



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1101 OF 2024

Gautam S/o Valmik Jadhav

Age : 27 years

R/o. Mahalgaon, Vaijapur

Chhatrapati Sambhajnagar.

... Petitioner

Versus

1. District Magistrate,
Chhatrapati Sambhajnagar

2. The State of Maharashtra
Through the Secretary,
Home Department (Spl),
Mantralaya, Mumbai.

3. The Superintendent
Chhatrapati Sambhajnagar
Central Prison

... Respondents

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

Mrs. R. P. Gaur, APP for the Respondents.

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

RESERVED ON : 23 AUGUST 2024

PRONOUNCED ON : 20 SEPTEMBER 2024

JUDGMENT (Per Abhay S. Waghware, J.) :-

1. Heard learned Advocate Mr. Rupesh A. Jaiswal for the
petitioner and learned APP Mrs. R. P. Gaur for respondents-State.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with consent of the parties.

3. In this Writ Petition, there is challenge to the order of detention dated 12.04.2024 passed by respondent no.1 herein under Section 3 of the “Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing of Essential Commodities Act, 1981” (for short, “MPDA Act”), directing detention of present petitioner in Central Prison, Chhatrapati Sambhajnagar.

4. It is pointed out that the impugned order has been mechanically passed in very casual and cavalier manner without subjective satisfaction as required under law. According to learned counsel, there is non application of mind while withdrawing valuable liberty of petitioner. That, there are several lapses on the part of the detaining authority in not reporting its action to the State Government expeditiously and forthwith, as is contemplated under Section 3(3) of the MPAD Act. According to him, there is undue and unexplained delay in forwarding report to the Government. That, further, even Government has delayed in considering and deciding the representation made by the petitioner.

5. Taking this Court through the grounds of detention, it is pointed out that stereotype statements of witnesses are recorded. That, petitioner is shown to be involved in three to four episodes within a short span. Therefore, according to him, it is clear that there is total non-application of mind before slapping the charges. He further pointed out that he has already been granted anticipatory bail by the Sessions Court in one of those cases wherein crime has been recently registered, i.e. C.R. No. 13 of 2024.

6. Learned Advocate for the petitioner further submits that there is consideration of extraneous material while passing the impugned order and therefore, according to him, in view of the settled precedents, the impugned order is not liable to be sustained and is rather required to be quashed and set aside.

7. Per contra, on the strength of affidavit, learned APP pointed out that petitioner is involved in serious crimes. Considering the same, he has been declared as dangerous person. He is repeatedly involved in serious offences. That, previous preventive actions have not deterred him. Therefore, action contemplated under the MPAD act was required to be taken. That, the detaining authority has considered the material in its correct perspective and on due and just satisfaction,

order has been passes and as such, she prays to dismiss the writ petition.

8. Before advertng to the facts of the case, we would like to refer the three Judge Bench decision of the Hon'ble Supreme Court in *Nevanath Bujji etc. v. State of Telangana and others [2024 SCC OnLine SC 367]* , wherein, after considering various judgments, the legal position has been summarized as under:

“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) / ground(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.”

9. As per ratio laid down in ***Nevanath Buji*** (supra), it has to be seen as to whether the detaining authority, while passing the detention order, had arrived at the subjective satisfaction and whether the

procedure as contemplated has been complied with or not. It is also reiterated in **Nevanath Bujji** (supra) 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.

10. In the case in hand, on perusal of the grounds of detention at Exhibit “C”, it seems that by virtue of Section 8 of the MPAD Act, petitioner was served with material regarding his involvement in following offences :

Sr. No.	Police Station	Particulars of crime	Date of Registration	Present status
1.	Vaijapur	17/2020 u/s 12(A) of Maharashtra Prevention of Gambling Act.	14.01.2020	Pending trial
2.	Virgaon	107/2020 u/s 269, 270, 188 IPC, Sec. 4/25 of Arms Act, Sec. 51(B) of The Disaster Management Act, Sec. 2 of The Epidemic Diseases Act, Rule 11 of the Maharashtra Covid-19 Regulations 2020.	23.05.2020	Pending trial
3.	Virgaon	286/2023 u/s 143, 341 of IPC, Sec. 135 of Maharashtra Police Act.	13.12.2023	Pending Investigation
4.	Virgaon	13/2024 u/s 452, 294, 336, 427, 504, 506, 34 of IPC	04.01.2024	Pending Investigation
5.	Virgaon	14/2024 u/s 384, 143, 147, 326, 323, 427, 504, 506 r/w 34 IPC	04.01.2024	Pending Investigation
6.	Virgaon	15/2024 u/s 307, 143, 147, 427, 504, 506 IPC	04.01.2024	Pending Investigation

11. According to the respondent authorities, he has shown propensity to indulge in criminal activities which are prejudicial to the maintenance of public order. Incidences of his involvement and complaints to that extent received by the police authorities are reflected in para 4 (i), (ii), (iii) and (iv). 452, 294, 336, 427, 504, 506, 34

12. As regards crime bearing no. 286 of 2023 is concerned, it is pertaining to commission of offence punishable under Sections 143, 341 of IPC and Section 135 of the Maharashtra Police Act, 1951.

13. Regarding the three incidences which took place on 04.01.2024, three crimes seem to have been registered at Virgaon police Station i.e. crime no. 13 of 2024 for offence under Sections 452, 294, 336, 427, 504, 506, 34 of IPC ; crime no. 14 of 2024 for offence punishable under Sections 384, 143, 147, 326, 323, 427, 504, 506 r/w 34 of IPC ; and crime no. 15 of 2024 for offence punishable under Sections 307, 143, 147, 427, 504, 506 of IPC. It is pertinent to note that at the time of registration of all three crimes, he is shown to be absconding.

14. Crime no. 13 of 2024 seems to have been registered on report by one Smt. Vimal Madhukar Gaikwad, alleging therein that on 04.01.2023 at

about **14.45 hrs.**, while she was present at her house, petitioner and his associates came to her house on motorcycle, threatened to kill her and her sons and also threatened to set the petrol pump on fire. It is further alleged that informant's Innova car was damaged and stones were pelted on the doors of the house of informant.

15. Crime No. 14 of 2024 seems to be at the instance of one Prasad Laxman Jadhav. He has alleged that that on 04.01.2024 at about **12.00 hrs.**, when he was present at his hotel, petitioner and his seven to eight associates came there, consumed liquor and started smashing empty bottles on table. On being questioned, petitioner abused him, demanded *hafta* from him and threatened to kill him if *hafta* is not paid within five days. He further alleged that petitioner then broke chairs and tables in the hotel, inflicted injury to him with a knife and also beat and threatened the people in the hotel and while leaving the hotel, petitioner again issued life threats and to file case of atrocities against him if he reports the incident to police.

16. Regarding the third incident on the same day which is alleged to have occurred at **14.00 hrs.**, Crime No. 15 of 2024 came to be lodged by the informant therein, i.e. Rameshwar Gorakhnath Patole, who reported that when he parked his vehicle in front of Vighnaharta garage, petitioner and his associates came there and gave dash to his vehicle from rear side and damaged his vehicle by pelting stones and hitting with iron rod and sticks.

He further alleged that petitioner and his associates then abused him and hit him with stone and iron rod and he too was threatened with life and case of atrocity.

17. Considering the above three offences, there does not seem to be any proper explanation as to how petitioner was found at three distinct spots on the same day i.e. 04.01.2024. Moreover, he is also shown to be absconding. Learned counsel for the petitioner pointed out that he was already on bail i.e. anticipatory bail. If this is so, and if this has not been refuted, then, while passing impugned order of detention, the said order ought to have reflected to that extent. If, while on bail, he committed further offences, then question arises as to why no efforts were made by police machinery to get his bail cancelled. Therefore, here, above discussion creates doubt whether respondent authority has applied its mind as required under law and whether there is subjective satisfaction on the material necessitating action of detention in prison.

18. Law laid down by the Hon'ble Supreme Court in the case of ***Abdul Sathar Ibrahim Manik Etc v. Union Of India And Ors [1991 AIR SC 2261]*** and reiterated in ***Ratnamala Mukund Balkhande v. State of Maharashtra [2022 ALL M.R. (Cri.) 3106]*** on the aspect of the detenu to be on bail, has been apparently lost sight of by the detaining authority.

19. In view of the above discussion, petitioner succeeds. Hence, we pass the following order:

ORDER

- I. Writ Petition is allowed.
- II. The detention order dated 12.04.2024 passed by respondent no.1 bearing No. 2024/MPDA/DET-02/DC-143 is hereby quashed and set aside.
- III. Petitioner Gautam S/o Valmik Jadhav shall be released forthwith, if not required in any other offence.
- IV. Rule is made absolute in the above terms.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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