



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.872 OF 2024

Pavan Ishwarlal Jaiswal
Age: 26 years,
R/o. Shivajinagar, Garkheda Parisar,
Chhatrapati Sambhajinagar

.. Petitioner

Versus

1. Commissioner of Police,
Chhatrapati Sambhajinagar.
2. The State of Maharashtra
(Through the Secretary Home
Department (Spl.),
Mantralaya, Mumbai.
3. The Superintendent
Chhatrapati Sambhajinagar
Central Prison.

.. Respondents

...
Mr. Rupesh A. Jaiswal, Advocate for the petitioner.
Dr. Kalpalata Patil Bharaswadkar, APP for the respondents – State.
...

**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 08 AUGUST 2024.
PRONOUNCED ON : 20 SEPTEMBER 2024.

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Rupesh A. Jaiswal for the
petitioner and learned APP Dr. Kalpalata Patil Bharaswadkar for

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.2024/CB/MPDA/DET-04/CR-19 passed by respondent No.1 on 20.03.2024 as well as the approval order dated 28.03.2024 and the confirmation order dated 15.05.2024 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, two offences were considered. One registered with Jawaharnagar Police Station vide Crime No.243 of 2023 under Sections 326, 323, 504, 506, 427 of Indian Penal Code and second was registered with Pundliknagar Police Station vide Crime No.31 of 2024 under Sections 354, 354(D), 452, 324, 336, 143, 147, 148,

149, 427, 504, 506 of Indian Penal Code and under Section 135 of Maharashtra Police Act, 1951. Learned Advocate for the petitioner submits that perusal of the facts of the two cases which were considered for passing the impugned order would show that the motive was allegedly personal. It could not have created law and order situation and, therefore, he relies on the decision in ***Nevanath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367]***, wherein the legal position on the preventive detention has been summarized in paragraph No.43. So also in paragraph No.32, the difference between the public order and law and order has been clarified. He further relied on the decision in ***Ameena Begum Vs. The State of Tamilnadu and Ors., [2023 LiveLaw (SC) 743]***, wherein it has been observed that the preventive detention laws are an 'exceptional measure reserved for tackling emergent situations' and must not be used as a tool for enforcing 'law and order'. In this case also, the difference between maintenance of 'public order' and offences that create a 'law and order' situation has been clarified. He also submits that perusal of the in-camera statements of the two witnesses would also clarify that it would have created at the most law and order situation. Further, the

impugned order suffers from subjective satisfaction, when in fact the proposal in respect of preventive action in the form of Section 110(e)(g) of the Code of Criminal Procedure was proposed on 25.01.2024. But then it has been dropped allegedly on the ground that it proved to be futile to prevent the petitioner from indulging in activities. The said action was not taken to its logical end. In the past also, when externment proceedings were taken up, those were also dropped in view of action under M.P.D.A. Further, the representation made by the petitioner was not at all considered and the result/decision on the same was never communicated till the present petition. For that purpose then he relies on the decision in ***Prem Lata Sharma (Smt.) Vs. District Magistrate, Mathura and others, [(1998) 4 SCC 260]***, wherein it has been observed that there cannot be any limitation period for exercise of right to make representation. When it was made to the Central Government, detaining authority was bound to forward it and it had no power to decide whether it should be rejected on the ground of rejection of earlier representation by Central Government. Denial of the right to represent under Article 22(5) of the Constitution of India rendered the continuation of the detention illegal.

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. He relies on the affidavit of Mr. Manoj Lohiya, the detaining authority i.e. the Commissioner of Police, Chhatrapati Sambhajnagar, who supports the action and tries to demonstrate as to how he had arrived at the subjective satisfaction. Further, reliance has been placed on the affidavit of Mr. Nagnath Gangadhar Sawant, Superintendent, Chhatrapati Sambhajnagar Central Prison, to demonstrate as to how the copies were served on the petitioner and also on the affidavit of Mr. Pradip Suresh Padole, Section Officer, Government of Maharashtra, Home Department, Mantralaya, Mumbai, to

demonstrate that the representation was considered by the Government and rejected on 28.05.2024, by applying mind and the rejection of representation was communicated by post to the detainee vide letter dated 28.05.2024 through the Registry Section of the Home Department. He has given the dates by which the matter was processed. He also submits that not only the two offences, which were considered for detaining him, but also the in-camera statements of witnesses 'A' and 'B' would show that, all of a sudden, at night time, the petitioner and his men obstructed those witnesses and by showing knife, they have extracted amount, threat to kill was given, but still when they had raised voice, nobody come forward to rescue them, when the incident took place in a public place and people fled away due to the threat given. Therefore, after the subjective satisfaction which is demonstrated by the affidavit of the detaining authority, the action has been taken and there are no errors committed by the detaining authority. Action against petitioner is appearing to be futile and, therefore, the authorities constrained to brand him as dangerous person.

6. Before considering the case, we would like to take note of the legal position as is emerging in ***Nevanath Bujji etc. Vs. State***

of Telangana and others, [2024 SCC OnLine SC 367], Ameena Begum Vs. The State of Tamilnadu and Ors., [2023 LiveLaw (SC) 743], 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]*, *Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, [1995 (3) SCC 237]*, *Pushkar Mukherjee and Ors. Vs. The State of West Bengal, [AIR 1970 SC 852]* and the authorities referred by the petitioner as well as the decisions in *Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751)* and *Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, [(1981) 4 SCC 647]*, which are relied by learned APP.

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 orders 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 two offences which have been considered at the time of passing detention order, as aforesaid, were pending investigation on the date when the order was passed. The first offence bearing Crime No.243 of 2023 was registered with Jawaharnagar Police Station under Sections 326, 323, 504, 506, 427 of Indian Penal Code, in respect of which the bail was granted to the petitioner on 25.01.2024 and the note of the same was taken by the detaining authority. The second offence bearing Crime No.31 of 2024 was registered with Pundliknagar Police Station under Sections 354, 354(D), 452, 324, 326, 143, 147, 148, 149, 427, 504, 506 of Indian Penal Code and under Section 135 of the Maharashtra Police Act, in which bail was given to the petitioner on 08.02.2024 and the note of the same was taken by the detaining authority. Out of these, in the first offence, the story was that the informant lodged the report on 02.10.2023 in respect of the incident which took place on 30.09.2023 stating that when he was proceeding to his house from Zenda Maidan, at that time, petitioner intercepted him and started saying that he is watching him since many days and it is enough now and then threatened to kill him, caused injuries to him with iron rod and damaged his motorcycle. This story has

been considered, but the utterance of words will definitely show that it was the outcome of the previous dispute between the informant and the petitioner. No more explanation appears to have been given and has not been considered by the detaining authority. For such purpose then, only the contents of the FIR may not be sufficient. Which extra material was considered by the detaining authority is not clarified from the impugned order. In the second offence also, it appears that the petitioner had gone to the house of the lady when her mother was present, at that time, petitioner told that the daughter should be called as he want to talk to her. Then the mother replied that whatever he want to say he can say it to her and then petitioner abused her and forcibly entered the house, hugged her, pressed her breasts and molested her by kissing her on cheek and then it is stated that while going, the petitioner threatened that the girl should be sent to him and she should marry him, otherwise she would be killed by knife. When the alleged offence is committed by entering inside the house, it looses its character to affect the public order. It is also tried to be said in the FIR, as it appears, that threat to kill people around by showing knives was given by the petitioner and his associates, but then it is not clear from the impugned

order that the statement of any of the witnesses, who was present at that time, apart from the two ladies, was considered by the detaining authority to come to the conclusion that said behaviour of the petitioner and his associates had created terror in the mind of people at large. Same is the case as regards the in-camera witnesses 'A' and 'B'. They show at the most law and order situation would have been created. Therefore, taking into consideration the decisions above-said in respect of the difference in public order and law and order, we are of the opinion that no public order situation was created in the present matter.

8. Taking into consideration the dates and events and how the progress has been made, we do not find any delay in passing the order. Further, as regards representation is concerned, it is to be noted that it was made by the petitioner on 06.05.2024. It was then forwarded by jail authorities and received by the Government on the same day i.e. 09.05.2024. The remarks from the detaining authority were called. Accordingly, they were submitted and the Additional Chief Secretary, Home Department, rejected the said representation on 28.05.2024. That means, the representation has been decided and it was then communicated on 31.05.2024 to the petitioner. Therefore, we do not find any

substance in the point that has been raised by the petitioner.

9. Thus, taking into consideration the above-said reasons, we hold that the detaining authority committed wrong in considering the two offences and two in-camera statements as an evidence of disturbance of public order by the petitioner branding him as dangerous person as defined under M.P.D.A. There was no subjective satisfaction as to why the preventive action under Section 110 of the Code of Criminal Procedure would not have curtailed the activities of the petitioner and the detaining authority appears to be under wrong impression that only the preventive detention could have tackled the behaviour of the petitioner. In view of ***Ameena Begum (Supra)***, the preventive detention laws cannot be used as a tool for enforcing law and order situation. 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.

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

ORDER

- I)** The Writ Petition is allowed.
- II)** The detention order dated 20.03.2024 bearing No. 2024/CB/MPDA/DET-04/CR-19 passed by respondent No.1 as well as the approval order dated 28.03.2024 and the confirmation order dated 15.05.2024 passed by respondent No.2, are hereby quashed and set aside.
- III)** Petitioner - Pavan Ishwarlal Jaiswal shall be released forthwith, if not required in any other offence.
- IV)** Rule is made absolute in the above terms.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm