



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.1098 OF 2024**

Rahul Ganesh Shinde  
Age: 23 years, Occu.: Nil,  
R/o. Wadarwada, Vaijapur,  
Tq. Vaijapur, Dist. Aurangabad.

**.. Petitioner**

***Versus***

1. District Magistrate,  
Aurangabad.
2. The State of Maharashtra,  
(Through the Secretary Home  
Department (Spl.), Mantralaya,  
Mumbai.
3. The Superintendent  
Aurangabad Central Prison,  
Aurangabad.

**.. Respondents**

...  
*Mr. K. A. Kale, Advocate for the Petitioner,*  
*Mrs. R. P. Gour, APP for the respondents – State.*  
...

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

**DATE : 02 SEPTEMBER 2024.**

**JUDGMENT (Per Smt. Vibha Kankanwadi, J.)**

. Heard learned Advocate Mr. K. A. Kale for the petitioner and  
learned APP Mrs. R. P. Gour 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 No.O.S.S.2024/MPDA/DET-03/DC-156 passed by respondent No.1 on 26.04.2024 and the confirmation order dated 24.06.2024 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 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.111 of 2024 registered with Vaijapur Police Station, District Chhatrapati Sambhajnagar for the offence punishable under Sections 323, 504, 506 of Indian Penal Code and under Section 4 punishable under Section 25 of the Indian Arms Act, Crime No.186 of 2024 registered with Vaijapur Police Station, District Chhatrapati Sambhajnagar for the offences punishable under Sections 354, 324, 323, 504 of Indian Penal Code and Crime No.187 of 2024

registered with Vaijapur Police Station, District Chhatrapati Sambhajanagar for the offences punishable under Sections 326, 324, 323, 504 and 506 of Indian Penal Code and two in-camera statements have also been considered. However, the subjective satisfaction is wrongly based on the proposal and it is without verification. Though on two occasions, the detention orders were passed against the petitioner, in respect of second detention order passed on 01.06.2023, the detaining authority has not considered the order passed by this Court in Criminal Writ Petition No.1549 of 2023 on 22.12.2023 holding that the said order is illegal and deserves to be set aside. Accordingly, it is set aside. The grounds of detention have been passed on 26.04.2024. Therefore, the decision of this Court ought to have been considered. All the three offences, which were considered for passing the detention order, were pending investigation. At the most, those offences as well as in-camera statements would have raised law and order situation and, therefore, the impugned orders deserve 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 “M.P.D.A. 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. It is submitted that the subjective satisfaction has been arrived at by the detaining authority on the basis of the material that was placed. Further the affidavit-in-reply by Shri. Dileep Veerpakshappa Swami, District Magistrate, Chhatrapati Sambhajinagar, would clarify as to how he proceeded in the matter and arrived at the subjective satisfaction. There is absolutely no delay committed by any of the authorities involved in the entire process. The Advisory Board has also given opinion supporting the detention order.

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. In **Nevanath Bujji etc. (Supra)**, after considering various judgments, the legal position has been summarized as follows -

“43. We summarize our conclusions as under :-

- (i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,
- (ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making

function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,

- (iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,
- (iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,
- (v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,
- (vi) The satisfaction cannot be inferred by mere statement in the order that "it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order". Rather the detaining authority will have to justify the detention order from the material that existed before him and the process

of considering the said material should be reflected in the order of detention while expressing its satisfaction,

- (vii) Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,
- (viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and
- (ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention. For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part

of the detaining authority.”

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 orders 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 glaring defect is that the proposal appears to have been forwarded by the sponsoring authority on 26.03.2024, wherein there is mention of the preventive detention order dated 01.06.2023 passed against the petitioner and the sponsoring authority had not at all considered the order passed by this Court in Criminal Writ Petition No.1549 of 2023 dated 22.12.2023 thereby setting aside the said preventive detention order dated 01.06.2023. All the authorities i.e. the sponsoring authority, forwarding authority (Superintendent of Police) and the learned District Magistrate have failed to apply their mind that if the detention order was passed on 01.06.2023, then its duration would have been for a

period of one year. That means, it would have come to an end on 31.05.2024. Then without that being set aside by some authority, where was the question of making the proposal by the sponsoring authority for action under the preventive detention laws. How the petitioner came out of the jail/released appears to have not been considered by all these three authorities. There is absolutely lack of application of mind on their part. Once again, we would say that the impugned order does not make a mention of perusal of the order passed by this Court which demonstrates lack of subjective satisfaction, rather demonstrates total non application of mind.

9. If we consider the facts stated in the FIR of the three offences, it is to be noted that those facts were involving offence based on personal vengeance or giving personal action. In the first case i.e. Crime No.111 of 2024, Section 4 punishable under Section 25 of the Arms Act has been invoked and only because of that it appears that cognizable offence has been considered, otherwise the Indian Penal Code Sections are Sections 323, 504, and 506. The case is still under investigation, but the impugned detention order does not show that the Central Government Notification was considered by the detaining authority. The said

Notification by Central Government is not made part of the papers, which were given to the petitioner, nor the said Notification has been placed before this Court, which is the prerequisite for Section 4 of the Arms Act.

10. The second question that would arise as to whether the statements of the in-camera witnesses were to such an extent that it would create a problem of public order. To explain this concept, we may take help of the observations in **Nevanath** (*Supra*) made in paragraph No.32 :-

“32. The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression ‘law and order’ is wider in scope inasmuch as contravention of law always affects order, ‘Public order’ has a narrower ambit, and could be affected by only such contravention, which affects that community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of ‘law and order’ and ‘public order’ is one of degree and extent of the reach, of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. In other

words, the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. [See: *Union of India v. Amrit Lal Manchanda*, (2004) 3 SCC 75].”

11. 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.

12. For the aforesaid reasons, the petition deserves to be allowed. Hence, following order is passed :-

**ORDER**

- I)** The Writ Petition is allowed.
- II)** Detention order dated 26.04.2024 passed by respondent No.1 bearing No.O.S.S.2024/MPDA/DET-03/DC-156 and the confirmation order dated 24.06.2024 passed by respondent No.2 are hereby quashed and set aside.
- III)** Petitioner viz. Rahul Ganesh Shinde 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