



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1032 OF 2024

Omprasad @ Ravi Bhujang Kasabe
Aged : 19 years, Occu.: Nil,
R/o. Lakshmi Colony, Old
Ausa Road, Latur,
Tq. And District Latur.

.. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Home Department, Mantralaya,
Fort, Mumbai.
2. The District Magistrate, Latur.
3. The Superintendent of Police, Latur.
4. The Superintendent of District Central
Jail, Latur.
5. The Police Inspector,
Police Station,
Shivaji Nagar, Latur.

.. Respondents

...

Mr. N. J. Patil, Advocate for the petitioner.

Mr. G. A. Kulkarni, APP for the respondents-State.

...

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

DATE : 22 OCTOBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. N. J. Patil 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 12.04.2024 bearing No. 2024/MAG/MPDA/Desk-2/Kavi-87 passed by respondent No.2 as well as the approval order dated 22.04.2024 and the confirmation order dated 07.06.2024 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, three offences were considered i.e. Crime No.513 of 2023 registered with Shivaji Nagar Police Station, District Latur for the offence punishable under Section 4 punishable under Section 25 of the Indian Arms Act, Crime No.566 of 2023 registered with Shivaji Nagar Police Station, District Latur for the offences punishable under Section 380 read with Section 34 of Indian Penal Code and Crime No.815 of 2023 registered with M.I.D.C.

Police Station, District Latur for the offence punishable under Sections 392 read with Section 34 of Indian Penal Code. Learned Advocate for the petitioner submits that the above-said three offences were considered along with two in-camera statements by the detaining authority for passing the detention order. As regards the first offence i.e. Crime No.513 of 2023 is concerned, the notification under Section 4 of the Arms Act by the Central Government was not placed before the detaining authority. The other two offences i.e. Crime No.566 of 2023 and Crime No.815 of 2023 were against the unknown person. In all the cases public was not involved. Even in respect of in-camera statements, public was not involved. In fact, the mother of the petitioner had moved the representation for supply of copies of the proceedings on 01.05.2024, but except the detention and committal order, no other document has been supplied to her. There was no material before the detaining authority to take up action of detention and, therefore, the order is 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. Learned APP relies on the affidavit-in-reply of Ms. Varsha Thakur-Ghugre, the District Magistrate, Latur giving details as to how she had arrived at the decision that the petitioner is required to be detained. Additional affidavit is again filed when amendment was carried out to the extent of confirmation of the order by the same authority.

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

(i) *Nenavath 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 ***Nenavath*** (*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 by the detaining authority was that the petitioner is only 19 years old boy. Though he might be involved

in offence, it should be considered by the authority like District Magistrate as to whether the detention of such a young boy is necessary and whether the ordinary law would not have curtailed his activities. It appears that even as a juvenile in conflict with law, the applicant has committed offences, but those offences cannot be considered for passing a detention order. As regards two of the offences which were considered by the detaining authority here i.e. Crime No.566 of 2023 and 815 of 2023, the FIR itself discloses that it was against unknown person. It ought to have been considered by respondent No.2 as to whether there is proper identification parade. It appears that the involvement of the petitioner in those offences is on the basis of some statement under Section 27 of the Indian Evidence Act leading to the discovery of the mobile handsets. The third offence is under the Arms Act and the Notification under Section 4 of the Arms Act issued by the Central Government or by the State Government upon authorization was not before the learned District Magistrate. In all these matters, the petitioner appears to be on bail. Even note of the bail order has not been taken in the impugned order. The statements of in-camera witnesses are literally identical. Only the amount which is stated to have been

stolen is different. Detention orders are not required to be passed in a mechanical way and only to please the sponsoring authority. It is hard to believe that the activities of a 19 year old boy that too in the nature of stealing articles could not have been curtailed by the police authorities by resorting to the ordinary law.

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)** The detention order dated 12.04.2024 bearing No. 2024/MAG/MPDA/Desk-2/Kavi-87 passed by respondent

No.2 as well as the approval order dated 22.04.2024 and the confirmation order dated 07.06.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Omprasad @ Ravi Bhujang Kasabe 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