



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1178 OF 2024

Rahul s/o Kaduba Pawar
Age: 31 years,
R/o. Babra, Tal. Phulambri,
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

.. Respondents

...

Mr. R. A. Jaiswal, Advocate for the petitioner.

Mr. V. K. Kotecha, APP for the respondents – State.

...

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

DATE : 19 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. R. A. Jaiswal for the petitioner
and learned APP Mr. V. K. Kotecha 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 18.12.2023 bearing No. Out No.D.O.2023/MPDA/DET-09/DC-423 passed by respondent No.1 and the confirmation order dated 29.02.2024 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.203 of 2023 registered with Karmad Police Station, District Chhatrapati Sambhajnagar for the offence punishable under Sections 394, 506 of Indian Penal Code, Crime No.295 of 2023 registered with MIDC Cidco Police Station, District Chhatrapati Sambhajnagar for the offence punishable under Sections 392, 506 of Indian Penal Code and Crime No.250 of 2023 registered with Wadod Bazar Police Station, District Chhatrapati Sambhajnagar for the offences punishable under Sections 341, 506 of Indian Penal Code. The petitioner is challenging the impugned order on five

grounds, (i) the offences which have been considered for passing the detention order would have at the most affected law and order and not the public order, (ii) there is delay in passing the detention order which has not been explained, (iii) the detaining authority has not considered that the ordinary law was sufficient to deal with the situation, (iv) detaining authority has failed to consider the point of false implication of the petitioner and (v) there is delay of 28 days in deciding representation filed by the petitioner by the State. In order to substantiate these five points the learned Advocate for the petitioner submits that the facts of the cases considered for detention order would show that the law and order situation might have been created due to the activities of the petitioner. There is delay of about 56 days taking into consideration the last prejudicial activity of the petitioner and the same has not been explained in the reply filed by the respondents. He relies on the decisions in ***Prem Lata Sharma Vs. District Magistrate, Mathura, [19998 CJ(SC) 670]***, ***Rama Dhondurade Vs. V. K. Saraf, Commissioner of Police, [1989 CJ (SC) 428]*** and ***S. Amutha Vs. The Government of Tamil Nadu and others, [2022 LiveLaw (SC) 25]***, wherein it has been held that the representation by a detenu will have to be decided without

unnecessary delay as it is prejudicial to the life and liberty of the detenu.

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 the then District Magistrate, Chhatrapati Sambhajinagar, Mr. Astik Kumar Pandey, wherein he has tried to demonstrate as to how he has arrived at the conclusion that the petitioner is a dangerous person. In fact, his affidavit-in-reply is nothing but the repetition of the grounds of detention. Further, he submits that the matter was referred to Advisory Board by the State and after receipt of the opinion, the confirmation has been given to

the order of detention. He also states that he had referred the earlier cases only to show the criminal past history of the petitioner and ascending trend of his dangerous criminal activities. It cannot be stated that old and stale cases were considered by him to arrive at a conclusion that the petitioner is a dangerous person.

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. As aforesaid, as per the grounds of detention, Crime No.203 of 2023 under Sections 394, 506 of Indian Penal Code, Crime No.295 of 2023 under Sections 392, 506 of Indian Penal Code and Crime No.250 of 2023 under Sections 341, 506 of Indian Penal Code were considered. It also appears that Karmad Police Station had tried to take preventive action under Section 110(e)(g) of the Code of Criminal Procedure against the petitioner, however, it was disposed of by saying that as the action under MPDA was proposed, the Chapter Case was dropped. We are unable to find out any such noting in the entire file. It appears

that the sponsoring authority is Karmad Police Station and in view of the same, the concerned police officer from Karmad Police Station would have given the notice for action under Section 110(e)(g) of the Code of Criminal Procedure to the Petitioner. The entire file does not say when that action was initiated and why it was not then taken to the logical end before the proposal was made on 11.12.2023. Therefore, we find substance in the submission on behalf of the petitioner that the detaining authority has not considered the point that whether petitioner could have been dealt with under the ordinary law before taking recourse to action under MPDA, which has been remarked as draconian rule by the Hon'ble Supreme Court in **Nevanath Bujji (Supra)**. Taking into consideration the contents of the FIR of all the three offences which have been considered for passing detention order, at the most law and order situation would have arisen and the informants therein had approached police stations by taking recourse to the law. Same is the case as regards the statements of in-camera witnesses 'A' and 'B'. Interesting point to be noted is that an old lady and her relative went to police station and lodged report for the act allegedly done by the petitioner, but then the in-camera statements would show that those male

members had not gone to the police station. The first paragraph in their statements is copy paste. Even in the second paragraph, major part is copy paste.

8. The further point is in respect of delay in passing the detention order. According to the petitioner, there is delay of 56 days as he counts it from the date of last offence. We may not fully agree with those submissions. In the decision in ***Digambar @ Digambar Vitthal Dagdade Vs. The District Magistrate, Latur and others, [Criminal Writ Petition No.1736 of 2023 decided on 08.02.2024]***, there was six months delay that was considered from the date of last prejudicial activity. Taking into consideration the same, those observations are there. Here, the repetition of the further prejudicial activity would give rise to action of detention and, therefore, in each case it may not be taken that the starting point for counting the delay would be from the last day of registration of the offence. The statement of in-camera witnesses were recorded on 09.12.2023 and 10.12.2023 respectively. The confidential statements were verified by SDPO on 12.12.2023. Proposal was submitted on 13.12.2023 and the detention order has been passed on 18.12.2023. Therefore, we are not impressed on the point of delay canvassed on behalf of

the petitioner.

9. As regards delay in deciding the representation is concerned, definitely when such representation is made, the State is bound to decide the same as early as possible. The representation was filed by the petitioner on 27.06.2024, which was then forwarded by jail authority on the same day. It was received by the State Government on 02.07.2024 and the remarks of the detaining authority are called. It appears that the remarks were given on 10.07.2024, yet the Additional Chief Secretary, Home Department, rejected the said representation on 25.07.2024. Therefore, taking into consideration the decisions in ***Prem Lata Sharma (Supra)***, ***Rama Dhondu Borade (Supra)*** and ***S. Amutha (Supra)***, we hold that since the representation of the detenu has been decided belatedly, the entire action and the confirmation cannot be allowed to sustain. Further it is to be noted that the bail that was granted to the petitioner in Crime No.203 of 2023 was not considered by respondent No.2. As regards the last offence i.e. Crime No.250 of 2023, the petitioner was given notice under Section 41(1)(a) of the Code of Criminal Procedure and was not arrested at all. It was the bailable offence and, therefore, we are of the opinion that detention order cannot

be based on bailable offence. In other words, the bailable offence cannot be considered by the detaining authority for passing detention order; wherein bail is as of right. Further, we are not impressed with the point in respect of false implication, because it is beyond the scope of the detaining authority.

10. 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.

11. 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 18.12.2023 bearing No. Outward No. D.O.2023/MPDA/DET-09/DC-423 passed by

respondent No.1 and the confirmation order dated 29.02.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner – Rahul Kaduba 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