



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.831 OF 2024

Lalit Umakant Dixit

Age: 24 years, Occu.: Labour,
R/o. Plot No.07, Ishwar Colony,
Jalgaon, Tq. & Dist. Jalgaon

.. Petitioner

Versus

1. The District Magistrate Jalgaon,
Jalgaon.
2. The State of Maharashtra
(Through Additional Chief Secretary
to the Government of Maharashtra,
Mantralaya)
Home Department,
Mantralaya, Mumbai-32.
3. The Superintendent of Central Prison,
Nagpur, District Nagpur

.. Respondents

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Mr. A. M. Reddy, Advocate h/f Mr. B. S. Deshmukh, Advocate for Petitioner.

Mr. N. R. Dayama, APP for the respondents – State.

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**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

DATE : 06 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. A. M. Reddy holding for learned
Advocate Mr. B. S. Deshmukh for the petitioner and learned APP
Mr. N. R. Dayama for the respondents – State.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the parties.

3. The petitioner challenges the detention order bearing No. Dandapra/KAVI/M.P.D.A./87/2023 passed by respondent No.1 on 12.12.2023 as well as the confirmation order dated 30.01.2024 passed by respondent No.2, by invoking the powers of this Court under Article 226 of the Constitution of India.

4. Learned Advocate for the petitioner has taken us through the impugned orders and the material which was supplied to the petitioner by the detaining authority after passing of the order. He submits that though several offences were registered against the petitioner, yet for the purpose of passing the impugned order, four offences were considered i.e. Crime No.255 of 2022 registered with M.I.D.C. Police Station, District Jalgaon for the offences punishable under Sections 323, 504, 506 read with Section 34 of Indian Penal Code, Crime No.319 of 2022 registered with M.I.D.C. Police Station, District Jalgaon for the offences punishable under Sections 143, 147, 148, 149, 307, 326, 427, 506 of Indian Penal Code, under Sections 37(1)(3), 135 of Maharashtra Police Act,

1951 and under Section 7 of the Criminal Law (Amendment) Ordinance, 1944, Crime No.127 of 2023 registered with M.I.D.C. Police Station, District Jalgaon for the offences punishable under Sections 294, 337, 323, 504, 506 of Indian Penal Code and Crime No.551 of 2023 registered with M.I.D.C. Police Station, District Jalgaon for the offence punishable under Sections 324 of Indian Penal Code. Learned Advocate for the petitioner submits that though the petitioner as per the impugned order was involved in eight offences, the detaining authority has considered four offences. If we consider the contents of the FIR, it can be seen that those offences were personal i.e. individualistic and public was not affected by the alleged acts of the petitioner. Another fact to be noted is that in all those matters, other persons were also stated to be involved, but action of detention has not been taken against the co-accused. Even the statements of in-camera witnesses 'A' and 'B' would show that at the most the alleged acts would have caused law and order situation and not the public order. The approval and the confirmation of the order is, therefore, illegal and cannot be allowed to sustain. Learned Advocate for the petitioner submits that there is considerable delay in passing the order, which has not been explained by the

respondents.

5. Per contra, the learned APP strongly supports the action taken against the petitioner. He submits that the petitioner is a dangerous person as defined under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the "MPDA Act"). The detaining authority has relied on the two in-camera statements and the subjective satisfaction has been arrived at. There is no illegality in the procedure adopted while recording the in-camera statements of the witnesses. Due to the terror created by the petitioner, people are not coming forward to lodge report against him and, therefore, it affects the public order. Learned APP relied on the affidavit-in-reply of Mr. Ayush Prasad, the District Magistrate, Jalgaon/detaining authority. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. He further states that his order has been approved by the State Government and also by the Advisory Board. Thereafter, the confirmation has been given. Learned APP submits that there is no delay in the order. The in-camera statements were verified by the detaining authority on

08.12.2023 and the detention order was issued on 12.12.2023. The Advisory Board had heard the petitioner on video conferencing and then had given the opinion whereupon the State Government has confirmed the detention order. The preventive action under Section 110 (e)(g) of the Code of Criminal Procedure has not deterred the petitioner from staying away from committing offences and, therefore, the State Government had no option, but to detain the petitioner under the detention law.

6. Before considering the case, we would like to take note of the legal position as is emerging in the following decisions :-

(i) *Nevanath Bujji etc. Vs. State of Telangana and others*, [2024 SCC OnLine SC 367],

(ii) *Ameena Begum Vs. The State of Tamilnadu and Ors.*, [2023 LiveLaw (SC) 743];

(iii) *Kanu Biswas Vs. State of West Bengal*, [1972 (3) SCC 831] wherein reference was made to the decision in *Dr. Ram Manohar Lohia vs. State of Bihar and Ors.* [1966 (1) SCR 709];

(iv) *Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta*, [1995 (3) SCC 237];

(v) ***Pushkar Mukherjee and Ors. Vs. The State of West Bengal, [AIR 1970 SC 852];***

(vi) ***Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751) and;***

(vii) ***Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, [(1981) 4 SCC 647].***

7. Taking into consideration the legal position as summarized above, it is to be noted herein as to whether the detaining authority while passing the impugned order had arrived at the subjective satisfaction and whether the procedure as contemplated has been complied with or not. In ***Nevanath Bujji etc. (Supra)*** itself it has been reiterated by the Hon'ble Supreme Court that illegal detention orders cannot be sustained and, therefore, strict compliance is required to be made, as it is a question of liberty of a citizen. The first and the foremost fact to be noted is that the statements of confidential witnesses 'A' and 'B' were recorded on 15.08.2023 and 16.08.2023, however, the sponsoring authority had submitted the proposal on 01.12.2023. It was then forwarded by the Superintendent of Police to the detaining authority on 07.12.2023. The statements of the in-

camera witnesses were verified by the Sub Divisional Police Officer on 30.08.2023 and then it was forwarded to the District Magistrate, who has passed the detention order on 12.12.2023. The affidavit-in-reply is totally silent as to where and why the proposal was pending between 30.08.2023 to 01.12.2023. According to the detaining authority, in his affidavit, the Superintendent of Police, Jalgaon has forwarded the said proposal to him on 07.12.2023. No affidavit has been filed on behalf of the police authorities to explain the said delay between 30.08.2023 to 01.12.2023 and 07.12.2023. One more fact which appears from the papers which are with the APP that proposal for externment i.e. proceeding under Section 55 of the Maharashtra Police Act was submitted by Police Inspector, MIDC Police Station, Jalgaon to Superintendent of Police Jalgaon. It was for the police to explain then why the said proposal was not taken to the logical end. Even at that time, it appears that statements of two in-camera statements were recorded. Out of the four offences, which were considered by the detaining authority, it appears that Crime No.255 of 2022 and Crime No.319 of 2022 have been filed by the persons from the same family and it was registered against three and seven accused respectively. The dispute was on account

of why the informant, who was 17 years old boy, had come in the area of the petitioner as stated in Crime No.255 of 2022, however in Crime No.319 of 2022 it is stated that the dispute was as the informant from Crime No.255 of 2022 had danced in the procession. Therefore, it is to be taken that a cause therein was personal. Similarly, the other two offences also are personal and at the most it can be said that those acts of the petitioner had created law and order situation and not the public order. Similar is the situation as regards the statements of in-camera witnesses 'A' and 'B'. The detention order in fact mainly suffers from delay, which is not explained at all and it appears that it has not been considered by the State Government as well as by the Advisory Board.

8. Thus, taking into consideration the above observations and the decisions of the Hon'ble Apex Court, at the most, the statements as well as the offences allegedly committed would reveal that the petitioner had created law and order situation and not disturbance to the public order. Though the Advisory Board had approved the detention of the petitioner, yet we are of the opinion that there was no material before the detaining authority to categorize the petitioner as a dangerous person or bootlegger.

9. For the aforesaid reasons, the petition deserves to be allowed. Hence, following order is passed :-

ORDER

- I)** The Writ Petition is allowed.
- II)** Detention order dated 12.12.2023 passed by respondent No.1 bearing No.Dandapra/KAVI/MPDA/87/2023 and confirmation order dated 30.01.2024 passed by respondent No.2 are hereby quashed and set aside.
- III)** Petitioner – Lalit Umakant Dixit shall be released forthwith, if not required in any other offence.
- IV)** Rule is made absolute in the above terms.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm