



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1111 OF 2024

Santosh s/o Bhanudas Danve
Age: 44 years,
R/o. Javkheda, Tq. Bhokardhan,
Jalna.

.. Petitioner

Versus

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

.. Respondents

...
Ms. Jayshri Tripathi h/f Mr. R. A. Jaiswal, Advocate for petitioner.
Mr. S. A. Gaikwad, APP for respondents/State.
...

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

DATE : 14 OCTOBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Ms. Jayshri Tripathi holding for
learned Advocate Mr. R. A. Jaiswal for the petitioner and learned
APP Mr. S. A. Gaikwad 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 15.09.2022 bearing No. 2022/RB-Desk-1/Pol-1/MPDA/Kavi-1125 passed by respondent No.1 as well as the approval order dated 22.09.2022 and the confirmation order dated 28.05.2024 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, two offences were considered i.e. Crime No.125 of 2022 registered with Badnapur Police Station, District Jalna for the offences punishable under Sections 395, 353, 332 of Indian Penal Code and Crime No.205 of 2022 registered with Hasnabad Police Station, District Jalna for the offences punishable under Sections 379 read with Section 34 of Indian Penal Code. Learned Advocate for the petitioner submits that there is absolutely non application

of mind by the detaining authority for passing the impugned order. He has taken into consideration two offences, which were under investigation and it can be seen that both the offences would have at the most raised law and order situation. The statements of in-camera witnesses also show the same thing. Further, though the detention order came to be passed on 15.09.2022, it was got executed on 07.04.2024 i.e. after about two and half years. Respondent No.1, who was the then District Magistrate, Jalna, has filed affidavit and tried to contend that the petitioner was absconding. However, along with the order of detention, no proof was annexed or made available to the petitioner to show that the petitioner was absconding and had avoided the execution of the detention order. He relies on the decision in **SMF Sultan Abdul Kader Vs. Jt. Secy., to Govt. of India and others, [(1998) 8 SCC 343]**. Though it was the detention order under Section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short “COFEPOSA Act”), but it is *para materia* to Section 3(1) of the MPDA Act. It is held that, “the unreasonable delay in executing the order creates a serious doubt regarding the genuineness of the detaining authority as regards the immediate necessity of

detaining the petitioner in order to prevent from carrying on the prejudicial activity referred to in the grounds of detention. The order of detention was passed by the detaining authority not in lawful exercise of the power vested in him.” Further reliance has been placed on the decision in ***Manju Ramesh Nahar Vs. Union of India and others, [(1999) 4 SCC 116]***, which is almost on the similar ground of non execution of the order within a reasonable period. Further reliance has been placed on the decision in ***K. P. M. Basheer Vs. State of Karnataka and another, [(1992) 2 SCC 295]***, wherein the three Judge Bench of the Hon’ble Supreme Court held that when there are no serious and sincere efforts made for arresting the accused by taking action under the Act or in arresting the detenu when he appears before the Assistant Collector of Customs, then consequently the live and proximate link between the grounds of detention and purpose of detention is snapped and therefore, the order of detention cannot be sustained. Learned Advocate for the petitioner also relies on the decision in ***P. M. Hari Kumar Vs. Union of India and others, [(1995) 5 SCC 691]***, wherein there was delay of about four years in executing the order of detention and there was no attempt made to approach the Courts for cancellation of bail. Further the place

where police searched for the detenu not disclosed in the affidavit and there was no effort to get the proclamation issued, then in such circumstance, the delay in executing the detention order cannot be held to be properly and satisfactorily explained requiring quashment of the detention order.

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 Dr. Vijay Chandrakant Rathod, the then District Magistrate, Jalna, who has explained as to what material he had considered to arrive at the subjective satisfaction and only states that when the petitioner was absconding and was avoiding the

execution of the detention order, the search was undertaken by Hasnabad Police as well as Local Crime Branch of Jalna police. On information, the petitioner was traced on 07.04.2024 at Aksharban Society, Zalta Phata Parisar, Chhatrapati Sambhajnagar and on the same day order of detention was served on him and he was then lodged at Central Prison, Chhatrapati Sambhajnagar. The learned APP is also relying upon the affidavit of Mr. Shivshankar Patil, currently working as Superintendent of Chhatrapati Sambhajnagar Prison, to state that the grounds of detention were explained to the petitioner so also the information was given to him about rejection of his representation.

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 (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 point that is required to be considered in the given facts is that there is delay

of about two and half years for execution of the detention order. If it is found by the detaining authority that the detenu is absconding, then as per Section 7 of the MPDA Act which deals with powers in relation to absconding persons, the procedure will have to be undertaken. It prescribes that the State Government or the officer concerned has reason to believe that a person in respect of whom detention order has been made has absconded or is concealing himself so that the order cannot be executed, then the provisions of Sections 82 and 86 (both inclusive) of the Code of Criminal Procedure, 1973 shall apply in respect of such person and his property. The detention order made against him shall be deemed to be a warrant issued by a competent Court. Such officer has ordinary jurisdiction to exercise all the powers of a competent Court under Sections 82, 83, 84 and 85 of the said Code for issuing a proclamation for such person and attachment and sale of his property situated in any part of the State and for taking any other action under the said Sections. None of these procedures have been undertaken and there is absolutely no explanation in the affidavit of Dr. Vijay Rathod, the then detaining authority and, therefore, all those cases on which the learned Advocate for the petitioner is relying would be applicable. Such

detention order after such considerable delay in getting the order executed cannot be allowed to sustain.

8. Even on merits, it is to be considered that the two offences which were considered for passing the detention order are under Sections 395, 353, 332 of Indian Penal Code in respect of Crime No.125 of 2022, which was still under investigation when the impugned order was passed and the second was under Section 379 read with Section 34 of Indian Penal Code in Crime No.205 of 2022. The facts of both these cases would show that it was personal and no public was involved. Every offender who had committed extortion, dacoity, theft etc. are not liable for the action under the detention law. If such action is allowed, then it will lead to chaos. Further, when it is very much personal cause, it cannot be said that general public is then involved or would be under fear. The petitioner is involved in five cases of similar nature and three of them were pending in Court and two were under investigation. As regards the in-camera statements are concerned, those are stereotyped. The opinion of the Advisory Board is made available for our perusal, however, it can be seen that the Advisory Board had not taken into consideration the point regarding delay in execution of the detention order. One

more point that is required to be considered that the representation was made by the petitioner on 21.06.2024 to the State Government, but it has been rejected on 16.08.2024. Certainly, there is delay in deciding the representation.

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 dated 15.09.2022 bearing No. 2022/RB-Desk-1/Pol-1/MPDA/Kavi-1125 passed by respondent No.1 as well as the approval order dated 22.09.2022 and the

confirmation order dated 28.05.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner - Santosh s/o Bhanudas Danve 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