



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1007 OF 2024

Rama Mariba Devkar
Age: 25 years, Occu.: Unemployed,
R/o. Kohragade Nagar, Nanded,
Tq. And Dist. Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate
Nanded, Tq. And Dist. Nanded.
3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad.
District Aurangabad.

.. Respondents

...

Mr. Shailesh S. Gangakhedkar, Advocate for the Petitioner.
Mr. G. A. Kulkarni, APP for Respondents/State.

...

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

DATE : 05 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. S. S. Gangakhedkar for the
petitioner and learned APP Mr. G. A. Kulkarni 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 dated 26.02.2024 bearing No. 2024/RB-1/Desk-2/T-4/MPDA/CR-39 passed by respondent No.2 as well as the approval order dated 06.03.2024 and the confirmation order dated 18.04.2024 passed by respondent No.1, 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, only one offence was considered i.e. Crime No.388 of 2023 registered with Shivajinagar Police Station, District Nanded for the offences punishable under Sections 386, 506 read with Section 34 of Indian Penal Code and Section 4 punishable under Section 25 of the Indian Arms Act. Learned Advocate for the petitioner has further submitted that the facts in the FIR vide

Crime No.388 of 2023 would show that it was the personal offence and other accused persons are also involved. However, no such action is taken against the other accused persons. The statements of in-camera witnesses 'A' and 'B' would also show that at the most law and order situation would have been created and not the public order. Further, on the date of the detention order, in fact, the petitioner was acquitted from the offence vide Crime No.240 of 2021 registered with Shivajinagar Police Station, District Nanded i.e. R.C.C. No.10 of 2023 on 16.10.2023. Further, in respect of Crime No.360 of 2021 registered with Vimantal Police Station, District Nanded i.e. R.C.C. No.163 of 2022, the petitioner has been acquitted on 04.05.2024. The bail order in Crime No.388 of 2023 has not been considered. The detaining authority committed wrong in arriving at a conclusion that the petitioner is a dangerous person. Hence, the said order deserves to be set aside.

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 has relied on the affidavit filed by the detaining authority i.e. respondent No.2 Mr. Abhijit Rajendra Raut, the District Magistrate, Nanded filed on 24.07.2024 and his additional affidavit dated 21.08.2024. He submits that after the detention order was passed, it was approved by the State Government and it was referred for the opinion of the Advisory Board. The Advisory Board had heard the detenu through video conferencing. Thereupon the said order has been confirmed by the State Government.

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) Aameena 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. Here, it is to be noted that though there were about twelve offences registered against the petitioner since 2018, only one offence has been considered for passing the detention order i.e. Crime No.388 of 2023 under Section 386, 506 read with Section 34 of Indian Penal Code and under Section 4 punishable under Section 25 of the Indian Arms Act. It is necessary to take into consideration the prosecution story in the said matter. The informant, who is the manager of a petrol pump at Nanded, was sitting in his office in petrol pump around 11.00 p.m. on 06.11.2023. It is then stated that the present petitioner along with three others went there, took out dagger from his waist and then by threatening the informant that if he wants to run the petrol pump, then he will have to give installment of Rs.10,000/- per month and then he demanded on that date amount of Rs.25,000/-. The other two persons had also raised daggers in their hands and threatened to stab the informant. They also threatened that if he informs the police about the incident, then they would kill him and he will not be spared. The informant then states that he then came out of the office and called his employees, however, the accused persons left. Here, it is to be noted that the detention order was passed on 26.02.2024.

The petitioner has produced on record the bail order in the said offence i.e. the application under Section 438 of the Code of Criminal Procedure passed by learned Additional Sessions Judge-2, Nanded on 19.12.2023. In paragraph No.4(c), the concerned Judge has specifically observed that the informant in the said matter i.e. the manager of the petrol pump had appeared before him and had raised the questions about veracity of the FIR. He has categorically stated that the incident recorded in the FIR never took place. Therefore, after raising doubt regarding the facts in the FIR, the anticipatory bail has been granted to the petitioner. The detention order is totally silent on this aspect. That means, sponsoring authority has not even taken care to place the order of grant of anticipatory bail before the detaining authority.

8. It is high time to observe, taking into consideration various matters which are coming up before this Court daily in many cases, that there would be huge gap between the proposal by the sponsoring authority i.e. police station officer to the detaining authority, as the said proposal goes through either the Sub Divisional Police Officer or Superintendent of Police to the detaining authority. There might be then a gap between

forwarding from one authority or two authorities and it takes some time for passing the detention order. If this gap is more, then definitely it suffers or hit by delay, but then such delay can be explained by the concerned authorities. But still before the detention order is passed, it is incumbent upon the detaining authority to consider as to whether in between the date of the proposal till he passes the detention order, whether any bail order is passed in respect of any of the offences which the detaining authority is intending to consider for passing detention order. That precaution will have to be taken by the detaining authority before passing the detention order. Here, in the present case, the proposal was submitted by Local Crime Branch, Nanded on 17.11.2023. Sub Divisional Police Officer had forwarded the same to the Superintendent of Police, Nanded on 18.11.2023. The statements of confidential witnesses 'A' and 'B' were recorded on 17.11.2023, but it appears that they have been verified on 13.12.2023 and 30.11.2023 respectively. Thereafter, the Superintendent of Police, Nanded had forwarded the proposal to District Magistrate on 26.12.2023 and as aforesaid, the detention order came to be passed on 26.02.2024. That means before the Superintendent of Police had forwarded the said proposal on

26.12.2023, the order granting anticipatory bail in Crime No.388 of 2023 was passed by the concerned Court on 19.12.2023, wherein the informant himself had stated before the concerned Court that the incident had not taken place, the way it has been stated in the FIR. We do not want to go much into the details of the facts as to whether by that time the accused persons had prevailed upon the informant to give such kind of statement or there was any other reason for the informant to take that kind of stand, but the fact remains is that the informant had told to the concerned Court that the incident had not taken place, as it was narrated in the FIR. Under such circumstance, the detaining authority ought not to have relied upon the prosecution story, as it is given in the said FIR. Here, there is total lack of subjective satisfaction by the learned District Magistrate, Nanded while passing the impugned order.

9. As we have taken the note of the dates and events in the earlier paragraph, it can be certainly said that there is considerable delay in passing the detention order. If we count from the date the proposal was made i.e. 17.11.2023 and the detention order is passed on 26.02.2024, the delay is of 101 days. The affidavit of the detaining authority does not explain this

delay. Merely it is stated that he verified the statements of the in-camera witnesses, but the date of such verification is not reflected in the grounds of detention. When there is absolutely no explanation for the delay, then it will have to be held that there was absolutely no subjective satisfaction arrived at by the detaining authority. The in-camera statements of witnesses 'A' and 'B' interestingly does not say that any incident had taken place against them. Even in the order of detention, those details as to when the incident had taken place has not been stated. Those statements are general in nature without involving themselves as a victim. The statements of those witnesses cannot be taken as certificate or it cannot be taken in a representative capacity to consider the petitioner as dangerous person.

10. 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 offence 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.

11. 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 26.02.2024 bearing No. 2024/RB-1/Desk-2/T-4/MPDA/CR-39 passed by respondent No.2 and the approval order dated 06.03.2024 and the confirmation order dated 18.04.2024 passed by respondent No.1, are hereby quashed and set aside.
- III)** Petitioner - Rama Mariba Devkar 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