



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1063 OF 2024

Akshay @ Bhaiya s/o Ramesh Wahul
Age: 22 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 Sambhaji Nagar
Central Prison.

.. Respondents

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Mr. Rupesh A. Jaiswal, Advocate for the petitioner.

Mrs. P. R. Bharaswadkar, APP for the respondents – State.

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

DATE : 20 AUGUST 2024.

JUDGMENT [Per Smt. Vibha Kankanwadi, J.]

. Heard learned Advocate Mr. Rupesh A. Jaiswal for the
petitioner and learned APP Mrs. P. R. Bharaswadkar for the

respondents – State.

2. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of both the sides.

3. The petitioner challenges the detention order passed by respondent No.1 bearing D.O. No.2024/CB/MPDA/DET-05/CR-28 dated 17.04.2024 and the approval order dated 07.06.2024 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 before the detaining authority at the time of impugned 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 Pundlik Nagar Police Station vide Crime No.453 of 2023 under Section 392 read with Section 34 of Indian Penal Code and second was registered with Satara Police Station vide Crime No.407 of 2023 under Section 392 of Indian Penal Code. In fact, the impugned order suffers from application of mind, when the detaining authority had only considered the preventive action in the nature of

detention order passed by respondent No.1 on 08.04.2023. However, the said order came to be quashed and set aside by this Court on 11.08.2023 in Writ Petition No.893 of 2023. The note of quashing of the said order has not been taken. The prosecution story in both the offences, which were considered for the purpose of passing the detention order, would show that at the most there would have been a law and order situation, but not the public order. The statement of in-camera witnesses also depicts that the action was personal. On the basis of the said material, the petitioner could not have been considered as dangerous person within the meaning of Section 2(b)(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the "M.P.D.A. Act"). The confirmation of such order ought not to have been done by the State. Therefore, both the orders are illegal and deserve to be set aside.

5. Per Contra, learned APP supports the action taken against the petitioner. He relies on the affidavit-in-reply of Mr. Manoj Lohiya, the then Commissioner of Police, Chhatrapati Sambhajanagar, who passed the impugned detaining order and also the affidavit of one Mr. Nagnath s/o Gangadhar Sawant, the

Superintendent of Chhatrapati Sambhajanagar Central Prison. The affidavit of Mr. Sawant is mainly on the point that all the formalities after the petitioner came to be detained have been followed. Learned APP submits that the impugned detention order and the affidavit-in-reply of the then Commissioner of Police would show that there was proper application of mind. All the offences against the petitioner were not considered, but only the relevant offences were considered. The offences in both the matters were committed on road and there was forcible extraction of money by the petitioner. That means, the general public was affected due to such extraction of amount. Though the petitioner was released on bail in those matters, yet the detaining authority had every power to detain the petitioner. In spite of taking preventive action, the activities of the petitioner were not curtailed and, therefore, the detaining authority has no option, but to pass the detention order. The situation that has been definitely raised was the public order situation and not the law and order situation only.

6. In the day-to-day matters, which are coming under these provisions, we are taking note of the Three Judge Bench decision of the Hon'ble Supreme Court in the case of **Nevanath**

Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367], wherein the legal position has been summarized in paragraph No.43. Now, we do not want to reproduce those conclusions, but certainly we are considering them here. The subjective satisfaction of the detaining authority is utmost necessary and when it comes to a question of personal liberty of a person, then the detaining authority who is, in fact, the protector of the individual rights of the citizens of this country, those are given under the Constitution of India, should see that there is a strict compliance of all the necessary factors involved. When it comes to the point of subjective satisfaction, respondent No.2 herein was duty bound to take note of the decision of this Court in Criminal Writ Petition No.893 of 2023 decided on 11.08.2023, which was the earlier petition filed by the present petitioner itself, wherein he had challenged his detention order dated 08.04.2023 passed by respondent No.1. This Court had allowed the said petition and set the petitioner at liberty. In the present matter, the proposal for detaining the petitioner was sent by the concerned Police Officer on 03.04.2024, that means it was after the decision dated 11.08.2023 by this Court. Respondent No.2 was, in fact, bound to take note of the order

passed by this Court. On the contrary, he has only considered his own order, which was in fact not in existence on the date of the proposal as well as on the date, he passed the detention order dated 17.04.2024.

7. It appears that the offences which were registered against the petitioner are from 2020 and all are pending for trial. Out of eight offences, only two offences have been considered by respondent No.2 as aforesaid. If we consider the facts and Crime No.453 of 2023 under Section 392 read with Section 34 of Indian Penal Code, it can be seen that the informant disclosed on 02.12.2023 that when she along-with her daughter were proceeding towards their house, at that time, petitioner went from behind the informant and forcibly snatched the Mini Mangalsutra from her neck and fled away. It is to be noted from the documents those are on record and especially, paragraph No.4(i) of the detention order, as to whether the informant was knowing the petitioner since beginning or not. The said case is stated to be still under investigation. The only connecting evidence appears to be the discovery panchanama under Section 27 of the Indian Evidence Act. The petitioner is on bail in that proceedings. As regards another offence i.e. Crime No.407 of 2023 is concerned, it

is again a chain snatching story. It is stated that the stolen property in the said crime as well as in Crime No.453 of 2023 under Section 392 read with Section 34 of Indian Penal Code was already recovered and seized. Thus, when in both the matters, it is a case that the gold chain or Mangalsutra was snatched, then it can be taken as a matter of law and order situation and not the public order. The regular Courts had come to the conclusion that the custody of the applicant is no longer required and, therefore, they had allowed the bail application. Under such circumstance, the detaining authority ought to have clarified as to why there is need for taking action under M.P.D.A. The difference of expression in law and order situation and public order is well explained in paragraph No.32 of the decision in **Nevanath Buji (Supra)**. That distinction has not been considered by respondent No.2.

8. As regards the statements of in-camera witnesses 'A' and 'B' are concerned, those are also on the same line i.e. extraction of money. It would be, therefore, a matter of law and order situation.

9. Mere meticulous compliance of the time schedule in such detention matters will not make the impugned order legal.

If the petitioner is able to demonstrate that there was no subjective satisfaction, then such order is required to be quashed and set aside.

10. Though the Advisory Board has approved the detention order, yet for the reasons stated, we do not find that there was any material before the detaining authority to brand the petitioner as dangerous person and, therefore, the Advisory Board ought not to have given opinion regarding confirmation of the order. We, therefore, proceed to pass the following order :-

ORDER

- I)** The Writ Petition is allowed.
- II)** The detention order dated 17.04.2024 bearing No. D.O. 2024/CB/MPDA/DET-05/CR-28 passed by respondent No.1 and the approval order dated 07.06.2024 passed by respondent No.2, are hereby quashed and set aside.
- III)** Petitioner - Akshay @ Bhaiya s/o Ramesh Wahul 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