



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1291 OF 2024

Atish s/o Jivansingh Thakur
Age: 22 years, Occu.: Labour,
R/o. Asadvan, Nanded,
Taluka and District Nanded.

.. Petitioner

Versus

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

.. Respondents

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Mr. S. S. Gangakhedkar, Advocate for the petitioner.

Mrs. P. R. Bharaswadkar, APP for the respondents – State.

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

DATE : 02 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. S. S. Gangakhedkar for the
petitioner and learned APP Mrs. P. R. Bharaswadkar the for

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 bearing No.2023/RB-1/DESK-2/T-4/MPDA/CR-71 passed by respondent No.2 on 28.03.2024 and the approval order dated 04.04.2024 as well as the confirmation order dated 15.05.2024 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 one offence is considered i.e. Crime No.821 of 2023 registered with Nanded Rural Police Station, District Nanded for the offence punishable under Section 4 punishable under Section 25 of the Indian Arms Act. Learned Advocate for the petitioner submitted that the proposal was submitted on 17.11.2023 and

the detention order has been passed on 28.03.2024. Therefore, there is inordinate delay of four months. As per the record, the date of the last offence is 16.11.2023, but there was already a communication dated 15.11.2023, which reflects that it was a predetermined act against the petitioner to initiate action under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the "M.P.D.A. Act"). The respondents have committed error in categorizing the petitioner as dangerous person only on the basis of one offence. In that offence also the petitioner was not arrested but notice under Section 41A of the Code of Criminal Procedure was issued against him. The last and only offence considered for passing detaining order and the two in-camera statements would at the most disclose law and order situation and would not have created public order and, therefore, the impugned orders deserve to be quashed and 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 M.P.D.A. 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. He relies on the affidavit of Abhijit Rajendra Raut, the District Magistrate, Nanded, who supports the action and tries to demonstrate as to how he had arrived at the subjective satisfaction. He submits that the detaining authority had verified the in-camera statements on 27.03.2024 and immediately on the next day i.e. 28.03.2024, the detention order has been passed. The matter was placed before the Advisory Board and opinion was sought and thereafter the detention order has been confirmed. Therefore, there is no procedural delay. In the last offence, it is alleged that the petitioner was found having Khanjar (Dagger) and was found in public place. The in-camera statement of witness 'A' would show that the petitioner was holding sword on the public road, when witness 'A' resisted, the petitioner by taking amount from his pocket of the pant assaulted him with the sword and took out amount of Rs.3,000/-. Though he raised voice, but after seeing sword in the hand of petitioner, the people around fled away. He

could not lodge the report due to the terror of the petitioner. Similar is the case of witness 'B' and at that time, he had shown Dagger to the said witness to extract amount of Rs.3,000/-. These activities of the petitioner prompted the detaining authority to consider him as a dangerous person. The statements of police authorities have also been taken, who have knowledge about the activities of the petitioner in the area.

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. In **Nevanath Bujji etc. (Supra)**, after considering various judgments, the legal position has been summarized as follows -

“43. We summarize our conclusions as under :-

- (i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,
- (ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,
- (iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective

satisfaction would be vitiated,

- (iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,
- (v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,
- (vi) The satisfaction cannot be inferred by mere statement in the order that "it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order". Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,
- (vii) Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,
- (viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of

the application of mind to the relevant and material facts available on the record, and

- (ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention. For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.”

8. 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 Buji etc. (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 fact to be noted here is that the proposal by the sponsoring authority was submitted on 17.11.2023 and there is also a communication of 16.11.2023 also wherein it is stated that the statements of in-camera witnesses have been recorded. Then it appears that SDPO had verified the statements of those in-camera statements on 20.11.2023, but the detaining authority has considered them on 27.03.2024. There is no explanation as to why the District Magistrate/Detaining Authority had no time to verify those witnesses prior to 27.03.2024. Though he has passed the detention order on 28.03.2024, definitely, there is inordinate delay of at-least four months in passing the order. If the petitioner is to be considered as a dangerous person, then security of people cannot be left as it is for a period of four months. Therefore, the impugned order suffers from delay.

9. The offence, which was considered for detention order is only one i.e. Crime No.821 of 2023 under Section 4 punishable under Section 25 of the Arms Act, stated to have been committed on 15.11.2023 for which FIR has been lodged on 16.11.2023. Then on the same day, the proposal has been prepared and sent

on 17.11.2023. These events certainly show that the action against the petitioner was predetermined. When the law requires that while passing detention order the detaining authority should arrive at subjective satisfaction, then the order should reflect that all the necessary documents were considered by the detaining authority. As per the FIR i.e. Crime No.821 of 2023, the police were patrolling near Ravi Nagar in Nanded, where they found the petitioner and upon his search, it is stated that dagger having iron blade of 37 cm and handle of 11 cm was found in his possession. Interestingly, it is stated that secret information was received that the petitioner was having dagger in his possession and then the petitioner was taken in custody by the police party by going to the spot and the said dagger was found on his waist. It is not clear as to whether it was concealed inside the clothes or it was visible to the public. The documents which were supplied to the petitioner appear to be not containing the panchanama. The matter is still under investigation. Important point to be noted is that Section 4 of the Arms Act requires that the Central Government should issue Notification regarding prohibition of a weapon in a particular area. That Notification was not placed before the detaining authority by the sponsoring authority. The

detention order does not specifically state that he had gone through such Notification. We are aware that in the present proceedings, we cannot sit as an appellate Court, but we are considering these facts to arrive at a conclusion as to whether there was material before the detaining authority to arrive at a subjective satisfaction. When these documents were not perused by the detaining authority, we hold that there was no subjective satisfaction arrived at by the detaining authority in the present case before passing the impugned order.

10. The second question that would arise as to whether the statements of the in-camera witnesses were to such an extent that it would create a problem of public order. To explain this concept, we may take help of the observations in **Nevanath** (*Supra*) made in paragraph No.32 :-

“32. The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression ‘law and order’ is wider in scope inasmuch as contravention of law always affects order, ‘Public order’ has a narrower ambit, and could be affected by only such contravention, which affects that community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of

‘law and order’ and ‘public order’ is one of degree and extent of the reach, of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. In other words, the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. [See: *Union of India v. Amrit Lal Manchanda*, (2004) 3 SCC 75].”

11. 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 offence 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.

12. 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 28.03.2024 passed by respondent No.2 bearing No.2023/RB-1/DESK-2/T-4/MPDA/CR-71 and approval order dated 04.04.2024 as well as confirmation order dated 15.05.2024 passed by respondent No.1, are hereby quashed and set aside.
- III)** Petitioner viz. Atish Jivansingh Thakur 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