



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1209 OF 2024

Salim Khan Jalil Khan Pathan
Age: 26 years, Occu.: Labour,
R/o. Mastanshah Nagar, Hingoli,
Taluka and District Hingoli.

.. Petitioner

Versus

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

.. Respondents

...

*Mr. Rupesh A. Jaiswal, Advocate h/f Mr. S. G. Ghongade, Advocate for
the petitioner.*

Mr. N. R. Dayama, APP for the respondents – State.

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

DATE : 20 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Rupesh A. Jaiswal for the
petitioner and learned APP Mr. N. R. Dayama 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 22.12.2023 bearing No.2023 DC-1/KAVI-792/2023/1606 passed by respondent No.2 and the confirmation order dated 13.02.2024 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.912 of 2023 registered with Hingoli City Police Station, District Hingoli for the offences punishable under Sections 386, 323, 324, 504, 506 read with Section 34 of the Indian Penal Code and Crime No.915 of 2023 registered with Hingoli Police Station for the offences punishable under Section 4 punishable under Section 25 of the Indian Arms Act. Learned Advocate for the petitioner submits, taking into

consideration the facts in the two cases which are considered for passing detention order, that it cannot be said that the activities of the petitioner would have caused any problem for public order. Further, in Crime No.912 of 2023, the petitioner was released on bail by the Court on 09.12.2023, whereas as regards the other offence is concerned it is said that he has been released on notice under Section 41-A of the Code of Criminal Procedure. The statements of in-camera witnesses 'A' and 'B' would also show that the facts do not disclose that the public order situation would have arose. The petitioner is studied up to 2nd standard and he can understand Hindi and Marathi only. He is not conversant with English. Translation of all the documents has not been supplied to him. Further, it appears from the impugned order that even the past cases against the petitioner were also considered though at one point of time it is stated that only two cases have been considered. Such order cannot be allowed to remain.

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.2 Mr. Jitendra Shrikumar Papalkar, District Magistrate, Hingoli, who has reiterated the same facts and tries to demonstrate that there is no delay in passing the order. It is stated that the petitioner’s illegal and dangerous acts had become a serious threat and source of danger to the lives of law abiding citizens and therefore, it was threat to the public order. The petitioner was found roaming with *Khanjar/Dagger* and threatening the public in open space. This is nothing but to establish supremacy in the area and, therefore, the petition deserves to be dismissed.

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 impugned order shows that out of seven offences registered against the petitioner only two offences have been considered i.e. Crime No.912 of 2023 and 915 of 2023. The contents of FIR vide Crime No.912 of 2023 would show that the petitioner and his associates had gone to the residence of informant, abused him, beaten him and extorted amount of Rs.15,000/-. It is to be noted that the petitioner has been released on bail in the said matter, which appears to be on 09.12.2023 (wrongly stated to be released on 02.11.2023, as the date of offence and arrest are dated 27.11.2023 and 29.11.2023 respectively). Though the incident is stated to have taken place at 1.30 am., other Sections have not been invoked and it appears to have caused law and order situation at the most as the place of incident is inside the house. As regards another offence i.e. Crime No.915 of 2023 under Section 4 punishable under Section 25 of the Arms Act is concerned, no Notification has been brought to our notice or the detaining authority appears to have not seen the said Notification as required under Section 4 of the Indian Arms Act. Now, unless there is a Notification, there cannot

be violation of the same by making allegations. The said offence is still under investigation. The FIR is lodged by police person. Whether other common man, who was present at the spot, is there and whether his statement under Section 161 of the Code of Criminal Procedure has been recorded or not was not clarified by the sponsoring authority. In order to arrive at a conclusion that the act would have created public order situation, the detaining authority should go to that extent as to what was the stage of investigation and which evidence has been collected so as to infer that the said activity of the detenu would be detrimental to the public order. The statement of in-camera witnesses 'A' and 'B' would show that the witnesses were knowing everything regarding the petitioner. Even they have gone to the extent that what is the criminal background of the petitioner and why other people are not coming forward to lodge report. Witness 'A' says that about eight days prior to his statement i.e. on 18.12.2023, the applicant had closed house of his sister with an intention to commit theft and then he had damaged the LCD TV. The witness then asked the petitioner why he has entered the house of the sister, then he was assaulted by the petitioner and threatened. We may post questions to ourselves that if the house was closed,

then how the petitioner got to know that the petitioner has entered the said house. In his statement, he is not clarifying where he was, what was the time when the alleged incident took place. We are aware about the limitation of this Court for scrutiny, but we want to clarify it that these details were necessary so as to see how the detaining authority had arrived at the subjective satisfaction. There has to be an element of truth in the story and if there are such circumstances, that will disbelieve or create doubts about the story. Then the detaining authorities are not justified in believing such stories in order to arrive at subjective satisfaction. As regards witness 'B', he says that petitioner met him within the premises of bus stand. Petitioner asked him amount for eating mutton and drinking liquor. Witness refused and thereupon, the petitioner slapped him and gave him threat. This would be the personal act against the said witness, which would not have created public order situation.

8. 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.

9. For the aforesaid reasons, the petition deserves to be allowed. Hence, following order is passed :-

ORDER

- I)** The Writ Petition is allowed.
- II)** Detention order dated 22.12.2023 passed by respondent No.2 bearing No.2023 DC-1/KAVI-792/2023/1606 and confirmation order dated 13.02.2024 passed by respondent No.1 are hereby quashed and set aside.
- III)** Petitioner viz. Salim Khan Jalil Khan Pathan 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