



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1340 OF 2024

Arjun s/o Prakash Lokhande
Age: 36 years, Occu.: Old Bhavsinghpura,
Aurangabad.

.. Petitioner

Versus

1. Commissioner of Police,
Aurangabad.
2. The State of Maharashtra
(Through the Secretary Home
Department (Spl.) Mantralaya, Mumbai)
3. The Superintendent
Aurangabad Central Prison,
Harsul, Aurangabad.

.. Respondents

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Mr. A. K. Bhosle, Advocate for the petitioner.

Mr. A. D. Wange, APP for the respondents – State.

...

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

DATE : 25 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. A. K. Bhosle for the petitioner
and learned APP Mr. A. D. Wange 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 17.06.2024 bearing D.O. No.2024/CB/MPDA/DET-09/CR-44 passed by respondent No.1 as well as the approval order dated 26.06.2024 and the confirmation order dated 07.08.2024 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.203 of 2024 registered with Cantonment Police Station, District Chhatrapati Sambhajinagar for the offences punishable under Sections 353, 341, 323, 504, 506, 188 read with Section 34 of Indian Penal Code and Crime No.265 of 2024 registered with Cantonment Police Station, District Chhatrapati Sambhajinagar for the offences punishable under Sections 326, 323, 504 of Indian Penal Code. Learned Advocate for the petitioner submits that the

detaining authority has not considered the fact that inCrime No.203 of 2024, the petitioner got anticipatory bail on 06.05.2024. The detaining authority is stated to have taken into consideration the two in-camera statements of witnesses 'A' and 'B' also. But all this would show that the incidences were individual in nature and those incidences would not have created public order situation. There was absolutely no subjective satisfaction. Even stale cases have been considered to arrive at a conclusion that the petitioner is a dangerous person. The representation of the petitioner has not been properly considered and the rejection is belated.

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. He relies on the affidavit-in-reply of respondent No.1 Mr. Sandip Bhimrao Patil, the then Commissioner of Police, Chhatrapati Sambhajnagar. He has reiterated as to how he had arrived at the subjective satisfaction and he states that the Advisory Board has given opinion that there are sufficient grounds for further detention of the detenu.

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. 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. The first offence i.e. Crime No.203 of 2024 came to be registered on the basis of the FIR lodged by Police Head Constable, Shriram Eknath Badne, which was against the petitioner and one another person, who is said to be the driver of D.J. vehicle. It is said that information was received to the police party, who was on patrolling that there is a traffic jam in Padegaon to Mitmita road. Therefore, they went to the said place and found that one D.J. vehicle was standing in the middle of the road on the occasion of marriage ceremony. The petitioner was

found dancing in front of that vehicle and the said vehicle was not allowing the other vehicles to overtake and, therefore, there was long queue of 2-3 kilometers of other vehicles. When he along with another police officer went near petitioner and requested him to give way to the other vehicles, at that time, it is said that the petitioner spoke arrogantly to him and gave him threat to get him suspended from the service and assaulted him. Interesting point to be noted is that in the FIR itself it is stated that “...तेथे लग्न समारंभा निमित्त रोडवर मध्य भागी डि.जे. गाडी क्र. MH-14-KL-17 संजोग डि.जे. असे गाडीवर लिहिलेले. त्या गाडी समोर अर्जुन प्रकाश लोखंडे हा उभा राहून नाचत होता...” It is hard to believe that the petitioner would have dancing alone in front of D.J. vehicle. There appears to be suppression of facts when it is said that the D.J. vehicle was for marriage purpose. That means, it was the marriage ceremony that was going, in which there was a D.J. vehicle and people were dancing. But it appears that only the petitioner has been prosecuted with that D.J. vehicle driver. Even on the basis of the contents of the FIR, it cannot be said that the act of the petitioner had created public order situation. Same is the case as regards another offence i.e. Crime No.265 of 2024, wherein it is stated that the informant was proceeding towards his home, the

petitioner hit the informant by a stone. When the informant asked him as to why he had hit the stone, the petitioner abused and assaulted informant. This complaint is also too personal and individual. As regards the in-camera statements of witnesses 'A' and 'B' are concerned, interesting point to be noted is that those are stated to have been taken on 05.06.2024 and 06.06.2024 respectively, however, the Deputy Commissioner of Police, who had got those statements verified, says that those persons were present before him on 10.05.2024 i.e. even prior to the statements and in both the cases, the incident is stated to have taken place in the first week of June 2024 and second week of May 2024. We take that there might be an inadvertence or error in mentioning the date, especially the month, however, we still observe that when it is a verification, then utmost care ought to have been taken by the Deputy Commissioner of Police while making endorsement. Even if it is taken that the verification was on 10.06.2024 by him and then by the detaining authority, it was sent on 17.06.2024. The contents of the same would show that public was not involved in the incident. Therefore, we arrive at a conclusion that the activities allegedly done by the petitioner would not have created public order situation.

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 is allowed.

II) The detention order dated 17.06.2024 bearing D.O. No.2024/CB/MPDA/DET-09/CR-44 passed by respondent No.1 as well as the approval order dated 26.06.2024 and the confirmation order dated 07.08.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner – Arjun s/o Prakash Lokhande 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