



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

**CRIMINAL WRIT PETITION NO. 578 OF 2024**

Ishwarsingh Jaswantsingh Girniwale,  
Age : 28 years, Occu. : Labour,  
R/o Gurudwara Gate No. 2,  
Chikhalwadi, Nanded.

.. Petitioner

**Versus**

1. The District Magistrate,  
Nanded.

2. Superintendent of Police,  
Nanded.

3. The State of Maharashtra,  
(Through the Secretary,  
Home Department (Spl.)  
Mantralaya, Aurangabad.

4. The Superintendent Aurangabad  
Central Prison, Aurangabad.

.. Respondents

Shri Abhaysinh K. Bhosle, Advocate for the Petitioner.  
Shri S. P. Joshi, A.P.P. for the Respondent Nos. 1 to 4.

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

**DATE : 08 MAY 2024.**

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

. Rule. Rule is made returnable forthwith. We have heard both the sides finally at the admission stage.

2. Petitioner takes exception to order of detention dated 21.12.2023 passed by the respondent No. 1/Detaining Authority U/Sec. 3(1) of 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 (for the sake of convenience and brevity hereinafter referred as to the “M.P.D.A. Act”). The petitioner is branded as dangerous person on the basis of two offences and two in camera statements.

3. Learned counsel for the petitioner Mr. Abhaysinh K. Bhosle submits that subjective satisfaction is vulnerable as reasons for enlarging petitioner on bail have not been considered by the detaining authority. He would submit that there is delay of about four months in passing impugned order from the registration of the last offence which remains unexplained and vitiates the proceedings. It is further submitted that the representation made by the petitioner was not considered and result thereof was not communicated to him. He would submit that the subjective satisfaction is arbitrary because both the in camera statements are unreliable and the drastic action of detention is unwarranted.

4. Learned counsel for the petitioner seeks reliance on the following judgments of Supreme Court and this Court :

- I. Banka Sneha Sheela Vs. State of Telangana and others reported in (2021) 3 SCC (Cri) 446.
- II. Judgment dated 03.10.2023 in the matter of Mrs. Sarla Makhan Gupta Vs. District Magistrate, Chandrapur and others in Criminal Writ Petition No. 430 of 2023.
- III. Judgment dated 06.11.2023 in the matter of Jaggu Sardar

@ Jagdish Tiratsingh Labana and others Vs. Commissioner of Police Thane and others in Criminal Writ Petition (St.) No. 15876 of 2023.

- IV. Judgment 01.08.2023 in the matter of Pranali Yogesh Karkhanis Vs. State of Maharashtra and others in Criminal Writ Petition St. No. 6657 of 2023.
- V. Judgment dated 23.04.2024 in the matter of Mirza Shabbar Baig Mirza Gafar Vs. State of Maharashtra and others in Criminal Writ Petition No. 373 of 2024.

5. Learned Assistant Public Prosecutor Mr. S. P. Joshi would repel the submissions of the petitioner by relying on reply. He would submit that the petitioner has serious criminal antecedents and he is habitual offender. He has created terror in the vicinity and he is undeterred by ordinary penal laws. Due procedure of law has been followed in passing the impugned order. Necessary statutory compliances have been made. There is no delay in taking the action. The subjective satisfaction is plausible and intelligible one.

5. We have considered rival submissions of the parties and also have gone through the relevant papers. Impugned order is founded on CR No. 282/2023 punishable U/Sec. 4/25 of the Arms Act registered with Vazirabad Police Station and CR No. 282/2023 punishable U/Sec. 395, 384, 385, 147, 148, 149, 232 of the I. P. Code r/w Sec. 4/25 of the Arms Act of Ardhapur Police Station. In the first offence petitioner was found to be possessing dagger and in another offence he was found to have stolen goods

worth Rs. 80,330/- by forming a gang and using weapon. Investigation of both offences is pending. He was released on bail in both the offences. The grounds of detention do not reflect that orders and reasons therein enlarging petitioner on bail have been considered. This was a relevant material over-looked by the detaining authority. It amounts to non application of mind. Learned counsel for the petitioner is right in contending that subjective satisfaction is defective on this count. A useful reference can be made to the law laid down by the Supreme Court in the matter of Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others reported in (2012) 1 SCC (Cri) 693.

6. Record reveals that CR No. 282/2023 registered with Ardhapur Police Station is the last offence registered on 08.08.2023. Affidavit in reply of the respondent No. 1 discloses in paragraph No. 8 that in camera statements of both the witnesses were recorded on 20.11.2023. Sub Divisional Police Officer verified those statements on 04.12.2023. The proposal was processed through the authorities and reached the detaining authority on 07.12.2023. Impugned order was passed on 21.12.2023. There is delay of more than four months in passing the impugned order, from registration of last offence. We do not find any satisfactory explanation in the affidavit in reply though paragraph No. 8 of the reply in that regard is pressed into service. We find that in camera statements were recorded belatedly. Thereafter there is delay in verifying those statements. There is further delay committed by the detaining authority from 07.12.2023 to 21.12.2023 in passing the order.

This delay remained unexplained.

7. Learned counsel for the petitioner submits that unexplained delay vitiates impugned order. For that purpose he seeks to rely upon the judgment rendered by this Court in the matter of **Jaggu Sardar @ Jagdish Tiratsingh Labana and others Vs. Commissioner of Police Thane and others** (supra). We have considered paragraph No. 15, 16 and 17 of the judgment which refer to earlier decision on the same points in the matters of Pradeep Nilkanth Paturkar Vs. S. Ramamurthi, 1993 Supp. (2) SCC 61, Pranali Yogesh Karkhanis Vs. The State of Maharashtra, Criminal Writ Petition No. 6657 of 2023, Niyazuddin @ Sonu Sirajuddin Ansari Vs. State of Maharashtra, 2013 All MR (Cri) 3870 and Sanjeev @ Sanjay @ Tatyasaheb Nagnath Upade Vs. The commissioner of Police, Solapur, Criminal Writ Petition No. 3035 of 2021. We propose to follow the ratio and have no hesitation to uphold the submission of the petitioner.

8. After receiving grounds of detention, petitioner made representation on 26.12.2023. We have considered affidavit in reply and more specifically paragraph No. 14 because it deals with the ground raised in the petition. We find absolutely no reply to the submission. No document is placed on record by the respondents to indicate that representation was ever considered, decided and communicated to the petitioner. We have no alternative than to uphold the submission of the petitioner that the representation has not been considered. Resultantly, this

affects the safeguard provided to the detainee under Article 22(5) of the Constitution of India, which in our view is fundamental flaw in the impugned order.

9. Learned counsel for the petitioner has invited our attention to two in camera statements. Those are criticized on the ground that witnesses did not quote any particular instance in which there was a confrontation with the petitioner. We find that these types of statements are unrealistic and would not enure to the benefit of the sponsoring and the detaining authority.

10. It reveals from record that externment proceeding was initiated on or about 19.01.2023 and it was dropped after ten months without disclosing any reason. It is incomprehensible as to why it was not taken to its logical end. In the backdrop of these facts, the findings that action taken against the petitioner under ordinary penal law were insufficient or ineffective to deter him, is perverse. Thus we are of the considered view that the subjective satisfaction is perverse and arbitrary.

11. Learned counsel for the petitioner seeks reliance on the judgment of the Supreme Court in the matter of **Banka Sneha Sheela Vs. State of Telangana and others** (supra). Our attention is invited to paragraph No. 24 of the judgment. The facts are differentiable and the ratio cannot be made applicable to the case in hand.

12. Next judgment cited by the petitioner is of **Mrs. Sarla Makhan Gupta Vs. District Magistrate, Chandrapur and others**

(supra). We have considered paragraph No. 11 of the judgment. Similar vagueness of in camera statements is also present in the case in hand. We are inclined to follow the ratio. Similarly, the learned counsel for the petitioner has rightly pointed out judgment in the matter of Pranali Yogesh Karkhanis Vs. The State of Maharashtra (supra) on the point of delay and in camera statements. We have also considered judgment in the matter of Mirza Shabbar Baig Mirza Gafar Vs. State of Maharashtra and others (supra) and we are inclined to adopt the same view as has been done by us in view of its para No. 14 and 15.

13. In the wake of above analysis, impugned order is difficult to be sustained. Hence we pass following order :

### **O R D E R**

- i) The criminal writ petition is allowed.
- ii) The impugned order dated 21.12.2023 passed by the respondent No. 1/District Magistrate, Nanded is quashed and set aside.
- iii) The petitioner shall be set at liberty forthwith if not required to be detained in any other matter.
- iv) Rule is made absolute in above terms.

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