



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1347 OF 2024

Rohan s/o Pavan Gaikwad
Age: 24 years, Occu.: Labour,
R/o. Thigale Galli,
Near Datta Mandir.

.. Petitioner

Versus

1. The State of Maharashtra
Through Deputy Secretary,
Home Department (Special),
Mantralaya, Mumbai – 400 032
2. The District Magistrate
Office of the District Magistrate,
Collectorate, Beed.
3. The Superintendent of Police
Aurangabad Central Prison,
Aurangabad.
4. The Police Inspector,
Beed Police Station,
Tq. And Dist. Beed.

.. Respondents

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Ms. Shilpa A. Awchar, Advocate for the petitioners.
Mr. A. R. Kale, APP for the respondents/State.

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**CORAM : SMT. VIBHA KANKANWADI &
R. W. JOSHI, JJ.**

DATE : 13 NOVEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Ms. Shilpa L. Awchar for the
petitioner and learned APP Mr. A. R. Kale 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 19.04.2024 bearing No. 2024/RB-Desk-1/Pol-1/MPDA-07 passed by respondent No.2 as well as the approval order dated 30.04.2024 and the confirmation order dated 07.06.2024 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, two offences were considered i.e. Crime No.23 of 2024 registered with Peth Beed Police Station, District Beed for the offence punishable under Section 379 of Indian Penal Code and Crime No.60 of 2024 registered with Beed City Police Station, District Beed for the offences punishable under Sections 323, 504, 506 of Indian Penal Code. Learned Advocate for the petitioner submits that the two offences which were considered by the detaining

authority could not have been considered for passing detention order. One was under Section 379 of the Indian Penal Code and another was in fact a N.C. case and after taking permission under Section 155(2) of the Code of Criminal Procedure, it appears that further investigation was under progress. At the most, these offences would have created law and order situation and not the public order. Same is the case as regards in-camera statements of witnesses 'A' and 'B'. There was no subjective satisfaction and the detention order is not based on various decisions of this Court as well as of the Hon'ble Supreme Court. Learned Advocate for the petitioner relies on the decision in ***Prakash Chandrakant Kanjar Vs. The State of Maharashtra and another, [Criminal Writ Petition No.1285 of 2023 decided by Coordinate Bench of this Court on 19.10.2023]***, wherein it has been held that subjective satisfaction is a *sine qua non* for passing order under MPDA.

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 Ms. Depa Mudhol Munde, the then District Magistrate, Beed, which says what was the material which she had considered while passing the detention order and how her order was approved by the Advisory Board, then confirmed by the State Government. Therefore, the said order need not be interfered with.

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 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. As aforesaid, two offences were considered for passing the detention order. Crime No.23 of 2024 was under Section 379 of Indian Penal Code. Interesting point to be noted is

that what was stolen as per the FIR were two she-goats. How theft of she-goats can be taken as a matter of affecting public order itself is a question. Therefore, this is a classic example of non application of mind by the District Magistrate. The second offence is Crime No.60 of 2024 which was registered under Sections 323, 504, 506 of Indian Penal Code i.e. non cognizable offences. It appears that the permission under Section 155(2) of the Code of Criminal Procedure has been taken for investigation. Even if we consider the contents for a while, then it is stated that the informant was proceeding around 17.30 hours on 02.03.2024 and was intercepted by the petitioner and asked him as to why he had told his name to police and then he abused the informant and assaulted, as a result of which he fell down. Though he asked for help from the public, the public shut their shops and ran away. Important point to be noted is that this complainant has stated that his motorcycle was stolen and, therefore, he had lodged the report on 12.05.2023 with Shivajinagar Police Station, District Beed and he has the knowledge that the said motorcycle was stolen by the petitioner. But if we consider the chart of offences given by the sponsoring authority, there is no such offence registered on the basis of alleged complaint dated

12.05.2023, which should have been under Section 379 of the Indian Penal Code. If there was no FIR, where was the question for the petitioner to intercept with complainant and assault him. Furthermore, even that permission is taken under Section 155(2) of the Code of Criminal Procedure and the detaining authority did not wait till the investigation is over. That non cognizable offence is then considered for passing the detention order. Therefore, we are of the opinion that there was no material before the detaining authority to arrive at a subjective satisfaction. In respect of in-camera statements, at the most; even if we take the story in the statements as it is, it would result in law and order situation and not the public order. The present impugned order therefore, cannot be allowed to sustain.

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 stands allowed.

II) The detention order dated 19.04.2024 bearing No. 2024/RB-Desk-1/Pol-1/MPDA-07 passed by respondent No.2 as well as the approval order dated 30.04.2024 and the confirmation order dated 07.06.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Rohan s/o Pavan Gaikwad shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

[R. W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm