



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1184 OF 2024

Mohsin Yunus Shaikh @ Patel
Age: 35 years, Occu.: Business,
R/o. Raj Galli, Majalgaon,
Tq. Majalgaon, Dist. Beed.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate, Beed,
District Hingoli.
3. The Superintendent of Jail,
Central Prison, Aurangabad.

.. Respondents

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*Mr. Mahesh P. Kale, Advocate h/f Mr. Sarvesh Jaipal Naik, Advocate for
the petitioner.*

Mr. S. V. Hange, APP for the respondents – State.

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

RESERVED ON : 19 AUGUST 2024
PRONOUNCED ON : 20 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Mahesh P. Kale holding for
learned Advocate Mr. Sarvesh Jaipal Naik for the petitioner and

learned APP Mr. S. V. Hange 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 bearing 2024/RB-Desk-1/Pol-1/MPDA-05 passed by respondent No.2 on 08.04.2024 as well as the approval order dated 18.04.2024 and the confirmation order dated 24.06.2024 passed by respondent No.1, 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.408 of 2023 registered with Majalgaon City Police Station, District Beed for the offences punishable under Sections 326, 324, 143, 147, 148, 149, 504, 506 of Indian Penal Code and under Section 3(1)(r), 3(1)(s), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”) and Crime No.79 of 2024 registered with Majalgaon City Police Station, District Beed for the offence punishable under Sections 323 and 506 of Indian Penal Code. Learned Advocate for the petitioner submitted that perusal of these two offences would show that the incidences were personal in nature and would not have created any public order situation. As regards the in-camera statements of witnesses ‘A’ and ‘B’ are concerned, they are stereotyped and appears to have been recorded on 06.03.2024 and 08.03.2024 respectively. Though it is stated that the petitioner had threatened them with the help of sword, that too in a broad day light on a public road, it is hard to believe that nobody would have come to say anything. There was no subjective satisfaction arrived at by the detaining authority. Learned Advocate for the petitioner relies on the decision in ***Mallada K. Sri Ram Vs. State of Telangana and Others, [2022 SCC OnLine SC 424]***, wherein it has been observed that, a mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the "maintenance of public order". It is observed that the nature of the allegations against the detenu are grave. However, the personal liberty of an

Accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. Further, reliance has been placed on the three judge Bench decision of the Hon'ble Supreme Court in ***Rakha Vs. State of Tamil Nadu Tr. Sec. To Govt. and Anr. [(2011) 5 SCC 244]*** wherein it is observed, it is all very well to say that preventive detention is preventive not punitive. The truth of the matter, though, is that in substance a detention order of one year (or any other period) is a punishment of one year's imprisonment. It is further observed that Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: Was the ordinary law of the land sufficient to deal with the situation ? If the answer is in the affirmative, the detention order will be illegal. In the present case, the charge against the

detenu was of selling expired drugs after changing their labels. Surely the relevant provisions in the Indian Penal Code and the Drugs and Cosmetics Act were sufficient to deal with this situation. Hence, in our opinion, for this reason also the detention order in question was illegal. Further, it is observed that Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law. Learned Advocate for the petitioner, therefore, submits that the impugned order of the detaining authority deserves to be quashed and 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 Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the "M.P.D.A. 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. He relies on the affidavit-in-reply of Ms. Deepa Mudhol Munde, the then District Magistrate, Beed, who had passed the impugned order. The said affidavit reiterates as to how she reached to the conclusion and got the subjective satisfaction. According to her, the ordinary criminal laws would not have deterred the petitioner from committing offences, as his criminal activity graph is increasing. Learned APP submits that there is no procedural error committed by the detaining authority and the State. All the steps have been taken within limitation as prescribed under M.P.D.A. The advisory board has also given opinion for confirming the order and at that time, the petitioner was heard personally by advisory board.

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 Buji etc. (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. It is now required to be seen as to whether the material which was placed before the detaining

authority was sufficient and whether on the basis of the said material the subjective satisfaction was arrived at. As aforesaid only two offences were considered, but offence vide Crime No.79 of 2024 is a Non Cognizable complaint lodged on 12.03.2024. It appears that on 21.03.2024, the learned Magistrate had given permission under Section 155(2) of the Code of Criminal Procedure for investigation. It is to be noted that when the FIR vide Crime No.408 of 2023 is lodged by one Sachin Ravan Alzende, then he had not given the name of the present applicant as the person who had assaulted and abused him in the name of caste. It appears that the said informant had love affair with a Muslim girl and, therefore, the incident took place. The statements of eye witnesses would show that they have also not stated the name of the present petitioner - Mohsin Yunus Shaikh @ Patel, still then it appears that at some point of time the police have come with the case that the present petitioner is a suspect in the case. It is now brought on record by the petitioner that the learned Additional Sessions Judge, Majalgaon has granted anticipatory bail to the applicant on 23.04.2024 i.e. after the detention order is passed. The documents, which were made available to the petitioner, were not showing as to how petitioner

is involved in the matter. Though the order for anticipatory bail has been passed after the detention order, yet we are considering the said order only to the extent as to what was the stand of the prosecution regarding the role of the petitioner. It was posed before the concerned Court that the applicant therein i.e. the present petitioner is a conspirator along with the main accused on the ground that he i.e. the petitioner had purchased Chilli Powder, which was used at the time of incident. The informant has not even made a statement that Chilli Powder was used against him. Therefore, when there were absolutely no documents showing the involvement of the petitioner, it cannot be said that the subjective satisfaction was arrived at by the detaining authority. In other words, if we quote the observations of the detaining authority from the impugned order, it reads thus :-

“Accordingly on the basis of complaint offence he registered and investigation is conducting by Dr. B. Dhirajkumar (IPS) Assistant Superintendent of Police, Sub Division, Majalgaon. During investigation Investigating Officer conducted spot panchanama and recorded statement of witnesses. As involvement of accused Mohsin Yunus Shaikh, R/o. Raj Galli is found and as accused is abscond investigation is going on.”

8. Coming back to the non cognizable case, which was considered for passing detention order to which permission under Section 155(2) of the Code of Criminal Procedure was given by the learned Magistrate, if we consider the complaint, then it appears that it is lodged by Dhiraj Ravan Alzende, who appears to be the brother of Sachin Ravan Alzende, who had lodged the FIR vide Crime No.408 of 2023 and then in the N.C. complaint, the said informant says that when he was at home, the present petitioner came in front of his house and started saying that because of him i.e. informant, his friends have been arrested and he would see the informant after bail is granted to him. Important point to be noted is that in Criminal Bail Application No.152 of 2024 which was decided on 23.04.2024, this N.C. complaint was not at all shown by the prosecution to the concerned Judge. The connection between these two offences was not established and now, the State wants to detain the petitioner by saying that there was connection between these two incidences which according to the State is leading to a public order situation, but as aforesaid, the connection has not been established or shown before the concerned Court. Another legal aspect to be considered is that when in respect of Crime No.408

of 2023, Atrocities Act has been invoked, which presupposes that the informant therein is a member of Scheduled Caste or Scheduled Tribe, then in respect of N.C. case, wherein the complainant therein is the real brother of the informant in Crime No.408 of 2023 why no sections from Atrocities Act were invoked and why the permission under Section 155(2) of the Code of Criminal Procedure was sought from learned Judicial Magistrate First Class, Majalgaon, instead of going before the learned Special Judge under the Atrocities Act. One more aspect to be noted is that the detaining authority and the respondents - State have not stated that the prosecution has taken steps now for cancellation of the bail granted by the learned Special Court/Additional Sessions Judge, Majalgaon, District Beed. We have taken all these facts into consideration only to demonstrate that the ordinary criminal law was sufficient to take care the alleged criminal activities of the petitioner, as we have posed the question before us as observed in ***Rekha (Supra)***.

9. The statements of confidential witnesses 'A' and 'B' at the most would show that it would have created law and order situation. Another aspect to be noted is that the statements were recorded on 06.03.2024 and 08.03.2024. They were seen by

Superintendent of Police, Beed on 30.03.2024 and then by District Magistrate on 08.04.2024 and on the same day it appears that order of detention was passed.

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 08.04.2024 bearing No. 2024/RB-Desk-1/Pol-1/MPDA-05 passed by respondent No.2 as well as the approval order dated 18.04.2024 and the confirmation order dated 24.06.2024 passed by respondent

No.1, are hereby quashed and set aside.

III) Petitioner - Mohsin Yunus Shaikh @ Patel 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