



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1331 OF 2024

Deepak s/o Laxman Dongre
Age: 31 years, Occu.: Agri.,
R/o. Mandeulgaon, Tq. Badnapur,
District Jalna.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate/District Collector,
Jalna, Collector Office, Jalna,
Dist. Jalna.
3. The Superintendent of Police Jalna,
District Jalna.
4. The Superintendent of Central Prison
Harsul, Chhatrapati Sambhajnagar,
Dist. Chhatrapati Sambhajnagar.

.. Respondents

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Mr. V. D. Sapkal, Senior Counsel a/w Mr. Onkar Waghule i/b Mr. V. V. Udhan, 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 : 24 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Senior Counsel Mr. V. D. Sapkal instructed
by Mr. V. V. Udhan 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 10.07.2024 bearing Outward No.2024/RB-Desk-1/Pol-1/MPDA/Kavi passed by respondent No.2 as well as the approval order dated 18.07.2024 and the confirmation order dated 30.08.2024 passed by respondent No.1, by invoking the powers of this Court under Article 226 of the Constitution of India.

4. Learned Senior Counsel 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, three offences were considered i.e. Crime No.44 of 2024 registered with Badnapur Police Station, District Jalna for the offences punishable under Sections 294, 506, 507 of Indian Penal Code, Crime No.43 of 2024 registered with Mukundwadi Police Station, District Chhatrapati Sambhajanagar

for the offences punishable under Sections 294, 504, 506, 507 of Indian Penal Code and Crime No.105 of 2024 registered with Chandanzira Police Station, District Jalna for the offences punishable under Sections 354, 452, 323, 504, 506 read with Section 34 of Indian Penal Code. Learned Senior Counsel submitted that it appears from the perusal of the detention order that all the seven offences were considered by the detaining authority to hold the petitioner as a dangerous person, which is against the law in view of the fact that the first offence is stated to have been committed on 02.09.2018 and there was no live link till the date of the detention order. The most glaring part is that the detaining authority had considered the externment order bearing No.2020/MAG/CR-03 dated 15.12.2022 whereby the petitioner was externed out of Jalna District for two years under the provisions of Section 56(1)(a)(b) of the Maharashtra Police Act, 1951. The detaining authority failed to consider that the said matter had gone up to Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 28.01.2022 in **Deepak s/o Laxman Dongre Vs. The State of Maharashtra and others, [Special Leave Petition (Cri.) No.9032 of 2021]** observed that there is involvement of local MLA Narayan Kuche in lodging the offences against the

petitioner and then the said order of externment as well as judgment of this Court dated 20.08.2021 was quashed and set aside. The detaining authority had not considered the order passed by the Hon'ble Supreme Court. Further, the detaining authority has also not considered that the anticipatory bail has been granted to the petitioner in Crime No.105 of 2024 by learned Sessions Judge, Jalna on 26.03.2024. The observations in the said bail application that there is no offence made out against the applicant has not been considered. There was no question of disturbance to the public order and all these facts have not been considered by the Advisory Board and, therefore, approval and confirmation of the same deserves to be set aside.

5. Learned Senior Counsel for the petitioner, in support of his submissions, relies on the following decisions :-

(i) Aameena Begum Vs. The State of Tamilnadu and Ors., [AIR ONLINE 2023 SC 706];

(ii) Khaja Bilal Ahmed Vs. State of Telangana, [AIR ONLINE 2019 SC 1808];

(iii) Pankaj Singh Vs. State of U.P., [2018 (1) ALJ 667];

(iv) Heisnam Chaoba Singh Vs. Union of India, [AIR ONLINE 2021 CAL 867];

(v) Alakshit s/o Rajesh Ambade Vs. The State of Maharashtra and others, [Criminal Writ Petition No.626 of 2022 decided by this Court Bench at Nagpur on 20.12.2022];

(vi) Lahu Shrirang Gatkhal Vs. State of Maharashtra, Through the Secretary, [AIR 2017 SC 3770];

(vii) Sayyed Mushtaq @ Builder s/o Sayyed Gafur, [Criminal Writ Petition No.1548 of 2022 decided by the coordinate Bench of this Court on 22.06.2023];

(viii) Vijay Baburao Avhad Vs. State of Maharashtra and others, [2023 DGLS (Bom.) 982];

(ix) Nilesh Bansilal Gaywal @ Ghaywal Vs. State of Maharashtra and others, [2022 (3) Mh.L.J. (Cri.) 85];

(x) Bharat Kisan Mekale Vs. Commissioner of Police and others, [2021 All.M.R. (Cri.) 3783];

(xi) Yogesh Udaram Gokhe Vs. The State of Maharashtra and another, [Criminal Writ Petition No.183 of 2024 decided by this Court Bench at Nagpur on 03.07.2024].

(xii) Omkar Umakant Kasbe Vs. State of Maharashtra, [2024 DGLS (Bom.) 2549].

(xiii) Kiran Kailas Pandit Vs. District Magistrate, [2024 DGLS (Bom.) 2731].

6. 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. He relies on the affidavit-in-reply of Dr. Shrikrishna Panchal, the District Magistrate, Jalna, who had tried to demonstrate that there is no procedural lacuna in the matter and which documents he had considered for arriving at the subjective satisfaction. He denies that he considered all the seven offences to arrive at the conclusion that the petitioner is a dangerous person. He says that the preventive action in the form of externment was taken against the petitioner, however, it had proved to be futile.

7. 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) **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];**
- (iii) **Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, [1995 (3) SCC 237];**
- (iv) **Pushkar Mukherjee and Ors. Vs. The State of West Bengal, [AIR 1970 SC 852];**
- (v) **Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751) and;**
- (vi) **Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, [(1981) 4 SCC 647].**

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 (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. In the above-said catena of judgments of this Court as well as Hon'ble Supreme Court, it can be seen that the detaining authority should arrive at a subjective satisfaction before passing the detention order. While arriving at such subjective satisfaction, the detaining authority should consider the law laid down on the point by the Hon'ble Apex Court as well as this Court. Apart from those guidelines, no formula can be laid down as to how the authority can arrive at the subjective satisfaction. The glaring fact in the present case is that the sponsoring authority appears to have not placed on record the decision of the Hon'ble Supreme Court dated 28.01.2022, thereby setting aside the externment order dated 15.12.2020. The detaining authority has wrongly mentioned the date in paragraph No.3, the tabular chart in respect of externment proceeding that the said order was passed on 15.12.2022. In fact, there was no other proceeding of externment against the petitioner. When that order was set aside about more than two years prior to the detention order, then that order could not have been considered by the District Magistrate. On the contrary, he went on to observe that the preventive action under externment proceedings under

the Maharashtra Police Act has proved to be futile to prevent petitioner from indulging in such activities. Thus, when set aside order has been considered for passing detention order, then such order cannot be allowed to exist even for a minute.

9. At the cost of repetition we would like to say that there is no set formula as to how the detaining authority can arrive at the subjective satisfaction. However, since he is a District Magistrate, in our opinion when he is considering the facts of the case in an offence against the petitioner, then he will have to consider whether those contentions in the FIR are making out ingredients of the offence or not. The District Magistrate while exercising the powers under M.P.D.A. cannot go only by the Sections/offences invoked by police. Respondent No.2 has considered Crime No.44 of 2024 registered with Badnapur Police Station, District Jalna and Crime No.43 of 2024 registered with Mukundwadi Police Station, District Chhatrapati Sambhajinagar. Both the offences have been registered on 07.02.2024 for the offences punishable under Sections 294, 506, 507 of Indian Penal Code and under Sections 294, 504, 506, 507 of Indian Penal Code respectively. Perusal of the FIRs would show that the offence at Badnapur police station is lodged by Devichand Tilakchand Kuche and the

offence with Mukundwadi Police Station is registered by one Lalit Narayan Kuche. It appears that they are uncle and nephew. Since the Hon'ble Supreme Court in Special Leave Petition challenging the externment order has observed that the involvement of the petitioner in the offence is at the behest of local MLA Narayan Tilakchand Kuche, it can be considered that the informant in Badnapur Police Station is the local MLA's brother and the minor informant with Mukundwadi Police Station is the son of local MLA. In both the FIRs it is stated that an unknown person was calling both of them from different mobile numbers and then abused them in filthy language on mobile. Interestingly, the police have registered offence under Section 294 of Indian Penal Code, which is the only cognizable offence, otherwise the other offences are non cognizable in nature. The ingredients of Section 294 of Indian Penal Code ought to have been considered by the District Magistrate i.e. detaining authority for arriving at the subjective satisfaction. At the cost of repetition, we say that subjective satisfaction is not restricted to the registration of the offence, number of offences, but it should be demonstrated by the sponsoring authority that ingredients of the said offence are made out in view of the

contents in the FIR and the other documents if any. For proving an offence under Section 294 of Indian Penal Code, in ***Pawan Kumar vs. State of Haryana and Ors., [1996 (4) SCC 17]***, it has been held that “two particulars are required to be proved by the prosecution namely (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed.” Therefore, the facts of these two cases absolutely do not attract ingredients of Section 294 of Indian Penal Code. The detention order cannot be based on registration of non cognizable offence, but for that purpose the ordinary law of the land would be then sufficient. Therefore, once again it can be said that consideration of these two offences was illegality. As regards offence vide Crime No.105 of 2024 registered with Chandanzira Police Station, District Jalna is concerned, though the detaining authority has stated that the petitioner is on anticipatory bail in that matter, however, failed to consider the observations of a

judicial authority. It has been specifically observed that no offence under Section 354 of Indian Penal Code and POCSO Act have been made out. Further, the facts in the FIR would show that the petitioner was outside the house when some words were uttered by him. Therefore, even the ingredients of Section 452 of Indian Penal Code were not attracted against him. By the same order, the learned Sessions Judge has granted anticipatory bail to the co-accused also. Therefore, consideration of all these three offences by the detaining authority was erroneous. As regards in-camera statements of witness 'A' and 'B', interesting point to be noted is that their statements have been recorded on 24.06.2024 and 25.06.2024 and they say that incident as against them had taken place in the same month. One says that it was in second week and another says that it was in third week. Still, they have avoided to give the exact date. Though they have stated that the present petitioner roams around with weapons when the alleged incident with them had taken place, they have not stated that any weapon was used by the petitioner.

10. 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. It appears from the opinion of the Advisory Board made available to us dated 19.08.024 that the Advocate for the petitioner was heard. The fact about judgment of the Hon'ble Supreme Court was brought to notice, but Advisory Board has opined that the crimes relied upon by the authorities for passing externment order were not relied upon by the detaining authority. But we are of the opinion that the point of subjective satisfaction, that the said externment order though set aside was considered by the detaining authority on the point that it had not curbed activities of the petitioner, was not considered by the Advisory Board. Therefore, 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.

11. For the aforesaid, the petition deserves to be allowed. Hence, following order is passed :-

ORDER

I) The Writ Petition is allowed.

II) The detention order dated 10.07.2024 bearing No. Outward No.2024/RB-Desk-1/Pol-1/MPDA/Kavi-204 passed by respondent No.2 as well as the approval order dated 18.07.2024 and the confirmation order dated 30.08.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Deepak s/o Laxman Dongre 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