



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1294 OF 2024

Rabjyotsingh @ Gabya Jasavindarsingh Tiwana,
Age; 24 years, Occu.: Labour,
R/o. Baba Nidanshingh
Colony, Bhagatsingh Road,
Nanded, Tq. And Dist. 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,
Dist. Aurangabad

.. Respondents

...

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

Mr. G. A. Kulkarni, APP for the respondents – State.

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

DATE : 23 OCTOBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. S. S. Gangakhedkar for the
petitioner and learned APP Mr. G. A. Kulkarni 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 dated 29.03.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-33 passed by respondent No.2 as well as the approval order dated 08.04.2024 and the confirmation order dated 31.05.2024 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 was considered i.e. Crime No.61 of 2024 registered with Itwara Police Station, District Nanded for the offence punishable under Section 143 of Indian Penal Code and under Section 4 punishable under Section 25 of the Indian Arms Act. Learned Advocate for the petitioner submits that both the cases which were considered for passing the detention order were under investigation. It has been held by this Court in **Rama**

Mariba Devkar Vs. The State of Maharashtra and others, [Criminal Writ Petition No.1007 of 2024 decided by this Court on 05.09.2024], that the detaining authority should see whether Notification under Section 4 of the Arms Act has been issued by the Central Government prohibiting a particular weapon in a particular area. Such Notification was not placed before the detaining authority by the sponsoring authority and therefore, it cannot be said that there was a subjective satisfaction. Here, in this case also such Notification has not been produced, nor it was made available to the petitioner. A specific ground was also raised in the petition that the statements of in-camera witnesses 'A' and 'B' were not supplied to the petitioner. In the affidavit-in-reply, this point has not been clarified or denied. When vital documents have been withheld by the detaining authority from the petitioner, such order cannot be allowed to sustain. One more ground that was raised is that the documents which were supplied contains many illegible pages. It was the bounden duty of the detaining authority to supply legible copies. On this count also, the impugned order suffers.

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 of Mr. Abhijit Rajendra Raut, the District Magistrate, Nanded, wherein he has tried to support his order by giving the details which according to him led to his subjective satisfaction. The petitioner always carries weapons like *Khanjar*, Sword and even certain times pistol and therefore, the material that was placed before the detaining authority was sufficient to arrive at a conclusion that ordinary legal course would not have stopped 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. Certainly, those observations from ***Rama Mariba Devkar (Supra)*** by this Court are required to be taken into consideration. Here, only one case which was considered for passing the detention order was stated to be under Section 143 of the Indian Penal Code and under Section 4 punishable under Section 25 of the Indian Arms Act. As regards the said i.e. Crime No.61 of 2024 is concerned, it was stated that a video was made public, wherein the petitioner had gathered along with his associates in front of his house. They had cut cake, screamed and bursted fire crackers. In fact, coming together, cutting cake, even screaming and bursting fire crackers independently cannot amount to offence unless the circumstances showed that it was with an intention to spread terror. The FIR does not say as to whether slogans were shouted at that time. Further, it is stated that the said cake was cut by a dagger. Now, when the investigation is still going on and the action of lodging the FIR is taken only on the basis of video, the detaining authority ought to have waited for investigation to be complete. Unless the gathering

of people is with an intention to commit an offence, ingredients of Section 143 of Indian Penal Code will not get attracted. Now, the prosecution wants to say that the offence which was intended to create or commit was under Section 4 punishable under Section 25 of the Indian Arms Act. For that purpose, then the Notification which is mandatory to be issued under Section 4 by the Central Government or if there are rules then with permission or delegation of authority from the Central Government, by the State Government upon authorization, was necessary. The impugned order does not say that such Notification was placed before the detaining authority and it was considered by respondent No.2. The documents on record would show that the FIR came to be lodged on 10.03.2024 and it is stated that on 09.03.2024 around 8.00 p.m., the police authority had seen the video that was posted on Instagram. It is then stated that from the sources, it was noted that the incident in the video was around 3.00 a.m. of 09.03.2024. Who had posted that video on the Instagram was not revealed till the detention order was passed. On 10.03.2024 then it is stated that one *Khanjar* has been seized from the petitioner. The seizure document does not show or mention from where that weapon was taken out by the petitioner and produced

before the police officer. When the detaining authority is taking such a drastic step under detention laws, then the subjective satisfaction cannot be only on the face value of documents. Petitioner was arrested on 11.03.2024 at 14.41 hours. Another interesting point to be noted is that in the said video, certain other persons were also seen. The documents which were supplied to the petitioner would show that the notice under Section 41-A(1) of the Code of Criminal Procedure was given to other accused persons. Only on the basis of earlier offences, it appears that the petitioner was arrested. When detention order is passed against the petitioner on the basis of one offence and the other two in-camera statements and in the said offence there were other accused persons also, then it appears that the sponsoring authority has adopted pick and choose method against the petitioner. We are therefore of the opinion that the material that was before the detaining authority was not sufficient to arrive at a subjective satisfaction and also not sufficient to take action under the detention laws. There is absolutely no answer to the grounds raised by the petitioner that the copies of in-camera statements were not made available to the petitioner and legible copies of the documents were not supplied

to him.

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 29.03.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-33 passed by respondent No.2 as well as the approval order dated 08.04.2024 and the confirmation order dated 31.05.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Rabjyotsingh @ Gabya Jasavindarsingh Tiwana 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