petitioner. The offences are serious in nature and most of them are under Chapter XVI and XVII of the I. P. Code.

10. Four offences which are taken into account by the Detaining Authority are under the provisions of I. P. Code as well as the Arms Act. Last two offences were committed on the same day with a gap of few hours. Out of four offences three offences are under the provisions of Sec. 395 of the I. P. Code i. e. decoity. We have carefully perused first information report and other relevant documents. Following striking features are surfacing :

- (i) All offences have been committed by use of deadly weapons and by forming gang.
- (ii) All offences are committed within a span of one month.
- (iii) Two offences are punishable U/Sec. 307 of the I. P. Code, which are serious.

- (iv) Investigation in all the offences is pending.
- (v) All the offences are post preventive actions.

11. The above referred aspects of the matter have to be considered while appreciating the submissions of the learned counsel for the petitioner. The learned counsel has drawn our attention to the papers of CR No. 257/2023, CR No. 488/2023 and CR No. 491/2023 to buttress that the petitioner is not involved in the offences and the detaining authority overlooked this aspect. We have already recorded that when the respondent No. 2/Detaining Authority was considering the matter all the four offences were under investigation. The detaining authority was expected to consider the material placed before it. Though first information reports do not disclose name of the petitioner, the supplementary statements and other incriminating material show his involvement.

12. The detaining authority has no jurisdiction to comment upon the merits of particular offence or the prosecution faced by the detainee. If the offence is under investigation, the investigating agency would be at liberty to file final report U/Sec. 169 or 173 of the Code of Criminal Procedure. It is only if the charge sheet was filed and the trial was under way, that the Competent Court can be expected to take into account the circumstances on merit by appreciating the material on record. In that view of the matter, we do not find substance in the submission of the learned counsel.

13. The learned counsel for the petitioner has vehemently submitted that orders enlarging petitioner on bail in CR No. 269/2023 and CR No. 253/2023 were not taken into account by the detaining authority. For that purpose reliance is placed on the judgment in the matter of **Shri Pandurang @ Panda Narayan Garud Vs. The District Magistrate Pune and others** (supra). Our attention is invited to paragraph No. 8. For the same purpose the judgment in the matter of **Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others** (supra) is pressed into service. The reasons assigned by the criminal court enlarging detenue on bail would certainly be relevant. Impugned order does not reflect that the detaining authority has applied its mind to the reasons for enlarging the petitioner on bail. But that in itself can't be a good ground to invalidate entire order of detention.

14. The impugned order is based on more than one grounds. Even if the petitioner succeeds on the ground stated above, by implication of Sec. 5-A of the Act, the entire impugned order will not be vitiated. We have already noted the involvement of the petitioner in serious offences committed by deadly weapon by forming gang. Therefore, we are not inclined to quash the impugned order, though the petitioner establishes the point of non consideration of the reasons for enlarging him on bail.

15. The petitioner was enlarged on bail in initial two offences when the matter was before the respondent No. 2. After passing impugned order the criminal Courts have released him on bail by

passing distinct orders in CR No. 481/2023 and CR. No. 491/2023. The learned counsel for the petitioner has invited our attention to the text of the order produced on record which is part of the compilation. The subsequent release of the petitioner on bail cannot be mitigating factor or would be relevant. In the present case the petitioner is facing investigation of serious offences under the I. P. Code and the Arms Act. We therefore do not find any merit in this submission.

16. The observation of the detaining authority that the drastic action was taken against the petitioner because he was likely to be released on bail in the last two offences, is heavily criticized by the learned counsel for the petitioner. It is a matter of record that this is not a solicatory finding recorded by the detaining authority for taking drastic action against him. All relevant circumstances and the material placed before the authority was taken into account before passing the impugned order. Paragraph No. 6 to 11 of the impugned order disclose that the detaining authority arrived at a conclusion on the subjective satisfaction. The petitioner has failed to persuade us to hold that subjective satisfaction is either perverse or defective.

17. The learned counsel for the petitioner also criticized in camera statements, being improbable and unreliable. In our view in camera statements cannot be segregated from other incriminating material on record. The detaining authority is not expected to test veracity of the in camera statements. They are to be considered in conjunction with other material pitted against

the petitioner. The metaphorical language appearing in the statements would not vitiate the impugned action. On the contrary, the statements corroborate other material on record. They would indicate that the petitioner is habitual offender and involved in serious offences. The subjective satisfaction of the detaining authority that the activities are prejudicial to the public order is sound and proper.

18. Turning to the submission of the learned counsel for the petitioner on ground of delay, in camera statements were recorded on 11.09.2023. They were verified on 22.10.2023 by the Sub Divisional Police Officer. Thereafter, proposal was forwarded to the detaining authority. Impugned order was passed on 25.10.2023. We do not find that there was inordinate delay or indifferent attitude of the authorities in attending the matter.

19. The learned counsel for the petitioner has referred to the judgment of the Supreme Court in the case of **Ameena Begum Vs. State of Telangana and others** (supra). Our attention was adverted to paragraph Nos. 34 and 46 of the judgment to buttress that the activities of the petitioner are not prejudicial to the public order. We have already observed that there are number of criminal activities of the petitioner and also their magnitude. The judgment would not help the petitioner. Next judgment of the Supreme Court in the matter of **Sushanta Kumar Banik Vs. State of Tripura and others** (supra) and more particularly para Nos. 26 to 28 is in respect of non consideration of order of bail. But in a

given facts, this ratio also cannot come to rescue of the petitioner in view of our observation with reference to Sec. 5A.

20. The matter of **Lallan Prasad Chunnilal Yadav Vs. S. Ramamurthi and others** (supra) is distinguishable on facts. Similarly judgment in the matter of **Shri Pandurang @ Panda Narayan Garud Vs. The District Magistrate Pune and others** (supra) and its para No. 8 would not enure to the benefit of the petitioner because in that matter only one offence was pitted against the petitioner. Whereas, the case in hand reflects four serious offences committed by the petitioner in the recent past, over and above the enormous criminal record of the period prior thereof.

21. We have gone through para Nos. 14 and 15 of the judgment in the case of **Pawan Tukaram Kudale Vs. Commissioner of Police, Pune and others** (supra). It would be of no avail to the petitioner in view of many distinguishable facts. The judgment of the Division Bench in the case of **Shri Nagesh Laxman Takmoge Vs. The Commissioner of Police, Solapur and others** (supra) shows that in that matter only solitary offence was registered against the petitioner therein. Present case shows involvement of the petitioner in four offences within span of one month. Similarly, the judgment in the matter of **Ashokrao Uttamrao Pawar Vs. State of Maharashtra and others** (supra) is also distinguishable on facts. The gravity of the offences in the case in hand is much more than those in the judgment cited.

22. On the basis of above analysis, we are of the considered view that the detaining authority has not committed any perversity or illegality so as to cause interference in the impugned order.

23. We, therefore, dismiss criminal writ petition. Rule is discharged.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/Feb. 24