



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1237 OF 2024

Shaikh Akhil Shaikh Hasnoddin,
Age: 31 years, Occu.: Business,
R/o. Hussainiya Colony,
Telgaon Naka, Beed.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai.
2. The District Magistrate-Collector,
Office of District Collector,
Beed.
3. The Superintendent of Police,
Police Superintendent Office,
Beed.
4. The Sub Divisional Police Officer,
Sub Division, Beed.
5. Police Inspector,
Police Station, Beed City,
Beed.
6. The Superintendent of Jail,
Central Prison,
Harsul, Aurangabad.

.. Respondents

...

Mr. Saeed S. Shaikh, Advocate for the petitioner.
Mr. S. A. Gaikwad, Advocate for the respondents/State.

...

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

DATE : 07 OCTOBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate learned Advocate Mr. Saeed S. Shaikh for the petitioner and learned APP Mr. S. A. Gaikwad 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 02.05.2024 bearing Outward No.2024/RB-Desk-1/Pol-1/MPDA-10 passed by respondent No.2 as well as the approval order dated 10.05.2024 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, only two offences were considered i.e. Crime No.66 of 2024 registered with Beed City Police Station, District Beed for the offences punishable under Sections 341, 504, 506 of Indian Penal Code and Crime No.68 of 2024 registered with the same police station for the offences punishable under Sections 323, 504, 506 of Indian Penal Code. Learned Advocate for the petitioner submits that out of the two offences considered for passing the detention order, one i.e. Crime No.68 of 2024 is a non cognizable offence, which ought not to have been considered. Further, out of seven offences shown to be against the petitioner, the petitioner was convicted by the Assistant Sessions Judge, Beed on 17.10.2019 and thereafter, acquitted in Appeal by learned Sessions Judge, Beed on 30.06.2020 in the case arising out of Crime No.100 of 2015 for the offence punishable under Section 392 read with Section 34 of Indian Penal Code. Still when the grounds of detention were given on 02.05.2024, it has been stated that the petitioner has been convicted. Though the said offence is stated to be not considered, yet the detaining authority has observed that the documents which were tendered before her were considered. That means, she had considered the statement by

the sponsoring authority that the petitioner has been convicted in the said case. Therefore, it can be seen that there was no proper application of mind and the subjective satisfaction of the detaining authority. If we consider the facts in Crime No.66 of 2024 and the statements of in-camera witnesses, then it can be seen that at the most, it would have raised law and order situation and not the public order. He also submits that the representation filed by the petitioner on 08.07.2024 was not considered immediately by the State authority and, therefore, the impugned order deserves to be 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 "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 is relies upon the affidavit-in-reply of Ms. Deepa Mudhol Munde, the then District Magistrate, Beed, and her affidavit-in-reply dated 07.10.2024. She has stated that she had arrived at the subjective satisfaction before concluding that the petitioner as a dangerous person. She further states that her order has been approved by the State Government and also by the Advisory Board. Thereafter, the confirmation has been given.

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 and the foremost fact to be noted is that out of the two offences which were considered for passing detention order, one is Crime No.66 of 2024 under Sections 341, 504, 506 read with Section 34 of Indian Penal Code, which was still under investigation. It appears from the contents of the FIR that the wife of the informant in Crime No.66 of 2024 had lodged FIR against an unknown person in 2022, who had committed theft/snatched the gold chain from her neck. After investigation, the police had made the present petitioner as accused in that matter. We have perused the FIR given by the wife of the

informant. It is Crime No.61 of 2023 dated 14.02.2023. It appears that in Crime No.66 of 2024, the concerned informant has wrongly stated that the said FIR is given in 2022. The charge-sheet was against the present petitioner and one more person, though the FIR is against an unknown person. As regards Crime No.66 of 2024 is concerned, the informant says that when the petitioner met him in vegetable market he says that since he has received his gold why he is not taking back the case and threat was given. This shows that the action was personal or individual. At the most, it would have created law and order situation. In respect of second case, i.e. Crime No.68 of 2024, it is a non cognizable case. Learned APP clarifies that the application under Section 155(2) of the Code of Criminal Procedure was filed by the Investigating Officer for investigation, but there is no order. If this is the situation, then the detaining authority ought to have considered that there is no procedure completed by the police and, therefore, even the investigation by the police officer was not permitted till the permission is given by the Magistrate.

8. The statements of in-camera witnesses 'A' and 'B' would show that the petitioner had demanded amount from them and when they refused, they were threatened, assaulted and alleged to

have been robbed. This would also raise the individual action. Now, it is stated that due to the said action on the part of the petitioner, the people, who were present had fled away and the shopkeepers, whose shops were near the spot, had closed down their shops. We must observe here that the sponsoring authority had not recorded the statements of those shopkeepers to support the statements of these in-camera statements and to place it on record that really, people afraid of the petitioner and therefore, they are not coming forward for giving complaints. The excuse that due to the fear, the FIR was not lodged by the witnesses may not be always sufficient to infer that the petitioner's activity would create public order situation. The another important aspect which has not been addressed by the detaining authority is that the ordinary law would not have been sufficient to curb the activities of the petitioner taking into consideration the two offences those were considered for passing the detention order. It is stated that in respect of Crime No.66 of 2024, notice under Section 41-A of the Code of Criminal Procedure was issued. The police have not taken action of cancellation of bail, in view of commission of that offence, in the earlier offences which are still pending for trial.

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 02.05.2024 bearing Outward No.2024/RB-Desk-1/Pol-1/MPDA-10 passed by respondent No.2 as well as the approval order dated 10.05.2024 and the confirmation order dated 24.06.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner - Shaikh Akhil Shaikh Hasnoddin 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