



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1164 OF 2024

Rahul Baburao Pawar
Age: 33 years, Occu.: Labour,
R/o. Kaikadi Mohalla, Old Jalna,
Tq. And Dist. Jalna

.. Petitioner

Versus

1. District Magistrate, Jalna
District Jalna.
2. The State of Maharashtra
Through the Additional Chief Secretary,
Govt. of Maharashtra, Home Department,
Mantralaya, Mumbai-32.
3. The Jail Superintendent,
Central Prison, Harsool,
Aurangabad.

.. Respondents

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Mr. S. S. Jadhav, 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.**

DATE : 13 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. S. S. Jadhav 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 dated 21.03.2024 bearing No.2024/RB-Desk-1/Pol-1/MPDA/Kavi-63 passed by respondent No.1 and the confirmation order dated 15.05.2024 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 there were several offences registered against the petitioner, yet for the purpose of passing the impugned order, six offences were considered i.e. Crime No.149 of 2021 registered with Kadim Jalna Police Station, District Jalna for the offences punishable under Sections 341, 323, 504, 506 read with Section 34 of Indian Penal Code, Crime No.505 of 2022 registered with Jalna Taluka Police Station, District Jalna for the offences punishable under Sections 353, 332, 186 read with Section 34 of Indian Penal Code, Crime No.527 of 2023 registered with Kadim Jalna Police Station, District Jalna for the offence

punishable under Sections 3/25, 4/25 of the Indian Arms Act, Crime No.1092 of 2023 registered with Sadar Bazar Police Station, District Jalna for the offences punishable under Sections 3/25 of Indian Arms Act, Crime No.1093 of 2023 registered with Sadar Bazar Police Station, District Jalna for the offence punishable under Section 3/25 of the Indian Arms Act and Crime No.485 of 2023 registered with Chandanjhira Police Station, District Jalna for the offence punishable under Section 3/25 of the Indian Arms Act. It is submitted that all the six offences were considered by the detaining authority. That means even the staircases were considered. There was no live link. If we consider the offences in 2021 and 2022 with the detention order passed on 21.03.2024, the detaining authority failed to consider that the petitioner was acquitted from the offence vide Crime No.149 of 2021 bearing S.C.C. No.929 of 2021 on 22.01.2024 and Crime No.505 of 2022 bearing R.C.C. No.919 of 2022 on 16.08.2022. The delay in passing the order has not been explained. Further, the detaining authority failed to consider that as regards the four offences under the Arms Act are concerned, which were stated to be under investigation, three of them were registered on the same day i.e. 17.12.2023. One with Kadim Jalna Police Station and

two with Sadar Bazar Police Station. The offence vide Crime No.527 of 2023 and Crime No.1092 of 2023 are registered against the petitioner on the basis of statement of the co-accused. So also, the offence vide Crime No.485 of 2023 registered with Chandanjhira Police Station on 19.12.2023 was also based on the statement of the co-accused. There was absolutely no such evidence before the detaining authority which will show the involvement of the petitioner in the case. Therefore, there was no subjective satisfaction of the detaining authority and therefore, the said impugned order cannot be allowed to be sustained.

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 has relied on the affidavit-in-reply filed by Dr. Shrikrishna Panchal, the District Magistrate, Jalna as well as his additional affidavit-in-reply to explain the point of delay. As regards delay is concerned, it is explained that the Superintendent of Police forwarded the proposal of detention of the petitioner to the office of District Magistrate on 01.02.2024 and thereafter, the protest for Maratha reservation and parliament election process consumed time and, therefore, when the law and order situation in the entire District became hazardous, the District Magistrate being head of the Revenue Authority was required to give more attention to those matters and, therefore, the delay that has been caused, was beyond the control of the detaining authority.

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 catena of above-said judgments and other judgments also would state that there should be a live link between the offences complained and the date of the detention

order. Certainly, those offences which had taken place on 06.04.2021 and 03.08.2022 cannot be said to be providing the live link, still they have been considered and in spite of raising the point, may be by inadvertence by the petitioner in ground No.2 that only four crimes were considered, in the affidavit-in-reply, the District Magistrate states that he has considered all the six offences i.e. including the stair cases. Certainly, the order based on staircases will have to be categorized as erroneous. Further, the acquittal of the petitioner from two of the crimes has not been considered. The four cases under the Indian Arms Act were under investigation on the date of impugned order. Though the District Magistrate was not a Court of law or considering the cases under the Arms Act, yet the basic legal provisions should be considered by the detaining authority when he has such detaining powers. He failed to consider that in three of the matters the name of the petitioner is taken on the basis of statement of the co-accused which has no evidentiary value in the eye of law. Interesting point to be noted is that in three of the offences which were registered on 17.12.2023, two to three police officers are same. We may not go into the details of the facts, but only one thing which will have to be observed that when the

detaining authority was considering the offence under Section 3 which is punishable under Section 25 of the Indian Arms Act, then he ought to have considered the Notification prohibiting such arm. Further, we are of the opinion that when the matter is still under investigation, the detaining authority should not make haste, of course depending upon the facts of the case, but when question of sanction to prosecute is involved, much depends upon the sanctioning authority. Therefore, unless there is sanction to prosecute, such offences should be considered meticulously by the detaining authority. Here, as regards Crime No.527 of 2023 is concerned, even Section 4 punishable under Section 25 of the Indian Arms Act is also invoked. The learned APP failed to produce any such Notification issued by the Central Government prohibiting the arms and weapons on the day of incident which was promulgated for Jalna District. In one offences, Section 4 of the Indian Arms Act is invoked, though it is stated that the co-accused was found possessing country made pistol in all the matters and in that matter, it is said that a sword also was seized from the house of the petitioner. Therefore, we do not find that the detaining authority had arrived at a subjective satisfaction or there was such material before the learned District Magistrate to

arrive at a subjective satisfaction.

8. As regards delay is concerned, we may accept the reason given in the additional affidavit-in-reply. As regards the statements of in-camera witnesses are concerned, witness 'B' says that the amount was extorted from him, yet it is not stated that the petitioner had used any of the dangerous weapon. Witness 'A' says that the extortion was with the help of knife. These appears to be the offences of individual in nature.

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 21.03.2024 bearing No. 2024/RB-Desk-1/Pol-1/MPDA/Kavi-63 passed by respondent No.1 as well as the confirmation order dated 15.05.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner – Rahul Baburao Pawar 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