



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1153 OF 2024

Ganesh s/o Santukrao Pungale
Age: 28 years, Occu.: Agri.,
R/o. Rajur, Tq. Bhokardan,
District Jalna.

.. Petitioner

Versus

1. The State of Maharashtra
Through Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai.
2. The President/Secretary,
Advisory Board, Desk Officer,
Home Department, (Special)
Mantralaya, Mumbai-32.
3. The District Magistrate, Jalna,
District Jalna.
4. The District Superintendent of Police,
Jalna.
5. The Sub Divisional Magistrate, Bhokardan
District Jalna.
6. The Sub Divisional Police Inspector,
Bhokardan, District Jalna.
7. The Police Inspector,
Police Station, Hasnabad,
Tq. Bhokardan, District Jalna.
8. Superintendent of Central Prison,
Harsul, Chhatrapati Sambhajanagar.

.. Respondents

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*Mr. D. R. Kale and Mr. Y. H. Lagad, Advocate for the Petitioner.
Mr. N. R. Dayama, APP for the Respondents – State.*

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

DATE : 06 AUGUST 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. D. R. Kale for the petitioner and learned APP Mr. N. R. Dayama 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.3 in file No.2024/RB-Desk-1/MPDA/Kavi-81 dated 03.04.2024 and the approval order dated 28.05.2024 passed by respondent Nos.1 and 2 confirming the order passed by respondent No.3.

4. Learned Advocate for the petitioner has taken us through the impugned orders, grounds of detention and the material which was before the authorities at the time of passing the impugned orders on the basis of documents supplied to the

petitioner. He submits that it is stated that the petitioner is involved in six offences since 14.05.2013. In fact, all of them have been considered by the detaining authority for passing the impugned order. There cannot be a live-link between the offence that had allegedly committed in May 2013, 21.08.2019, December 2021 and November 2022 when the proposal was submitted by the police officer from Hasnabad Police Station, District Jalna on 21.02.2024. On this issue itself it can be said that there was no subjective satisfaction arrived at by the respondent No.3. Further, if we consider each offence it is to be noted that they are under Indian Penal Code except one and they can be said to be the offences against individual members. The facts of those cases do not disclose that there was disturbance to the public order though those acts may amount to law and order situation. Even as regards the statement of the in-camera witnesses, it can be seen that the threat was allegedly given and money was tried to be extorted from the witness 'A'. It is not stated that public was threatened by the petitioner at that time. Similarly, in respect of statement of in-camera witness 'B', it is stated that he was proceeding towards house when he was intercepted by the petitioner and amount was demanded from

him. Though the petitioner had submitted the representation dated 24.04.2024 to the President, Advisory Board, Desk Officer, Home Department; through Superintendent of Prison, it appears that it was not placed before either the Advisory Board or the State Government. Affidavit has been filed by Dr. Shrikrishna Panchal, the District Magistrate, Jalna. Another affidavit filed by Mr. Deepak Vasant Sawant, Secretary to Advisory Board, (MPDA), Mumbai, would show that the representation was sent on his personal e-mail and one copy appears to have been given on another e-mail of the Home Department of the State Government and it is then stated that the Home Department received the representation on 09.05.2024 on the day of hearing of the Advisory Board, but hard copy of the representation was not received and, therefore, it could not be placed before the Advisory Board. This reason cannot be accepted at all. The representation ought to have been placed before the Advisory Board. When the statutory duty has not been adhered to, the order cannot be allowed to sustain. The confirmation of such order will have to be declared as illegal and, therefore, deserves 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 the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the “MPDA Act”). Even preventive action was also taken against him under Section 110 of the Code of Criminal Procedure, however, he has not reduced his illegal activities. The detaining authority has also 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. He is doing the activities of extortion and, therefore, it affects the public order.

6. The first and the foremost ground that is required to be considered is that when there were alleged to be six offences registered against the petitioner, whether all of them could have been considered by the detaining authority while passing the order of detention. The answer is certainly no. In the catena of judgments, the Hon’ble Supreme Court has held that there should be live connection between the offence committed and the action of preventive detention. An offence which was registered

way back in May 2013 cannot be considered to be giving live-link for the action of detention. From the list of the cases of six offences, first four cases i.e. till November 2022 cannot be considered or ought not to have been considered by the detaining authority, as there is no live-link between them and the action taken. As regards the chapter cases are concerned, one was under Section 107 of the Code of Criminal Procedure in 2023 and second was under Section 110(e) of Code of Criminal Procedure in 2024. For how much period the bond was taken is not reflected in the order. As regards the two offences in December 2023 is concerned, both of them are under Sections 385, 386, 387 of Indian Penal Code etc, but both of them are still under investigation. In both the matters, the Court has released the petitioner on bail. No doubt, the bail order has been taken by the detaining authority, but there is no statement that in spite of the bail, the preventive detention is necessary for maintenance of the public order. The in-camera statements are recorded on 13.02.2024 and 15.02.2024. They both have not given a specific date of incident, but then both the witnesses say that they were intercepted and money was demanded from them by putting them under threat. There is absolutely no mention in both the

statements as to who were around the witnesses when the incident took place. Witness 'B' has not even stated the time when the alleged incident with him had taken place. We would also like to say that by taking their statements as it is, at the most it can be said that the law and order situation arise, but not the public order. We would like to rely on the Three Judge Bench decision of the Hon'ble Supreme Court in ***Nevanath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367]***, wherein 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.”

7. When the law gives opportunity to the petitioner to make representation and makes it compulsory to the detaining authority or the State Government to consider such representation and also put it before the Advisory Board, then that act must be carried in its true spirit. We are surprised to

note that though the Secretary to the Advisory Board accepts that he has received the soft copy on his e-mail as well as that was received by the State on its mail well in advance, then how he can insist upon the hard copy. He could have taken the print out from his e-mail and place it before the Advisory Board. Whatever decision has been taken by the Advisory Board appears to be in ignorance of receipt of the representation, though it was properly made by the petitioner. Under this circumstance, a vital right has been withheld without any reasonable cause by the respondents which directly affects the personal liberty of the petitioner.

8. 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]."

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 in December 2023 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 dangerous person or bootlegger.

10. For the aforesaid, the petition deserves to be allowed.

Hence, following order is passed :-

ORDER

- I)** The Writ Petition is allowed.
- II)** The detention order dated 03.04.2024 passed by respondent No.3 in file No.2024/RB-Desk-1/MPDA/Kavi-81 and the approval order dated 28.05.2024 passed by respondent Nos.1 and 2, are hereby quashed and set aside.
- III)** Petitioner - Ganesh s/o Santukrao Pungale 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