



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1193 OF 2024

Ajay Bhausahab Gat
Age: 26 years,
R/o. Shivajinagar, Garkheda Parisar,
Chhatrapati Sambhajnagar

.. Petitioner

Versus

1. Commissioner of Police,
Chhatrapati Sambhajnagar.
2. The State of Maharashtra
(Through the Secretary Home
Department (Spl.) Mantralaya, Mumbai)
3. The Superintendent
Chhatrapati Sambhajnagar
Central Prison.

.. Respondents

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

Mr. A. R. Kale, APP for the respondents – State.

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

DATE : 26 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. R. A. Jaiswal for the petitioner
and learned APP Mr. A. R. Kale 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 08.05.2024 bearing No.2024/CB/MPDA/DET-06/CR-30 passed by respondent No.1 as well as the approval order dated 15.05.2024 and the confirmation order dated 23.07.2024 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.468 of 2023 registered with Pundaliknagar Police Station, District Chhatrapati Sambhajnagar for the offences punishable under Sections 452, 354, 504, 506 of Indian Penal Code, Crime No.471 of 2023 registered with Pundaliknagar Police Station, District Chhatrapati Sambhajnagar for the offences punishable under Sections 341, 506 read with Section 34 of Indian Penal Code and Crime No.14 of 2024 registered with Jinsi Police Station, District Chhatrapati Sambhajnagar for the offences punishable under Section 324,

323, 504, 506 read with Section 34 of Indian Penal Code. Learned Advocate for the petitioner submits that taking into consideration the three offences which were considered for passing detention order as well as the in-camera statements of witnesses 'A' and 'B' would show that at the most law and order situation would have been created. The petitioner had filed representation which has not been decided within a reasonable period. There is delay by the State in deciding the representation and even it is not communicated till today to the petitioner. A vital right has been therefore withheld.

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 respondent No.1 Mr. Manoj Lohiya, the then Commissioner of Police, Chhatrapati Sambhajnagar, who has passed the detention order. He has reiterated as to which material he had considered for passing detention order and how he had arrived at the subjective satisfaction. The petitioner was externed from Chhatrapati Sambhajnagar City by order dated 18.08.2021 for two years, still he had entered the area within the said period and four offences under Section 142 of the Maharashtra Police Act were registered against him. Thereafter also he had not discontinued his acts and committed three more offences, which were considered by the detaining authority. Under such circumstance, the ordinary law would not have curbed the activities of the petitioner.

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 offence i.e. Crime No.468 of 2023 is

registered under Sections 452, 354, 504, 506 of Indian Penal Code. It is stated that by entering into the house the lady has been molested. After entering the house, it is said that the petitioner asked the informant as to why his sister has given complaint against him with Jinsi Police Station. This indicates that the grievance was personal and public was not affected by the same. The second offence i.e. Crime No.471 of 2024 under Sections 341, 506 read with Section 34 of Indian Penal Code says that when the informant was going to vegetable market, at that time, she was restrained by the petitioner and his associates, accosted her and threatened that if she lodges complaint, then she and her son would suffer dire consequences. This appears to be in reference to the earlier FIR i.e. Crime No.468 of 2023, as there is a reference in this FIR about the same, meaning thereby both these offences had some bearing over each other and therefore, they are personal. The third offence i.e. Crime No.14 of 2024 shows that the informant was passing by a tamarind tree where the petitioner and co-accused went near him and asked him as to whether he has come to assault them and then he was assaulted. There appears to be no previous incident that has been referred in the FIR, but from the alleged dialogues it can be

seen that the incident was personal. In all the three offences public was not involved.

8. No doubt the petitioner was externed for two years by order dated 18.08.2021 from Chhatrapati Sambhajnagar City under Section 56(1)(a)(b) of Maharashtra Police Act. That period would have ended in August 2023. During the said period of externment, it appears that four offences under Section 142 of Maharashtra Police Act and one under Section 380 of Indian Penal Code came to be registered against the petitioner. This criminal activity has not been taken into consideration by the detaining authority and, therefore, the previous conduct cannot be considered in the manner learned APP wants to convey. Further, if immediately after the externment order had come to an end or offence was registered, then the action ought to have been taken immediately if public was involved. But the proposal for detention has been given on 03.05.2024 i.e. after about six months from the date of commission of offence vide Crime No.468 of 2023. What we could find from the grounds of detention is that action under Section 110 (e) (g) of the Code of Criminal Procedure was initiated on 26.12.2023 i.e. immediately after lodging of Crime No.468 of 2023, but it is stated that since the

action was taken under MPDA, the chapter case was dropped. A chapter case cannot be kept lingering for more than six months, but then there is also no order passed by the competent authority giving reasons as to why the said chapter case was not decided immediately. The statements of in-camera witnesses would also show that public order would not have been disturbed. Representation was filed by the petitioner on 04.07.2024. The detaining authority itself had kept matter with itself when remark was called till 09.08.2024, when the law requires that immediately remarks ought to have been offered. The decision on the representation appears to have been taken on 17.08.2024. Thus, there is delay in considering the representation and the rejection is stated to be not even informed to the petitioner. Withholding of result cannot be justified. The said delay is not explained in the affidavit of the detaining authority.

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 08.05.2024 bearing No.2024/CB/MPDA/DET-06/CR-30 passed by respondent No.1 as well as the approval order dated 15.05.2024 and the confirmation order dated 23.07.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner – Ajay Bhausahab Gat 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