



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1078 OF 2024

Sanjay s/o Suresh Tribhuwan
Age: 26 years, Occu.: Labour,
R/o. Wak, Tq. Bhadgaon,
Dist. Jalgaon.

.. Petitioner

Versus

1. The District Magistrate Jalgaon,
Dist. Jalgaon.
2. The State of Maharashtra
Through the Additional Chief
Secretary, Government of Maharashtra,
Home Department, Mantralaya,
Mumbai-32.
3. The Jail Superintendent,
Central Prison, Nagpur,
Dist. Nagpur.
Through its Proprietor.

.. Respondents

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Mr. S. B. Yawalkar, Advocate h/f Mr. H. F. Pawar, Advocate for the petitioner.
Mr. G. A. Kulkarni, APP for the respondents – State.

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

RESERVED ON : 05 SEPTEMBER 2024
PRONOUNCED ON : 03 OCTOBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. S. B. Yawalkar holding for
learned Advocate Mr. H. F. Pawar 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 bearing Outward No. Dandapra/KAVI/MPDA/84/2023 passed by respondent No.1 on 02.12.2023 as well as the confirmation order dated 11.01.2024 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, five offences were considered i.e. Crime No.8 of 2018 registered with Pachora Police Station, District Jalgaon for the offence punishable under Sections 395, 324, 120-B of Indian Penal Code, Crime No.285 of 2020 registered with Bhadgaon Police Station, District Jalgaon for the offence punishable under Section 379 of Indian Penal Code, Crime No.139 of 2021 registered with Bhadgaon Police Station, District Jalgaon for the offences

punishable under Sections 353, 332, 341, 352, 323, 504, 506, 427 of Indian Penal Code, Crime No.296 of 2021 registered with Bhadgaon Police Station, District Jalgaon for the offence punishable under Sections 353, 332, 201, 379, 506, 427 read with Section 34 of Indian Penal Code and under Section 48(8) of the Maharashtra Land Revenue Code, 1966 and Crime No.160 of 2023 registered with Bhadgaon Police Station, District Jalgaon for the offence punishable under Sections 353, 323, 504, 506, 201 of Indian Penal Code and under Section 142 of the Maharashtra Police Act, 1951. Learned Advocate for the petitioner submits that the detaining authority has not considered that there was no live link. Even the staircases since 2018 were considered for passing the detention order in December 2023, which is against the principles laid down by the Hon'ble Supreme Court. Another fact to be noted is that in respect of in-camera statements, they were in verbatim, same and equally vague and omnibus. The detention order has not expressly demonstrated that the detaining authority has objectively verified the fact and reached to any conclusion as to how these witnesses were genuine and indeed were reluctant to come forward to record testimony in open because of the terror of the detenu. He relies on the decision of

this Court in ***Vijay Baburao Avhad Vs. State of Maharashtra and Others, [AIROnline 2023 BOM 417]***, wherein it has been held that in such circumstances, when there is no objective verification and subjective satisfaction, the detention order is not sustainable. Another fact to be noted is that in respect of the theft of sand, in the past, the petitioner has deposited the fine amount that was imposed, but that was in 2020 and 2021. The detention order when takes note of staircases also then it shall not be allowed to be implemented further. The State Government has illegally approved and then confirmed the order of detention.

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 Mr. Ayush Prasad, the District Magistrate, Jalgaon/detaining authority. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. He further states that his order has been approved by the State Government and also by the Advisory Board. Thereafter, the confirmation has been given. Learned APP submits that since 2018, the petitioner was consistent in involving himself in theft of sand and it is dangerous to the environment. The detaining authority has satisfied itself taking into consideration the facts in the offences in which the petitioner is involved and the in-camera statements. In respect of in-camera statements, the authority has put the endorsement about the truthfulness of the in-camera statements and that is sufficient under the circumstance. The informant clearly states that they were produced before the District Magistrate i.e. the detaining authority and then the endorsement has been made about the truthfulness. The petitioner appears to be a sand mafia. He had also paid the penalty/fine in the past, still he has not stopped his activities of illegal excavation of sand. The intention behind illegal excavation, transportation of sand from river bed and river is only

with an intention to make a business i.e. earn out of selling the sand. It is now becoming dangerous to the environment, if we allow the illegal excavation and, therefore, such persons are definitely required to be detained. Learned APP relies on the decision in ***Harish Patil Vs. State of Maharashtra and Others, [2016 (6) Mh.L.J. (Cri.) 226]***, wherein in respect of similar person i.e. person who was illegally excavating sand, note was taken that on account of smuggling of the sand, water available had reduced and it has caused disturbance to the ecological balance. Even the farmers were not attending their fields due to the fear and threats given by the detenu and, therefore, the detention order was upheld.

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) ***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 ***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 to be noted is that the detaining authority has considered all the five offences registered against the petitioner. The respondents

have failed to show the live link. It appears that one more offence i.e. the sixth offence was also registered against the petitioner on 04.06.2023 i.e. Crime No.160 of 2023 with Bhadgaon Police Station for the offence punishable under Sections 353, 323, 504, 506, 205 of Indian Penal Code and Section 142 of Maharashtra Police Act. It appears that on 19.05.2023 vide Crime No.139 of 2023 another offence was registered with Bhadgaon Police Station for the offence punishable under Section 142 of Maharashtra Police Act, but it is then stated that the petitioner has not been arrested in that offence. If he could be arrested on 13.07.2023 in Crime No.160 of 2023 and it appears that he came to be released on bail, why he has not been arrested in Crime No.139 of 2023, is a question. Facts of that offence appears to have not been considered by the detaining authority. All the matters are stated to be pending before the Courts, then there is no explanation by the State as to why in none of the matters the prosecution had taken steps for cancellation of bail. It will have to be demonstrated by the State that the ordinary Criminal law and procedure are not sufficient to curb the activities of the petitioner and therefore, it was left with no option but to take action under the detention law, which is said to be draconian in **Nevanath**

Buji (Supra).

8. In-camera statements of witnesses 'A' and 'B' would show that those witnesses are serving in the Revenue Department. Witness 'A' says that he was in the squad for patrolling duty and when they found that the petitioner and his companion were chasing the vehicle of the patrolling unit, the patrolling unit stopped the vehicle and asked petitioner as to why he is chasing them. Then the petitioner gave them threat by saying that they should do their work and he is doing his work. They should not seize the petitioner's sand vehicles and if they seize those vehicles, then he will not allow the persons from the patrolling party to serve. Thereafter, the petitioner left and then the patrolling party went for the patrolling. Witness 'B' says that they had received the confidential information that there is heap of sand near the Girna River Bank and, therefore, witness 'B' alone went to the spot for inspection. At that time, the petitioner came and asked him as to why he has come. Witness 'B' tells him that he has come to execute panchanama. There was altercation between him and the petitioner. Petitioner was asking him as to why he is involved in false offences. Then the petitioner gave threat to remove said witness from his job and left. Thereafter,

the said witness called two panchas, executed the panchanama and did the further act that was required. From these two statements it can be considered basically that when both of them were government servants and doing government job, it is unbelievable that they will not come forward to lodge report against the petitioner due to fear. In fact, this can be taken as total failure of the Government machinery to give protection to their own staff or employee. There was absolutely no subjective satisfaction that can be arrived at from these two statements to arrive at a conclusion that the petitioner's behaviour or acts were creating public order situation. Therefore, the observations in ***Vijay Avhad (Supra)*** would be applicable here. In our considered opinion, the decision in ***Harish Patil (Supra)*** cannot be applied to the facts of this case taking into consideration the decision by the Hon'ble Apex Court in ***Ameena Begum (Supra)*** and ***Nevanath Bujji (Supra)*** and the facts.

9. 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.

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 bearing outward No. Dandapra/KAVI/MPDA/84/2023 passed by respondent No.1 on 02.12.2023 as well as the confirmation order dated 11.01.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner - Sanjay s/o Suresh Tribhuwan 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