



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1025 OF 2024

Ismail Mehaboobsab Pathan
Age: 67 year, Occu.: Agri.,
R/o Near Faruki Mill, Samta Nagar,
Dam Road, Udgir, Tq. Udgir, Dist. Latur ..PETITIONER

Gaffar @ Bablu Esmail Pathan
Age: 31 years, Occu.: Business,
R/o Samta Nagar, Udgir, Tq. Udgir, Dist. Latur ..DETENU

VERSUS

1. State of Maharashtra
Through Principal Secretary,
Home Department, 2nd Floor,
Mantralaya, Madam Kama Road,
Hutatma Rajguru Chowk, Mumbai
2. The District Collector,
Collector Office, Latur
3. Police Superintendent
Office of the Superintendent of Police,
Latur, Tq. & Dist. Latur
4. The Sub-Divisional Police Officer,
Officer of SDPO, Udgir, Tq. Udgir, Dist. Latur
5. The Police Inspector
Police Station, Udgir Rural,
Tq. Udgir, Dist. Latur ..RESPONDENTS

....
Mr. N.K. Tungar, Advocate for petitioner
Mr. A.R. Kale, A.P.P. for respondents
....

CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 11th JULY, 2024

PER COURT :

1. This petition, under Article 226 of the Constitution of India, filed for the following reliefs :-

- “A) *Criminal Writ Petition may kindly be allowed.*
- B) *The impugned order passed by the respondent No.2, District Magistrate, Latur on 08.05.2024 in File No. 2024/MAG/MPDA/DESK-2/KAVI-91 and the impugned order passed by respondent No.1 dated 17.05.2024 be quashed and set aside.*
- C) *Pending hearing and final disposal of writ petition, the impugned order passed by the respondent No.2, District Magistrate Latur on 08.05.2024 in File No. 2024/MAG/MPDA/DESK-2/KAVI-91 and the impugned order passed by respondent No.1 dated 17.05.2024 be suspended and petitioner be released on bail.”*

2. Respondent No.2 is the District Magistrate, Latur. He, vide his order dated 08th May, 2024, detained son of the petitioner viz. Gaffar @ Bablu Esmail Pathan (‘Detenu’) for a period of twelve months with a view to prevent him from acting prejudicial to maintenance of public order. The order of detention passed by Respondent No.2 was confirmed by Respondent No.1 - State Government, Department of Home vide order dated 17th May, 2024. The detention is mainly on the ground of the Detenu being a dangerous person.

3. Heard. Perused the orders impugned herein.

4. Learned A.P.P. reiterated the order in justification thereof. According to him, the graph of criminal activities of the Detenu was ascending. It was found necessary to detain him preventing from indulging in the activities prejudicial to the maintenance of public order. He would further submit that the subjective satisfaction of the detaining authority can hardly be a subject of judicial scrutiny. He, therefore, urged for dismissal of the petition.

5. Considered the submissions advanced. Perused the order impugned herein. Before advertng to address the impugned order of detention, it would be appropriate to refer certain provisions of the MPDA Act as under :-

“2(a) “acting in any manner prejudicial to the maintenance of public order” means -

(iv) In the case of dangerous person, when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order;

Explanation. - For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health (or disturbance in public safety and tranquility or disturbs the day to day life of the community by black- marketing in the essential commodities which is resulting in the artificial scarcity in the supply of such commodities and rises in the prices of essential commodities which ultimately causes inflation] (or disturbs the

life of the community by producing and distributing pirated copies of music or film products, thereby resulting in a loss of confidence in administrations);

[(b-1) "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959];

6. The order of detention impugned in this petition reads thus :-

“3. Several crimes have been registered against you in the past as mentioned below which show your criminal background law of the society.

Serious Offences -

<i>Sr.</i>	<i>Police Station</i>	<i>CR No.</i>	<i>Section</i>	<i>Registration Date</i>	<i>Status of case</i>
<i>1</i>	<i>Ahmedpur</i>	<i>182/2021</i>	<i>364A, 394, 384, 323, 504, 506, 34 of IPC</i>	<i>20/04/2021</i>	<i>Pending for Adjudication</i>
<i>2</i>	<i>Udgir (Rural)</i>	<i>614/2023</i>	<i>364A, 365, 368, 384, 386, 343, 346, 347, 324, 32, 504, 506, 34 of IPC</i>	<i>18/10/2023</i>	<i>Pending for Adjudication</i>

Preventive Action -

<i>Sr.No.</i>	<i>Police Station</i>	<i>Case No.</i>	<i>Section</i>
<i>1</i>	<i>Ahmedpur</i>	<i>10/2021, Date 21/06/2021</i>	<i>110(e)(g) Cr.P.C.</i>

However said prosecution is not based on the offences mentioned in paragraph 3 of the above. These offences are shown to highlight your previous criminal background and the fact that your activities are causing alarm and insecurity among the general public.

4. The recently your involvement shown in the following incidents goes to show your tendencies and inclinations to continue your activities detrimental to the maintenance of public order.

a) Police Station Udgir (Rural) - Cr. No 638/2023, Section 420,506 of IPC

On Date 09/11/2023 plaintiff named Samel Shivaji Chavan age 23 years, occupation cleaner on travels, resident near Sanjivani school Kamalnagar, Taluka Kamalnagar, District Bidar, Mo. No. 9324073182 stated as follows,

I am Samel Shivaji Chavan age 23 years, occupation cleaner on travels, resident near Sanjivani school Kamalnagar, Taluka Kamalnagar, District Bidar, Mo.No. 9324073182.

Appearing in the police station, I am stating that I am a resident of the above place and I have a family of mother, father, one brother and I work as a cleaner on travels to port my family.

I worked as a cleaner on Bablu Pathan's travels two to three years ago and now I am working as cleaner on travels MH-24AB7373. On 14/10/2023 when I returned from Pune to Udgir around 10.00 am at Bidar Naka, I met Bablu Pathan, my former employer and he took the Aadhaar card saying that I have some work with your Aadhaar card.

On 19/10/2023 I took Udayagiri Travels and it stopped at the travels point near Ankushrao Landge Natya Sabhagraha at Bhosari, Pune, around 12.00 pm to 2.00 pm Bablu Pathan met me and I asked him what had he done with my Aadhaar card. He took me to a mobile shop on the opposite side of Bhosari Bridge Parking and asked me to buy a SIM card of Jio company. He took the SIM card numbered 8459714895 which I bought and he put the SIM card in his mobile phone. When I asked him why he did so, he replied, what do you want to do, don't give the number of this SIM card to anyone and don't tell anyone that I am using this SIM card, if you tell anyone, I will not keep you alive. He threatened me like this and left from there

Although, I have not told anyone about the matter out of fear for my life, while I was in Udgir he asked my Aadhar card, he used the Aadhaar card in my name to buy a SIM card in Pune, he misused it, cheated and betrayed me. Appropriate legal action is requested against Gafar alias Bablu Ismail Pathan, age 31 years, Occupation - Labour. Resident of Samata Nagar, Taluka Udgir, District Latur.

After getting the above complaint regarding the said incident at Police Station Udgir (Rural) District Latur CRN. 638/2023 was registered under Section 420,506 IPC, and the investigation of the

same was handed over to Mr. Devkatte, PSI police station Udgir (Rural). During the investigation of the aforementioned crime, the said accused was present in judicial custody at District Central Jail Latur, under police station Udgir (Rural) CRN. 614/2023, Sections 364 A, 365, 368, 384,386, 343,346,347, 324, 32, 504, 506, 34 IPC. As he was in judicial custody at District Central Jail Latur, he was taken in a produce warrant and after examining him, the said SIM card and Rs. 2,00,000 (two lakh rupees) in cash were confiscated under CRN. 614/2023 Sections 364 A, 365, 368, 384,386, 343,346,347, 324, 32, 504, 506, 34 of IPC. As MCR of the said accused was completed, He was released to District Central Jail Latur, after completing the investigation of the said crime, Chargesheet No. 12/2024 dated 20/01/2024 was submitted to the Ho Court, thereafter RCC No. 33/2024 dated 02/02/2024 has been received.

b) You troubling the people and became a dangerous person for the society. I impoverished through intimidation, kidnapping, unlawful detainment, property seizure by force, orchestrating unlawful assemblies, as well as engaging in intimidation, abuse, assault, fraud, extortion. These acts of terror in the society are still going on and due to his above actions fear has been created among all the peace loving and law abiding common citizens. The affected person victims are Witness of your terror act. The names of these witnesses kept confidential they will not call before any court or any were after the surety of this act the people who are witness will ready to say about criminal activity of detainee.

i) Witness - A: Witness - A Upon being summoned to the Udgir Rural Police Station, I have known Bablu alias Ghafar Ismail Pathan alias Munjewar, resident of Samata Nagar, Udgir, District Latur, for the past fifteen years. Despite being aware of his history of violent criminal activities, I am providing my statement.

Bablu alias Ghafar Ismail Pathan, resides in Samata Nagar, Udgir. He exhibits a criminal mindset and consistently perpetrates crimes within Udgir city and its vicinity. His activities primarily involve the abduction of shopkeepers, businessmen, and women, extorting money from them, and subjecting poor individuals to continuous abuse and threats for ransom. Consequently, his behaviour has instilled a pervasive sense of fear among the

impoverished, business community, and labourers in Udgir city. Moreover, women and female students pursuing education in surrounding villages live in constant dread, hesitant to venture out of their homes. Upon his arrival in various neighbourhoods of Udgir, residents promptly secure their doors and windows, apprehensive of potential harm. His intimidating demeanour dissuades individuals from lodging complaints against him, further exacerbating the prevailing atmosphere of fear.

Despite the existence of recorded crimes against him, there is a reluctance among individuals to testify, fuelled by the absence of consequences for his actions, which has led to a loss of trust in both the administration and the judiciary. His persistent criminal behaviour has fostered an environment of fear in Udgir city and its vicinity.

I am providing my statement solely to the police, despite my awareness of Bablu alias Ghafar Ismail Pathan alias Munjewar, resident of Samata Nagar, Udgir, District Latur, being a delinquent, reckless, gangster, and actively involved in criminal activities.

Revealing my statement poses a significant risk to my life. Therefore, I am giving statement under the condition that I will not be required to appear before any court, office or any other officer.

The statement I provided was transcribed on the computer at the police station according to my guidance. I have reviewed it and confirm its accuracy and truthfulness.

In the final paragraph of the aforementioned statement, the confidential witness has urged us to maintain the confidentiality of his statement.

ii) Witness B: - Upon being summoned to the Udgir Rural Police Station, I confirm that I am a resident of the aforementioned area and that my family's livelihood is sustained through business. I have been acquainted with Bablu alias Ghafar Ismail Pathan alias Munjewar, resident of Samata Nagar, Udgir, District Latur, for approximately seven to eight years. Despite being aware of his violent criminal tendencies, I am providing this statement.

Bablu alias Ghafar Ismail Pathan alias Munjewar, a resident of Samata Nagar, Udgir, District Latur, approached me near Kalpana Theatre approximately five to six months ago. He coerced me into giving him Rs. 20,000. When I hesitated to comply with his demands, he threatened to expel me from Udgir city or implicate me in crimes he had committed. I pleaded with him and assured him that I would arrange the money as requested, promising not to disclose the incident to anyone. Upon hearing this, he released me. Despite the ordeal, I refrained from reporting the incident to the police due to fear of reprisal.

Bablu alias Ghafar Ismail Pathan, engages in criminal activities consistently within Udgir city and its vicinity. His actions include the abduction and assault of shopkeepers and businessmen, extortion of ransom, and terrorizing women and poor Individuals for monetary gain. As a result of his conduct, an atmosphere of apprehension pervades Udgir city and neighbouring villages, causing fear among residents, including the impoverished, business community, labourers, women, students, and girls, who are reluctant to venture outdoors due to the threat he poses. Upon his arrival in various villages within Udgir, residents hastily secure their homes, shutting doors and windows to safeguard against potential harm. His intimidating demeanour dissuades individuals from lodging complaints against him, further reinforcing the atmosphere of fear.

Despite the existence of recorded crimes against him, there is a reluctance among individuals to testify, fuelled by the absence of consequences for his action which has led to a loss of trust in both the administration and the judiciary. His persistent criminal behaviour has fostered an environment of fear in Udgir city and its vicinity.

I am providing my statement solely to the police, despite my awareness of Bablu alias Ghafar Ismail Pathan alias Munjewar, resident of Samata Nagar, Udgir, Distric Latur, being a delinquent, reckless, gangster, and actively involved in criminal activities. Revealing my statement poses a significant risk to my life. Therefore, I am giving statement under the condition that I will not be required to appear before any court, office, or any other officer.

The testimony of offenses registered against you which is shown in paragraph no. 3 & 4 and confidential witnesses A and B shows that you are reckless person and therefore constitute a habitual and probable danger to society at large. You have created your terror in Udgir and Ahamadpur around area limits. Because of your fear no one comes forward to file a complaint against you. Thus your activities in locality are hampering the maintenance of public order.”

7. The aforestated two in-camera statements have also been relied on. The detaining authority observed in the order that the activities of the Detenue were prejudicial to the maintenance of public order. In our view, merely observing so without there being foundational material would be an empty formality. In the chart given in paragraph no.3 of the impugned order (referred above), there is reference to two crimes. First one thereof was registered way back in April 2021 and the second one on 18th October, 2023. While in paragraph no.3 of the order it has been observed that several crimes had been registered against the Detenue, said sentence may not therefore be literally correct. True, one chapter proceeding under Section 110(e)(g) of the Cr.P.C. was initiated against the Detenue, the same too relates back to June 2021.

8. In the order itself Respondent No.2 - detaining authority has observed that reference to the crimes and preventive measure taken against the Detenue were referred as background and not for passing the impugned order.

9. Paragraph no.4 of the impugned order indicates that only one crime, being C.R. No. 638 of 2023 registered for the offences punishable under Sections 420 and 506 of the I.P.C. has been relied on besides two in-camera statements. We are conscious of the fact that the order of detention could be sustained solely based on in-camera statement. Let us, therefore, advert to the facts of the crime registered against the Detenue and in-camera statements.

10. Crime vide C.R. No. 638 of 2023 was registered on 09th November, 2023. The facts thereof indicate that the informant therein was the employee of the Detenue. He would work as cleaner on the vehicle belonging to the Detenue. It is alleged that the Detenue met him on 19th October, 2023. He forcibly took his 'Aadhar Card' and took him to a cell phone shop. Gist of the allegations in the F.I.R. of the said crime indicates that the Detenue forced the informant therein to give him his 'Aadhar Card' for securing a SIM card of a particular number and then threatened him of dire consequences if he disclosed the same to anyone else.

11. Close reading of the allegations would indicate that there was employer-employee relation between the Detenue and the informant therein. The allegations made in the F.I.R., by no stretch of imagination, would lead us to infer it to be an offence to have potential to cause disturbance to maintain public order. The offence was individual centric. Relying on the

said crime to pass the impugned order is, in our view, could not be said to be a reason for subjective satisfaction of the detaining authority.

12. So far as two in-camera statements are concerned, close reading thereof indicate the victims have not given day, date, time, month or year of the incidents (criminal acts committed by the Detenue against them). It has simply been observed by those witnesses that the Detenue was indulged in abduction, extortion, causing trouble to women etc. For want of day, date, time, month and year of those incidents, we find both those statements to be vague and resultantly prejudicial to the Detenue to come with a defence to meet the same.

13. The order of detention is dated 08th May, 2024, while the crime relied on is dated 09th November, 2023. As such, there is a gap of six months between the last crime and order of detention. Delay in passing the impugned order has not been satisfactorily explained.

14. As such, the detention order is found to have been passed with non-subjective satisfaction, and therefore, is liable to be interfered with. In the result, we allow the petition in terms of prayer clause (B).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

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