



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

CRIMINAL WRIT PETITION NO. 1912 OF 2023

Suraj S/o Bhagwan Khirode,
Age : 27 Years, Occu. : Labourer,
R/o Nikita Niwas, Asarjan, Nanded,
Tq. and Dist. Nanded. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Additional Secretary
Home Department (Special),
Mantralaya, Mumbai – 32.
2. The District Magistrate, Nanded,
Detaining Authority.
3. The In-charge Police Officer,
Nanded Rural Police Station,
Nanded.
4. Superintendent of Central Prison,
Harsul Central Jail, Aurangabad. .. Respondents

Shri Sandip R. Andhale, 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.
DATE : 20 MARCH 2024.**

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

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

2. Being aggrieved by the order of detention dated 21.09.2023 passed by the respondent No. 2/District Magistrate, Nanded U/Sec. 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (hereinafter referred as to the 'M.P.D.A. Act' for the sake of brevity and convenience), the petitioner has filed present criminal writ petition.

3. Petitioner is held to be 'dangerous person' on the basis of CR No. 248/2023 registered on 09.04.2023 U/Sec. 341, 294, 506 of the Indian Penal Code and U/Sec. 4/ 25 of the Arms Act and two in camera statements of the witnesses. The detaining authority has arrived at the subjective satisfaction and recorded finding that considering the activities of the petitioner the normal penal laws are inadequate to deter him and his activities are detrimental to the public order.

4. Learned counsel for the petitioner submits that there is delay of five months in passing the impugned order, from registration of last offence, which is unexplained. He would further submit that subjective satisfaction is perverse as it is based upon inadequate record and there is no danger to the public order. He would further submit that the petitioner has not been arrested in any of the offences, neither he was served with any notice. He would further submit that in camera statements of both the witnesses are unreliable and should not

have been considered for arriving at the subjective satisfaction.

5. Learned counsel for the petitioner seeks to rely upon the following judgments of this Court :

- (I) Mayur @ Vikki Deepak Alone Vs. The District Magistrate, Jalgaon and others judgment dated 27.02.2024 in Cri. W. P. No. 1764 of 2023.
- (II) Sachin Abhaysingh Chavan Vs. The District Magistrate, Jalgaon and others judgment dated 06.03.2024 in Cri. W. P. No. 1763 of 2023.
- (III) Devidas Lalji Ade Vs. The State of Maharashtra and others judgment dated 13.07.2022 in Cri. W. P. No. 469 of 2022.
- (IV) Prashant Bharat Datar Vs. State of Maharashtra and another judgment dated 07.07.2022 in Cri. W. P. No. 914 of 2021.
- (V) Sandip Govind Pawar Vs. State of Maharashtra and others judgment dated 03.04.2023 in Cri. W. P. No. 172 of 2023.

6. Learned Assistant Public Prosecutor would support impugned order relying upon affidavit in reply filed in the matter. He would submit that there was cogent material before the detaining authority to arrive at the subjective satisfaction. The petitioner was involved in various offences and established terror in the vicinity which can be seen from the statements of the two witnesses. It is further submitted that the respondents have followed due procedure of law and time schedule as prescribed by law. Learned A. P. P. would rely upon the affidavit

in reply to show that the contention of delay is meritless. It is submitted that in view of the judgment rendered by this Court in the matter of **Vinod Dhannulal Jaiswal Vs. District Magistrate Aurangabad and another vide judgment dated 17.01.2024 in Cri. Writ Petition No. 1430 of 2023** the submission on the basis of notice U/Sec. 41-A(1) of the Code of Criminal Procedure is not sustainable.

7. We have considered rival submissions of the parties. We have also considered relevant papers produced on record by the parties. Impugned order is passed on the basis of only one offence that is CR No. 248/2023 registered on 09.04.2023 and two in camera statements. Although there were earlier three offences, they were not taken into account by the detaining authority.

8. A solitary offence pitted against the petitioner was registered on 09.04.2023. Affidavit in reply of the respondent No. 2 reveals in its para No. 06, the sequence of events upto the forwarding of the proposal. It reveals that in camera statements were recorded on 10.04.2023. They were verified by the Sub Divisional Police Officer on 23.05.2023 . Thereafter, matter travelled from different authorities and ultimately it reached to the detaining authority on 03.06.2023. From 03.06.2023 the time of about more than three months was taken by the detaining authority to pass the impugned order.

9. We find no explanation is given by the respondents as to

why more than three and half month was taken to pass the impugned order. Thus from 09.04.2023 to 21.09.2023 there is delay of more than five months which is unexplained. Only inference which can be drawn is that even he did not feel that there was eminent danger to the public order. For the unexplained delay the law is settled. Order of detention gets vitiated for the unexplained delay. Applicant has rightly placed reliance on our judgments in the matter of Mayur @ Vikki Deepak Alone Vs. The District Magistrate, Jalgaon and others and Sachin Abhaysingh Chavan Vs. The District Magistrate Jalgaon and others (supra). In both the matters, we have held that delay of five months or more would vitiate order of detention. Delay caused in taking action for detention under M.P.D.A. Act indicates that the activities of the detenu are not of imminent danger. It can be inferred that detenu's being at large did not cause any apprehension to the public order. We find merit in the submissions of the learned counsel for the petitioner.

10. Next submission of the learned counsel for the petitioner is about the subjective satisfaction. The detaining authority has considered only one offence. We have gone through the first information report of the offence. It is alleged that informant in that offence was abused and threatened by showing dagger. It was specifically stated by the informant that there was previous animosity between them and, therefore, he was abused and threatened. The allegations are individual centric. We do not find that any element of danger to the public order was involved in it.

11. We have also considered in camera statements of both the witnesses. Both the statements lack material particulars. Both the statements of the witnesses are not reliable. No offence has been registered in pursuance of the incidents cited in the statements. It would not be appropriate to hold the petitioner a dangerous person on the basis of record pitted against him. There is no sufficient material on record to take recourse to the drastic action of detention under the M.P.D.A. Act. His activities could be dealt with under normal penal laws. We, therefore, find that subjective satisfaction is perverse.

12. Learned counsel for the petitioner has rightly referred to the judgments of the Division Bench of this Court at Nagpur and at the Principal seat at Bombay in the matter of **Prashant Bharat Datar Vs. State of Maharashtra and another** and **Devidas Lalji Ade Vs. The State of Maharashtra and others** (supra) respectively.

13. Learned counsel for petitioner refers to earlier offence registered against him to show that the petitioner is innocent and falsely implicated in the offence. He would also try to show that the petitioner has not been convicted in any of those offences. As the detaining authority has only considered CR No. 248/2023, it would not be appropriate to refer and consider earlier offences. We do not find any merit in the submissions in this regard.

14. So far as submission of the learned counsel for the

petitioner in respect of notice U/Sec. 41-A(1) of the Cr. P. C. is concerned, we have already taken a view in the matter of **Vinod Dhannulal Jaiswal Vs. District Magistrate Aurangabad** (supra) in paragraph No. 36 by referring to the judgment of the Supreme Court in the matter of **Arnesh Kumar Vs. State of Bihar and Anr.; (2014) 8 SCC 273**. Therefore, just because the petitioner has not been served with notice U/Sec. 41-A(1) of the Cr. P. C., no benefit can be given to him.

15. For the reasons stated above, we find that impugned order is unsustainable on the submissions of unexplained delay as well as perverse subjective satisfaction. We, therefore, pass following order.

O R D E R

- (i) The writ petition is allowed.
- (ii) The petitioner shall be set at liberty forthwith.
- (iii) The Criminal writ petition is disposed of.

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

bsb/March 24