



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1269 OF 2024

Devanand @ Sonu Shivaji Jadhav
Age: 23 years,
Siddharthnagar, Jawla Palsi Road,
Hingoli.

.. Petitioner

Versus

1. District Magistrate,
Hingoli.
2. The State of Maharashtra,
Through the Secretary Home
Department (Spl.), Mantralaya,
Mumbai.
3. The Superintendent,
Parbhani 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 &
R. W. JOSHI, JJ.**

DATE : 12 NOVEMBER 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 22.05.2024 bearing No. 2024 DC-1/KAVI-251/2024/1655 passed by respondent No.1 as well as the approval order dated 31.05.2024 and the confirmation order dated 05.07.2024 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, two offences were considered i.e. Crime No.66 of 2024 registered with Hingoli Rural Police Station, District Hingoli for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code and Crime No.294 of 2024 registered with Hingoli City Police Station, District Hingoli for the offences punishable under Sections 324, 323, 294, 506 read with Section 34 of Indian Penal Code. Learned Advocate for the petitioner

submits that though only two offences shown to have been considered for passing the detention order, however, in paragraph No.4.3 of the impugned order, all the seven offences have been considered and then it is stated that graph of committing offence by the petitioner is going high day by day, thereby in fact all the offences were considered by the detaining authority for passing the detention order, which is illegal as there was no live link between the first offence that was allegedly committed i.e. Crime No.161 of 2021. The two offences which were stated to have been considered were under Sections 324 etc. of Indian Penal Code and it can be seen from the FIR that at the most law and order situation would have been created, but there was no question of involvement of public order or breach of public order. Similar is the case as regards the statements of in-camera witnesses 'A' and 'B'. The detaining authority had simply considered that the earlier writ petition challenging the earlier detention order was allowed by this Court i.e. Criminal Writ Petition No.1505 of 2023 decided on 16.01.2024, but the observations and the law therein has absolutely not been considered. The detaining authorities are in fact without considering the law laid down are passing illegal orders. Therefore, the orders cannot be allowed to sustain.

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 relying upon the affidavit-in-reply filed by Mr. Jitendra Shrikumar Papalkar, District Magistrate, Hingoli wherein he has stated as to what is the material before him to arrive at a conclusion/subjective satisfaction for passing the detention order.

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 Bujji (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. As aforesaid though the impugned order shows that only two offences i.e. Crime No.294 of 2024 for the offences punishable under Sections 324, 323, 294, 506 read with Section 34 of Indian Penal Code and Crime No.66 of 2024 for the offences punishable under Sections 326, 323, 504, 506 read with Section 34 of Indian Penal Code stated to have been considered, yet paragraph No.4.3 of the impugned order considers all the offences which are registered against the petitioner right from 2021. Then it is stated that there are in all seven offences registered against the petitioner, in which people from different caste, community, occupation and age group, were involved. He has taken different accused persons along with him while committing those seven offences and the said offences are committed at different places by using dangerous weapons. He is repeating offences and also increasing the area where he is committing the offences. All these observations would show that there was a consideration by the detaining authority for arriving at the conclusion that the petitioner is a dangerous person, when in fact there was no live link between the earlier offences. Another fact to be noted is that in the earlier writ petition i.e.

Criminal Writ Petition No.1505 of 2023 in all two offences were considered by this Court and it was observed that there was no sufficient material to consider the petitioner as a dangerous person. Therefore out of those seven offences, now in paragraph No.4.3 two offences were already considered by this Court, which have been not taken note of in that context by the detaining authority, which he ought to have. The statements of witnesses in the earlier petition as well as this petition are also on the same line. It is not the chronology of the matter in respect of detention order that would decide the illegality or legality in the order, but there has to be a subjective satisfaction for taking cognizance and passing order under Section 3 of the MPDA. Those two offences which were stated to have been committed and the two in-camera statements would have at the most raised law and order situation and not the public order and, therefore, the impugned order deserves to be set aside.

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 stands allowed.
- II)** The detention order dated 22.05.2024 bearing No. 2024 DC-1/KAVI-251/2024/1655 passed by respondent No.1 as well as the approval order dated 31.05.2024 and the confirmation order dated 05.07.2024 passed by respondent No.2 are hereby quashed and set aside.
- III)** Petitioner – Devanand @ Sonu Shivaji Jadhav shall be released forthwith, if not required in any other offence.
- IV)** Rule is made absolute in the above terms.

[R. W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm