



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 460 / 2024

Shubham Ashok Vaywal (Waghole),
Age : 22 years, Occ.Labour,
R/o Shankarnagar, Near Belanagar,
Taluka & District Nanded.

...PETITIONER

Versus

1. State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai.
2. The District Magistrate,
Nanded.
3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad
Dist. Aurangabad.

..RESPONDENTS

Advocate for the Petitioner : Mr. Shailendra S. Gangakhedkar

A.P.P. for Respondents /State : Mr. N.R. Dayma

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 09 MAY 2024

ORAL JUDGMENT [Per Shailesh P. Brahme, J.] :

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

2. The petitioner is challenging order of detention dated 26.01.2024 passed by the respondent no.2 and order of approval dated 06.02.2024 passed by the respondent no.1 under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience). The detaining authority has branded petitioner as dangerous person on the basis of offences bearing C.R. No.316/2023 punishable under Section 3/25 of the Arms Act read with Section 135 of the Maharashtra Police Act registered on 18.09.2023, two preventive actions and two in-camera statements.

3. Learned Counsel Mr. S.S. Gangakhedkar submits that the petitioner was acquitted of three offences which fact was not considered by the detaining authority and which amounts to non-application of mind. According to him subjective satisfaction is arbitrary. He would further submit that the petitioner was released on bail on 17.10.2023 and the reasons for releasing him on bail, have not been considered by the detaining authority. He further submitted that there is delay in passing the impugned order. He would further submit that in-camera statements are not reliable. Lastly, he would submit that there is non-compliance of the statutory provisions and the impugned orders are unsustainable.

4. Learned Counsel for the petitioner tenders on record following judgments rendered in the matters of :

- i Balu Waman Patole Vs. Commissioner of Police Aurangabad
AIR OnLine 2019 Bom

- ii Pranali Yogesh Karkhandis Vs. State of Maharashtra and Ors. AIR OnLine 2023 Bom 1699
- iii Ashokrao Uttamrao Pawar Vs. State of Maharashtra and Ors. AIR OnLine 2023 Bom 173
- iv Dhanubai Vs. State of Maharashtra and Others 2024 SCC OnLine Bom 484
- v Nilesh Sunil Pendulkar Vs. District Magistrate, Ahmednagar & Ors. 2024 SC OnLine Bom 694

. He also tenders on record a chart to disclose that he was acquitted of couple of offences, which fact is overlooked by the detaining authority.

5. Per contra, learned APP Mr. N.R. Dayama opposes the submission of the learned Advocate for the petitioner. He submits that the detaining authority was aware of order of bail. He would further submit that acquittal in couple of offences would not enure to the benefit of the petitioner. According to him, due procedure of law was followed by the respondents. The statutory compliances have been made. It is further submitted that the subjective satisfaction is plausible and reasonable. Impugned orders cannot be faulted with in the writ jurisdiction.

6. Learned APP relies on affidavit-in-reply of the respondent no.2 in support of his submission. He places reliance on the judgment rendered in the matter of Sachin @ Bedkya Shyam Kale Vs. State of Maharashtra & Ors., Criminal Writ Petition No.422/2024.

7. We have considered the rival submissions and we have also

considered the papers. It reveals that though the record of nine offences was placed before the detaining authority, only last offence bearing C.R. No.316/2023 was taken into account for the purpose of reaching the subjective satisfaction. The chart produced by the petitioner indicates that the petitioner was acquitted in C.R. No.23/2019, C.R. No.361/2020 and C.R. No.2020/2019. The orders of acquittal and Roznama are placed on record. We find that the grounds of detention indicate offences registered against petitioner in paragraph no.3 with status of the proceeding. The matters in which the petitioner has been acquitted are shown to be pending. Though only last offence has been considered by the detaining authority, it was incumbent upon the sponsoring authority and the detaining authority to consider actual status of the proceedings. This reflects non-application of mind.

8. It would not be out of context to refer to paragraph no.14 of the reply of the respondent no.2/detaining authority. It is stated that acquittal would be no bar for issuing detention order. It is incumbent upon the detaining authority to consider relevant material. For arriving at the subjective satisfaction, the status of the offences/prosecution would be relevant factor. In this regard, Supreme Court by its latest judgment in the matter of Nenavath Bujji Etc. Vs. State of Telangana, AIR 2024 SC 1610 in paragraph no.43 has laid down the parameters to be followed by the detaining authority. In that view of the matter, we do not approve of the attitude of the respondent no.2 in making bold statements in paragraph no.14 referred to above.

9. Learned Counsel for the petitioner has invited our attention to order dated 17.10.2023, enlarging petitioner on bail. In paragraph no.7 and 8 specific reasons were assigned by the Additional Sessions

Judge, Nanded for granting bail. The grounds of detention do not reflect that the reasons assigned for enlarging petitioner on bail have been considered. This amounts to dereliction of the duties as relevant material has been overlooked. The subjective satisfaction is against the parameters laid down by the latest judgment of the Supreme Court in the matter of Nenavath Bujji Etc. (supra). Learned Counsel for the petitioner is justified in relying on the judgment in the matter of Nilesh Sunil Pendulkar (supra). We propose to follow the same view.

10. The last offence was registered on 18.09.2023 and the impugned order was passed on 26.01.2024, after a period of four months. We have considered paragraph no.8 so as to examine the point of delay. It reveals that in-camera statements were recorded on 20.11.2023 and 28.11.2023. Those were verified on 11.12.2023. The proposal was routed through authorities and reached detaining authority on 29.12.2023. We fail to understand as to why time of two months was consumed for recording statements of witnesses. There is no explanation for recording verification after considerable period. We, further notice that time consumed from receiving proposal on 29.12.2023 and passing of order on 26.01.2024 also has not been explained. Resultantly, there is unexplained delay of more than four months, which vitiates the impugned order. A useful reference can be made to the law laid down in the matters of Pradeep Nilkanth Paturkar Vs. S. Ramamurthi 1992 CJ(SC) 513; Austin William Luis Pinto Vs. Commissioner of Police, Greater Mumbai and Ors. 2005 ALL MR (Cri.) 28 and Pranali Yogesh Kharkhandis (supra).

11. Impugned order was passed on 26.01.2024. It is stated in paragraph no.9 of the reply that the proposal was forwarded to Additional Chief Secretary on 27.01.2024. The State Government

granted approval under Section 3(3) of the Act on 06.02.2024, after ten days. Though the outer limit is of twelve days from passing of the order of detention, we find no explanation for the period consumed after the proposal reached Additional Chief Secretary, Home Department, Mantralaya, Mumbai. This unexplained delay also vitiates impugned order. It would indicate that while dealing with the personal liberty of the petitioner, the respondents were casual.

12. Both the anonymous witnesses do not cite any particular instance or confrontation with the petitioner. The statements were recorded on 20.11.2023 and 28.11.2023, when the petitioner was already released on bail on 17.10.2023. In the matter of Pranali Yogesh Karkhandis (supra) cited by Mr. Gangakhedkar in paragraph nos.17 and 18, some instances were cited by the witnesses in their in-camera statements but the witnesses had not come forward for recording of statements while the detainee was in the custody. However, in the present case no particular incident was cited by the witnesses. Therefore, ratio cannot be made applicable to the present case.

13. In-camera statements are also criticized for having not been verified by the detaining authority. We find that due verification has been recorded in paragraph no.12 of the grounds of detention. Therefore, we are not impressed by the submission of learned Counsel for petitioner in this regard.

14. Learned APP vehemently argued that last offence bearing C.R. No.316/2023 was committed after the preventive action under Section 110(E)(G) of the Cr.P.C. was initiated by order dated 15.09.2023. According to him, this would amount to aggravated form

of misconduct. For that purpose reliance is placed in the matter of Sachin @ Bedkya Shyam Kale (supra). In the cited matter, the detenue had indulged in the criminal activity violating order of externment and therefore it was held to be aggravated misconduct. Such is not the scenario in the case in hand. We cannot approve the submissions of learned APP in this regard.

15. A sequitur to the above analysis, the impugned orders are unsustainable in law. We, therefore, pass following order :

ORDER

- (a) The Criminal Writ Petition is allowed.
- (b) The impugned order dated 26.01.2024 passed by the respondent no.2/District Magistrate, Nanded and confirmation order dated 06.02.2024 passed by the respondent No.1 are quashed and set aside.
- (c) The petitioner shall be set at liberty forthwith if not required to be detained in any other matter.
- (d) Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE