



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1532 OF 2024

Avej Khan s/o Gafar Khan Pathan
Age: 21 years, Occu.: Nil,
R/o. Near Neharu Statute, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.
At Present residing at Central Jail,
Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra
Home Department (Special)
Mantralaya, Mumbai.
2. District Magistrate, Parbhani,
District Parbhani.
3. The Superintendent of Police,
Parbhani, District Parbhani.
4. The Police Inspector,
Urban Police Station, Gangakhed,
Tq. Gangakhed, District Parbhani.

.. Respondents

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Mr. V. M. Lomte, Advocate for the petitioner.
Mr. A. M. Phule, APP for the respondents/State.

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

DATE : 27 NOVEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. V. M. Lomte for the petitioner
and learned APP Mr. A. M. Phule 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. Petitioner challenges the detention order dated 07.12.2023 bearing No. 2023/Home/A-1/POL/CR-02 passed by respondent No.2 as well as the approval order dated 15.12.2023 and the confirmation order dated 30.01.2024 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.272 of 2023 registered with Gangakhed Police Station, District Parbhani for the offences punishable under Sections 394, 326, 341, 323 read with Section 34 of Indian Penal Code and under Section 3 punishable under Section 25 of the Indian Arms Act and Crime No.292 of 2023 registered with Parbhani Rural Police Station, District Parbhani for the offence punishable under Section 3 punishable under

Section 25 of the Indian Arms Act. Learned Advocate for the petitioner submits that the detaining authority had considered two offences which would have not disturbed the public order taking into consideration the facts stated. There is delay in passing the order of detention. There was no subjective satisfaction of respondent No.2 before passing the order. So also, the fact that the petitioner has been released on bail in both the offences has not been properly considered.

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 relied on the affidavit-in-reply of Mr. Raghunath Gawade, District Magistrate, Parbhani. He

supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. He further submits that the continuous activities of the petitioner would show that he was creating danger to the society and the detaining authority had no option but to pass the detention order to curtail his criminal activities.

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)] 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. **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, the two offences which have been considered for passing the detention order are Crime No.272 of 2023 under Sections 394, 326, 341, 323 read with Section 34 of Indian Penal Code and Crime No.292 of 2023 under Section 3 punishable under Section 25 of the Indian Arms Act. Both the offences are still under police investigation. It is stated that in both the offences, there was use of illegal procured gun/pistol i.e. *Gavthi Katta*. It is not tried to be demonstrated by respondent

No.2 how the ordinary law would not have curtailed the activities of the petitioner. In both the matters the petitioner has been released on bail. Mere mention of the bail order is not sufficient. Whether the reasons given for bail were considered by the detaining authority or not is a question. At this stage, therefore, it can be certainly said that both the offences would not have created public order situation, but certainly *prima facie* they would have created the law and order situation. As regards the in-camera statements are concerned, the copies of the statements, which were supplied to the petitioner, do not bear the endorsements regarding perusal of those statements by the detaining authority or either personally verifying and confirming the contents of those statements. In the affidavit-in-reply also there is no statement that when respondent No.2 had seen and confirmed the contents of the statements of in-camera witnesses, thereby vital right of the petitioner has been withheld. Therefore, we arrive at a conclusion that the material before the detaining authority was not sufficient to arrive at a subjective satisfaction.

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 07.12.2023 bearing No. 2023/Home/A-1/POL/CR-02 passed by respondent No.2 as well as the approval order dated 15.12.2023 and the confirmation order dated 30.01.2024 passed by respondent No.1, are hereby quashed and set aside.
- III)** Petitioner – Avej Khan s/o Gafar Khan Pathan 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