



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1021 OF 2024

Ashpak Yunus Shaikh
Age: 24 years, Occu.: Labour,
R/o. Papanagar, Bhoiwada, Paithan,
Tq. Paithan, Dist. Aurangabad

.. Petitioner

Versus

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

.. Respondents

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Mr. S. S. Gangakhedkar, Advocate h/f Mr. D. S. Patil, Advocate for petitioner.
Mr. V. K. Kotecha, Advocate for the respondents – State.

...

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

DATE : 09 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. S. S. Gangakhedkar holding for
learned Advocate Mr. D. S. Patil for the petitioner and learned
APP Mr. V. K. Kotecha 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 26.04.2024 bearing No. D.O.2024/MPDA/DET-04/DC-157 passed by respondent No.2 as well as the approval order dated 06.05.2024 and the confirmation order dated 24.06.2024 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.07 of 2024 registered with Police Station Paithan, District Chhatrapati Sambhajanagar for the offences punishable under Sections 307, 384, 323, 504, 506 of Indian Penal Code. The detaining authority failed to consider that the prosecution had not taken up any proceedings for cancelling the bail of the petitioner in the earlier

matters contending that his criminal activities have not been stopped. It ought to have been seen by the detaining authority that whether the ordinary criminal procedure was sufficient to curtail the activities of the petitioner. Further, the earlier action taken under Section 110(e)(g) of the Code of Criminal Procedure was dropped and the reason was given that since the action under M.P.D.A. Act has been proposed, the procedure under Code of Criminal Procedure has been dropped. That means it was not tested by the detaining authority that any other mode was available to the police authorities to curb the activities of the petitioner. In other words, these facts would demonstrate that the sponsoring authority were depend upon the action under M.P.D.A. only. The facts in Crime No.07 of 2024 as well as the statements of the in-camera witnesses 'A' and 'B' would at the most raise law and order situation, but not the public order. It is further vehemently submitted by taking specific plea by way of amendment that the Advisory Board had not considered the representation filed by the petitioner. The representation was filed by the petitioner on 08.05.2024. The matter was placed before the Advisory Board on 09.05.2024. The detenu was heard by the Advisory Board on 10.06.2024, but there is no reflection

in the affidavits-in-reply that the Advisory Board had considered the representation of the petitioner. When substantial representation has been made in writing, then the petitioner might not have orally submitted all those points which he had taken in the representation. The said representation by the petitioner is not at all decided, which amounts to violation of the fundamental rights of the petitioner and, therefore, the impugned order deserves to be set aside.

5. Learned Advocate for the petitioner, in support of his submissions, relies on the following decisions :-

- I) Balu Waman Patole Vs. Commissioner of Police, Aurangabad, [AIROnline 2019 Bom 1037],**
- II) Pranali Yogesh Karkhandis Vs. State of Maharashtra and Ors. [AIROnline 2023 Bom 1699],**
- III) Ashokrao Uttamrao Pawar Vs. State of Maharashtra and Ors. [AIROnline 2023 Bom 173],**
- IV) Dhanubai Vs. State of Maharashtra and others, [2024 SCC OnLine Bom 484],**
- V) Nilesh Sunil Pendulkar Vs. District Magistrate, Ahmednagar and others, [2024 SCC OnLine Bom 694].**

6. 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-in-reply by Mr. Deelip Veerpakshappa Swami, the District Magistrate, Chhatrapati Sambhajanagar, who has reiterated the same facts and tries to demonstrate that he had applied his mind before arriving at the subjective satisfaction. The additional affidavit-in-reply of Mr. Deepak Vasant Sawant, Secretary to Advisory Board, (MPDA), Mumbai, has also been produced to show that how the matter was put up before the Advisory Board. There is specific observation by the detaining authority that the normal laws were not sufficient to curb the criminal activities of the petitioner and

the witnesses were unwilling to come forward and depose against him. All the explanations which would have been necessary have been placed in the affidavits-in-reply and, therefore, there is no procedural illegality in the impugned order.

7. 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].

8. 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 that is required to be considered is the chronology of events. The statements of confidential witnesses 'A' and 'B' were recorded on 02.03.2024 and thereafter it appears that the sponsoring authority submitted the proposal on 04.03.2024 to Sub Divisional Police Officer. Then Sub Divisional Police Officer had forwarded to Superintendent of Police the said proposal on 09.03.2024. In the meantime, Sub Divisional Police Officer had verified the confidential statements on 07.03.2024 and 06.03.2024 respectively. Then Superintendent of Police had forwarded the proposal to District Magistrate on 16.03.2024. Thereafter the detention order under Section 3(1) of the MPDA Act has been issued on 26.04.2024 and that order was served on

27.04.2024 along with the grounds of detention. However, it is to be noted that Superintendent of Police had issued reminder to the District Magistrate on 08.04.2024. Certainly, there is delay of more than one month taking into consideration the date of forward by Superintendent of Police to District Magistrate. That delay has not been explained. Why reminder was required to be issued is a question, if the authorities were considering the petitioner as a dangerous person who is doing the activities detrimental to the public at large. If we consider the facts in Crime No.07 of 2024, it was the only offence which was considered by the detaining authority that the informant in that case was on his way to house from his work place, who was stopped by the petitioner. The petitioner then demanded amount of Rs.200/- for drinking liquor to the informant. Informant told that he is having only Rs.50/- thereupon, the petitioner started abusing him and assaulted him. A passerby tried to intervene, at that time, the petitioner threatened the informant that since he is not giving money to him for drinking liquor, he would kill him. It is then stated that the petitioner had taken knife and assaulted the informant on his chest causing injury. These facts would reveal that the offence is individualistic. Now the in-camera

witnesses 'A' and 'B' have also stated on the same line and then it is stated that the petitioner had extracted amount of Rs.2500/- and Rs.1300/- respectively from them. One incident is stated to be taken place in the last week of December 2023 and another is in the first week of January 2024, however, their statements have been recorded on 02.03.2024. There is no such document on record which will show as to how police got the information regarding witnesses 'A' and 'B', since they have stated that due to the fear of the petitioner, they had not approached police station. Now, after their statements have been recorded disclosing *prima facie* the cognizable offence, yet the police have not lodged any report. The statements of the confidential witnesses do not state that even after they were contacted by police, yet they want to lodge any report against the petitioner. We are of the opinion that the police have failed in giving a confidence to the citizens and an assurance regarding their security. In order to cover up their failure, it appears that the action under MPDA was then proposed.

9. The other main point is in respect of consideration of representation. There is no dispute that the petitioner had submitted representation on 08.05.2024. From the affidavit of

Mr. Deepak Vasant Sawant, Secretary to the Advisory Board, it can be gathered that the representation of the petitioner dated 08.05.2024 was sent through Aurangabad Prison. Copy of the same was given by E-mail to the Home Department of State Government, then it was forwarded to Advisory Board's office on 09.05.2024. He says that the hard copy of the representation was received from the office of the State Government on 27.06.2024 i.e. after the date of hearing. The date of hearing of the detenu before the Advisory Board was 10.06.2024. In clear words, he is saying that as the hard copy was received after the date of hearing, it was not placed before Advisory Board. We failed to understand that when the said representation was sent through E-mail to the office of the Advisory Board, then why the Advisory Board could not have downloaded the soft copy. Advisory Board cannot insist in such modern era that the representation to it should be by way of hard copy. Secretary to Advisory Board Mr. Deepak Sawant has not explained as to why he had not sought directions from Advisory Board as to in what form the said copy of the representation should be placed before the Chairperson and members of the Advisory Board. Under such circumstance, failure to place the representation made by the

petitioner which had reached the Government as well as the Advisory Board for consideration amounts to violation of rights in favour of the petitioner. The confirmation of such order therefore is illegal.

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 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.

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 26.04.2024 bearing No. D.O.2024/MPDA/DET-04/DC-157 passed by respondent No.2 as well as the approval order dated 06.05.2024 and the confirmation order dated 24.06.2024 passed by respondent

No.1, are hereby quashed and set aside.

III) Petitioner – Ashpak Yunus Shaikh 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