



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1206 OF 2024

Mukesh s/o Shyam Shinde
Age: 22 years,
R/o. Village Shingoli,
Dist. Dharashiv.

.. Petitioner

Versus

1. District Magistrate,
Dharashiv.
2. The State of Maharashtra
(Through the Secretary Home
Department (Spl.)
Mantralaya, Mumbai.
3. The Superintendent
Chhatrapati Sambhajinagar
Central Prison.

.. 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 : 23 OCTOBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate 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 12.04.2024 bearing No.2024/UPCHITNIS/MAG-3/KAVI-159 passed by respondent No.1 as well as the approval order dated 22.04.2024 and the confirmation order dated 07.06.2024 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 all the nine offences, which were registered against the petitioner, were considered for passing the impugned order i.e. (i) Crime No.201 of 2019 for the offences punishable under Sections 326, 143, 147, 148, 149 of Indian Penal Code, (ii) Crime No.258 of 2019 for the offence punishable under Section 379 of Indian Penal Code, (iii) Crime No.295 of 2019 for the offences punishable under Sections 324, 323, 504, 506 of Indian Penal Code, (iv) Crime No.14 of 2021 for the offences punishable under Section 160 of Indian Penal Code, (v) Crime No.346 of 2022

for the offences punishable under Sections 336, 337, 427 of Indian Penal Code, (vi) Crime No.370 of 2022 for the offences punishable under Sections 452, 324, 323, 504 read with Section 34 of Indian Penal Code, (vii) Crime No.71 of 2023 for the offence punishable under Section 85(1) of the Maharashtra Prohibition Act, (viii) Crime No.241 of 2023 for the offence punishable under Section 354-D, 504, 506 read with Section 34 of Indian Penal Code, (ix) Crime No.401 of 2023 for the offence punishable under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code. All the aforesaid offences have been registered with Anandnagar Police Station, District Osmanabad. Learned Advocate for the petitioner submits that the impugned order suffers from live link. The petitioner is involved in nine offences since 2019 and all have been considered by the detaining authority for passing the detention order. Even offence under Section 160 of Indian Penal Code has been considered i.e. for committing an affray for which punishment is imprisonment for either description for a term which may extend to one month or with fine which may extend to one hundred rupees, or with both. The second ground is that the in-camera statements of which copy is provided would show that those statements are copy paste

statements, which were recorded on 19.09.2023. The last offence alleged to be committed by the present petitioner was on 06.11.2023, which was still under investigation on the date of impugned order dated 12.04.2024 and it was under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code. Even from that day also there was no live link. The impugned order does not say that ordinary law would not have curtailed the activities of the petitioner. In all the other eight offences which are pending before the Court, the petitioner has been released on bail. At no point of time the prosecution has undertaken the action of cancellation of bail after committal of the further offence as alleged. There is inordinate delay in passing the impugned order and, therefore, the detaining authority has neither arrived at any subjective satisfaction, nor the order can be said to be legal. It ought not to have been confirmed by the State Government as well as by the Advisory Board.

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 Dr. Sachin Ombase, the District Magistrate, Dharashiv. His affidavit reiterates that all the offences were considered by him and he has demonstrated as to how he has arrived at the subjective satisfaction. Taking into consideration the continuous criminal activities, he has arrived at the conclusion that the ordinary law would not have been sufficient to curtail 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) ***Nenavath 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 ***Nenavath*** (*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 and the foremost fact which respondent No.2 forgot or has not taken note of the legal position is that there should be a live link between the activities of the detenu and the detention order. All the offences which were stated to have been committed on 21.07.2019 till 06.11.2023

were considered while passing the impugned detention order on 12.04.2024. There was absolutely no live link between those offences and the detention order. Another fact to be noted is that the confidential statements of witness 'A' and 'B' were recorded on 19.09.2023. They were verified by Sub Divisional Police Officer on 09.11.2023 and then it went back to the sponsoring authority (under which circumstances, is not made clear in the affidavit-in-reply), but then the proposal was forwarded by the sponsoring authority to Sub Divisional Police Officer on 16.12.2023. He forwarded the same to Superintendent of Police, Dharashiv on 19.12.2023. Superintendent of Police, Dharashiv forwarded it to detaining authority i.e. District Magistrate on 02.02.2024. Now, this delay from 19.12.2023 to 02.02.2024 has not been explained by filing affidavit of Superintendent of Police, Dharashiv. After it was forwarded by Superintendent of Police to District Magistrate, Dharashiv, District Magistrate passed the detention order on 12.04.2024. That means, again there is about two months delay while passing the detention order. In the affidavit-in-reply the District Magistrate has not explained the delay.

8. Taking into consideration the offences those are registered against the petitioner, it can be seen that all those offences are

qua the informant and general public was not involved in the same. Therefore, at the most, all those offences had created law and order situation and not the public order. On two occasions, the chapter case was filed against the petitioner. One was allowed to lapse and in respect of another, it is stated that in view of subsequent offence, that action was cancelled. Thus, it can be seen that the ordinary law would have taken care of the activities of the petitioner, however, that action was not taken to the logical end by the police authorities. Under such circumstance, it does not lie in the mouth of sponsoring authority or even the detaining authority that the ordinary law would not have curtailed the activities of the petitioner. The in-camera statements of the witnesses would show that the first and the third paragraphs are literally copy paste. In respect of the alleged incident against them, it appears that it was the recovery of money. Even there public was not involved. Therefore, the detention order not only suffers from the above-said lacunas, but it is illegal, cannot be allowed to sustain and it ought not to have been confirmed by the State Government as well as by the Advisory Board.

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 12.04.2024 bearing No.2024/UPCHITNIS/MAG-3/KAVI-159 passed by respondent No.1 as well as the approval order dated 22.04.2024 and the confirmation order dated 07.06.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner – Mukesh s/o Shyam Shinde 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