



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1328 OF 2024

Ravi @ Maya Mahadev Tayade,
Age: 42, Occu.: Labour,
R/o. Bhoiwada Muktainagar,
Tal. Muktainagar, Dist. Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary
Home Department (Special)
Mantralaya, Mumbai-32.
2. The District Magistrate Jalgaon,
District Jalgaon.
3. The Superintendent of Central
Prison, Kolhapur,
District Kolhapur.

.. Respondents

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Mr. Mohd. Sharef Latif, Advocate for the Petitioner.
Mr. V. K. Kotecha, APP for the Respondents – State.

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

DATE : 25 OCTOBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Mohd. Sharef Latif for the
petitioner and learned APP Mr. V. K. Kotecha 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 03.02.2024 bearing No. Dandapra/KAVI/MPDA/03/2024 passed by respondent No.2 as well as the approval order dated 13.02.2024 and the confirmation order dated 19.03.2024 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, five offences were considered i.e. (i) Crime No.298 of 2021 registered with Muktainagar Police Station, District Jalgaon for the offence punishable under Section 3 punishable under Section 25 of the Indian Arms Act, (ii) Crime No.344 of 2021 registered with Muktainagar Police Station, District Jalgaon for the offences punishable under Sections 392, 341, 504, 506, 379 read with Section 34 of Indian Penal Code and under Sections 130(1)/177,

158/177, 122/177 of Motor Vehicles Act, 1988, (iii) Crime No.382 of 2023 registered with Bhusawal Bazaar Peth Police Station, District Jalgaon for the offences punishable under Sections 377, 392, 307, 386, 504, 506 read with Section 34 of Indian Penal Code, (iv) Crime No.318 of 2023 registered with Muktainagar Police Station, District Jalgaon for the offence punishable under Section 3, 7 punishable under Section 25 of the Indian Arms Act, under Section 142 of the Maharashtra Police Act and (v) Crime No.372 of 2023 registered with Muktainagar Police Station, District Jalgaon for the offences punishable under Sections 394, 427 read with Section 34 of Indian Penal Code. Learned Advocate for the petitioner submits that the detaining authority has considered the offences from 2021 for passing the detention order. There was no live link. Further, there was delay in passing the order. It appears that the proposal was submitted on 13.11.2023, however, detention order has been passed on 03.02.2024. The nature of the offences can be considered as individual in nature and, therefore, the material which was before the detaining authority was not sufficient to arrive at the subjective satisfaction. Even the in-camera statements would show that public was not involved. At the most, law and order

situation would have been created due to the activities of the petitioner.

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 Mr. Ayush Prasad, District Magistrate, Jalgaon. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. He further states that his order has been approved by the State Government and also by the Advisory Board. Thereafter, the confirmation has been given. Though two cases from 2021 are also considered, yet from 2023 onwards three

offences have been considered which are serious in nature i.e. under Sections 392, 377, 307, 394 of Indian Penal Code and offences under the Arms Act. The externment order has also been considered and, therefore, ordinary law was not sufficient to curtail 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) Aameena 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. No doubt, in the present case, there are statements in the impugned order which may paint a picture that the detaining authority is considering even the old cases, but the fact remains is that in 2021, action under Section 110 of the Code of Criminal Procedure was taken. Thereafter on the basis of report from Bhusaval Bazar Peth Police Station, Superintendent of Police, Jalgaon passed an order on 28.03.2023 under Section 55 of the Mumbai Police Act and he had externed the petitioner from entire Jalgaon District for a period of two years. We had specifically made a query to the learned Advocate for the petitioner that whether the petitioner had challenged the said

order of externment. He got the matter adjourned and today he submits that the petitioner has not challenged that order before any authority. This indicates that from 28.03.2023, the petitioner was externed for two years i.e. till 28.03.2025. He has been externed from entire Jalgaon District. Still offence vide Crime No.382 of 2023 was registered on 22.07.2023 with Bhusaval Bazar Peth Police Station, District Jalgaon for the offences punishable under Sections 377, 392, 307, 386, 504, 506 read with Section 34 of Indian Penal Code, in which the petitioner was arrested on 06.11.2023. Prior to that, during the period of externment, offence vide Crime No.318 of 2023 was registered against the petitioner on 29.08.2023 under Sections 3 and 7 punishable under Section 25 of the Indian Arms Act and under Section 147 of the Mumbai Police Act and on the same day, he came to be arrested. Further offence vide Crime No.372 of 2023 came to be registered on 09.10.2023 under Sections 394, 427 read with Section 34 of Indian Penal Code, in which the petitioner was arrested on the same day. These two offences were registered with Muktainagar Police Station, which is in district Jalgaon. Thus, the point which we consider here is that in spite of petitioner being externed out of the district, he breaches that

order, comes inside the district and commits offence. This indicates that the ordinary law was then not sufficient to curb the activities of the petitioner. This fact is sufficient to support the action taken. The said order has been then confirmed by the Advisory Board and also by the State. Therefore, we do not find this to be a fit case where we should exercise our constitutional powers.

8. The Writ Petition stands dismissed.

9. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm