

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1549 OF 2022

Ramdas Vitthal Wagh,
Age 35 yrs., Occ. Labour,
R/o Kelgaon, Tq. Sillod,
Dist. Aurangabad.

... Petitioner

... Versus ...

- 1 The State of Maharashtra,
Through The Secretary,
Advisory Board, Government of Maharashtra,
Home Ministry, Mantralaya,
Mumbai – 32.
- 2 District Magistrate,
Aurangabad.
- 3 Superintendent of Police,
Aurangabad.

... Respondents

...

Mr. M.B. Sandanshiv, Advocate for petitioner

Mr. S.J. Salgare, APP for respondent Nos.1 to 3

...

CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

RESERVED ON : 14th DECEMBER, 2022

PRONOUNCED ON : 10th JANUARY, 2023

ORDER : [PER : SMT. VIBHA KANKANWADI, J.]

1 The petitioner is a detenu, who has been ordered to be detained under 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 by order dated 17.08.2022 by District Magistrate, Aurangabad and the same has been approved by the Government on 27.09.2022. The petitioner is invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India to challenge those orders.

2 Heard learned Advocate Mr. M.B. Sandanshiv for the petitioner and learned APP Mr. S.J. Salgare for respondent Nos.1 to 3.

3 It has been vehemently submitted on behalf of the petitioner that his father was serving as Peon in Village Panchayat. He died on 03.09.2017. Initially A.D. was registered and the Postmortem was conducted, however, the said death was a murder and, therefore, complaint was lodged by the mother of the petitioner against Kishor Shinde, Somnath Kolhe and Balu Iware. Petitioner's mother had also lodged complaint against Balu Iware, who is the husband of Police Patil, as he used to give threats to lodge complaint. However, Police Patil lodged report against the petitioner vide

Crime No.317/2020 on 11.12.2020, for the offence punishable under Section 353, 354(A)(i), 504, 506 of the Indian Penal Code. It has been stated that the Police Patil and her relatives are instigating the entire village to lodge report against the petitioner and the family members. In fact, on the basis of First Information Report lodged by the sister of the petitioner against the villagers, offence punishable under Section 307 and other sections of the Indian Penal Code came to be registered, as the house of the petitioner was totally destroyed by the villagers. Other offences are also filed against the petitioner, however, those cannot be said to be of such a nature which can be said to be causing the behaviour of the petitioner as threat to the maintenance of law and order or in other words the petitioner cannot be termed as a dangerous person.

4 The learned Advocate appearing for the petitioner has taken us through all the documents which have been annexed along with the petition including the entire charge sheet of the offence that was registered on the basis of First Information Report lodged by mother of the petitioner. It is then stated that the competent authority had taken into consideration the cognizable offences i.e. six in number which were registered with Sillod Rural Police Station and confidential statements of two witnesses have also been recorded. However, that material is not sufficient. If at all the action of the

petitioner is dangerous, then the prosecution can go for cancellation of bail but no such action was taken. It is then also stated that even the note of non cognizable offences also been taken by the competent authority which is against the said principles of law.

5 The learned Advocate for the petitioner has relied on **Mallada K. Sri Ram vs. State of Telangana and others, 2022 SCC OnLine SC 424**, wherein it has been observed that -

“A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the “maintenance of public order”.

The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the alter of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Gracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of prevention detention do not devolve into a draconian and arbitrary exercise of state authority.”

5.1 Further reliance has been placed on the decision in **Shaik Nazneen vs. The State of Telangana and others in Criminal Appeal No.908 of**

2022 decided by Hon'ble Apex Court on 22.06.2022, wherein it has been observed that -

“17. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case.”

In both the above said authorities primary the reliance was on the decision in *Dr. Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740*.

5.2 Further reliance has been placed on the decision in **Ganesh @ Gajaraj Sainath Patil vs. The State of Maharashtra and others, 2021 ALL MR (Cri.) 2585** wherein reliance was placed on *Khaja Bilal Ahmed vs. State of Telangana and others, 2020 ALL SCR (Cri.) 1561* and then it was held that the nature of the offence registered against the petitioner therein can be taken care of by the process of ordinary law and then the impugned detention order was quashed and set aside. Learned Advocate for the petitioner, therefore, canvassed for setting aside the impugned order.

6 Learned APP has placed reliance on the affidavit filed by the District Magistrate, Aurangabad Mr. Sunil Chavan, who was then the

competent authority and it has been stated in the deposition that the petitioner is a “dangerous person” as defined under M.P.D.A. Act. He has committed serious offences, that is, drunk and disorderly behaviour, assault on public servant, sexual harassment of woman, voluntarily causing hurt by dangerous weapons, obscene act, mischief etc. He had considered six cases mainly, which were cognizable in nature.

Sr.No.	Police Station	Crime No.	Present status
01	Sillod Rural	266/2019, u/s 85(1) of Maharashtra Prohibition Act, 1949	Pending trial
02	Sillod Rural	277/2019, u/s 85(1) of Maharashtra Prohibition Act, 1949	Pending trial
03	Sillod Rural	317/2020, u/s 353, 354(A)(i), 504, 506 of IPC	Pending trial
04	Sillod Rural	99/2022, u/s 354, 354(A), 504, 506 of IPC	Pending trial
05	Sillod Rural	100/2022, u/s 324, 294, 504, 506, 427 of IPC	Pending trial
06	Sillod Rural	163/2022, u/s 324, 323, 504, 506 of IPC	Pending trial

It is then stated that he has also considered the statements of witnesses ‘A’ and ‘B’ in-camera and also confidential report by Police Inspector, Sillod Rural Police Station. It is then stated that after having subjective satisfaction he had passed the said detention order and had forwarded for the approval by the State Government. The said detention order was approved by the State Government on 26.08.2022. Thereafter the petitioner was heard

by the Hon'ble Advisory Board constituted under the Act on 12.09.2022 and then confirmed the order passed by the State Government vide order dated 27.09.2022. Therefore, all the mandatory provisions have been fulfilled and, therefore, the impugned order is legal.

7 The learned APP has relied on the decision in **Hemlata Kantilal Shah vs. State of Maharashtra and others, AIR 1982 SC 8**. Though the said case was under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, it was held that the detenu accepted the fact of smuggling activity and, therefore, past conduct of the detenu was considered while passing detention order and, therefore, it cannot be said to be in violation of Article 22(5) of the Constitution of India.

7.1 He also relied on the decision in **Santosh vs. The State of Maharashtra and others, MANU/MH/0270/2013**. This Court has held that -

“Hon'ble Supreme Court in case of *Smt. K. ArunKumari vs. Government of Andhra Pradesh and others, 1988 SCR (1) 973* held that the High Court while considering the writ application was not sitting in appeal over detention order and it was not for Court to go into and assess probative value of evidence available to Detaining Authority.

Law was settled that, if in-camera statement disclosed verification about truthfulness of such statement and identity of person concerned

to satisfaction of officer verifying statement, no challenge could be entertained on the ground that verification was defective.

It was further held that -

The Courts had only to consider, whether procedural requirements enjoined by Article 22(5) of the Constitution of India had been complied with by detaining authority. Where procedural compliance was exhibited from record and order passed by detaining authority, Courts could not examine material placed before the detaining authority. When petitioner was provided with opportunity to make representation on the basis of material supplied to him and thereafter it is found that the petitioner was disturbing the public order, the subjective satisfaction of the detaining authority is important.

Learned APP, therefore, submitted that after considering the entire record the subjective satisfaction has been arrived at and the said order has been confirmed by the Hon'ble Advisory Board constituted under the Act also. Therefore, it does not require any interference under Article 226 and 227 of the Constitution of India.

8 Here, the facts will have to be considered that out of six cognizable cases against the petitioner, two are under Maharashtra Prohibition Act, which cannot be considered, but the other four cases are serious in nature. Those are against body and Those are pending for trial. There is definitely proximity in the action taken and the last/recent offence

registered against the petitioner i.e. Crime No.163/2022 with Sillod Rural Police Station. The First Information Report lodged by the mother of the petitioner against Police Patil or her husband can be said to be an individual grievance or action, but as regards the action taken against the petitioner is concerned, there is no such evidence to show that the in-camera witnesses were those persons against whom the mother of the petitioner has lodged First Information Report. It has been tried to be submitted that offence vide Crime No.163/2022 filed on 04.06.2022 was the outcome of the family dispute, as the said First Information Report is lodged by the wife of the petitioner. Crime Nos.99/2022 and 100/2022 were registered on the same day and those are in respect of same incident. It is then stated that as regards those two offences are concerned, there is also a cross case which has been filed by the sister of the petitioner against the villagers. Here, the inference is required to be drawn, though two offences were registered on the same day; yet, its implication was required to be considered and as regards Crime No.163/2022 is concerned it cannot be brushed aside by saying that since it is filed by the wife of the petitioner, it is a family dispute. In the said First Information Report the wife of the petitioner has stated that the petitioner had demanded the amount with her for drinking liquor. When she told that he is already under the influence of liquor and, therefore, he should take meals and sleep, at that time, the petitioner had assaulted her

with stick and then neighbouring persons were required to interfere. The consequences will have to be considered that if anybody would not have interfered, there would have been more grave offence and, therefore, it cannot be said that it is a family affair and it ought to have been ignored.

9 The statements of the in-camera persons would show that the petitioner has created terror. He keeps knife with him and he demands money from the general public and if they refused to give him amount, then he abuses them and threatens to lodge cases under the Atrocities Act. These statements have been considered by the competent authority while passing the impugned order.

10 The compliance has been made in respect of making available all the documents to the petitioner and even he has been heard by Hon'ble Advisory Board before the confirmation. The reference was made to the Advisory Board for advice whether or not there is sufficient cause for detention of the petitioner and the board of the opinion that there is sufficient cause.

11 The ratio laid down in **Mallada K. Sri Ram** (supra) and **Shaikh Nazneen** (supra) cannot be denied. However, taking into consideration the fact of the case i.e. the involvement of the petitioner in many cases, proximity

from the last offence and the statements of in-camera witnesses would justify the order of detention. In spite of the fact that the petitioner has been released on bail he is committing offences and he has created terror in the vicinity. As regards the facts in **Ganesh Patil** (supra) are concerned, there was only one case against the said person, of which reference has been taken in para No.28 and then it is stated that under those circumstances it cannot be concluded that the said petitioner is a dangerous person. Therefore, the petitioner cannot make use of the ratio laid down in the above said authorities.

12 This Court in **Santosh** (supra) has taken note of all the earlier decisions of this Court as well as Hon'ble Apex Court and especially the decision in **Smt. K. ArunaKumari** (supra) that would be applicable here and, therefore, this Court cannot sit as an Appellate Court as a limited role to see as to whether there is any violation of Article 22(5) of the Constitution of India.

13 After considering all these aspects we are of the opinion that no case is made out for exercising the constitutional powers of this Court. Though the detention law might sound draconian on certain occasions; yet, when the acts are being repeated, there has to be certain restrictions by way

of detention. Here, in this case the detention order is for the period of one year only. Hence, the petition stands dismissed.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)

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