



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1448 OF 2024

Amol Avinash Kunde
Age: 19 years,
R/o. Ekharka, Tq. Rahata,
Dist. Ahmednagar Chikatgaon,
R/o. Tq. Vaijapur, Dist. Chh.
Sambhajinagar.

.. Petitioner

Versus

1. District Magistrate
Chhatrapati Sambhajinagar.
2. The State of Maharashtra
(Through the Secretary Home
Department (Spl.) Mantralaya,
Mumbai)
3. The Superintendent
Central Prison,
Chhatrapati Sambhajinagar.

.. Respondents

...
Mr. Rupesh A. Jaiswal, Advocate for petitioner.
Mr. G. A. Kulkarni, APP for respondents/State.

...

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

DATE : 18 NOVEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Rupesh A. Jaiswal for the
petitioner and learned APP Mr. G. A. Kulkarni 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 10.11.2023 bearing No. D.O.2023/MPDA/DET-9/DC-381 passed by respondent No.1 as well as the approval order dated 17.11.2023 and the confirmation order dated 08.08.2024 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.266 of 2023 registered with Loni Police Station, District Chhatrapati Sambhajnagar for the offence punishable under Sections 399, 402 of Indian Penal Code, under Section 4 punishable under Section 25 of the Indian Arms Act and Crime No.376 of 2023 registered with Vaijapur Police Station, District Chhatrapati Sambhajnagar for the offences punishable under Sections 379, 511 read with Section

34 of Indian Penal Code. Learned Advocate for the petitioner submits that perusal of the above-said two offences which were considered for passing detention order as well as the in-camera statements of witnesses 'A' and 'B' would show that at the most law and order situation would have been created. Learned Advocate for the petitioner further submits that the detention order came to be passed on 10.11.2023, however, it was served on 26.06.2024. Therefore, there was delay in serving and it has not been properly explained, yet the impugned order has been passed, which is illegal.

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. Astik Kumar Pandey, the then District Magistrate, Chhatrapati Sambhajnagar/detaining authority wherein he tries to demonstrate as to how he had arrived at the subjective satisfaction. Learned APP further relied on the affidavit-in-reply of Dattatray G. Gawade, Superintendent, Chhatrapati Sambhajnagar Central Prison. After considering the aforesaid two offences and the statements of in-camera witnesses 'A' and 'B', the detaining authority has passed a reasoned order, which is then confirmed with the opinion of the Advisory Board and, thereafter, confirmed by the State Government on 08.08.2024.

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. The first offence i.e. Crime No.266 of 2023 came to be registered on the basis of the FIR lodged by Police Head Constable, Manohar Sitaram Gosavi, which was against the petitioner and other five persons. It is said that when informant along with police staff were on search of absconding accused, he

received information that on Shirdi Nagar Highway, near toll naka of Nirmal Pimpri, in the dark place, five to six persons were present in sumo vehicle and they are making preparation to commit dacoity. Thereafter, informant along with police staff reached there. On seeing police persons, one of those accused persons ran away and remaining five accused persons were apprehended and upon search, articles for committing dacoity i.e. one sharp knife, sickle, chilli powder, rope, screw driver and one white coloured Tata Sumo vehicle were found in the possession of the accused persons and, therefore, offence came to be registered against the petitioner and other four accused persons under Sections 399, 402 of Indian Penal Code and under Section 4 punishable under Section 25 of the Indian Arms Act. This entire story would show that general public was not involved. When public was not involved, the ordinary law would have taken its course. As regards Crime No.376 of 2023 is concerned, the contents of the FIR would show that at the most law and order situation would have been created and not the public order. Another aspect to be noted is that it appears that the proceedings under Section 110(a)(g) of the Code of Criminal Procedure were undertaken against the petitioner i.e. Chapter Case No.17 of

2023, but the present status that has been shown in the impugned order is 'in process'. If the said chapter case is in process, then the simultaneous proceedings ought not to have been entertained by the detaining authority. Though only two offences shown to have been considered for passing the detention order, however, it is reflected from the impugned order as well as the affidavit-in-reply of the detaining authority that old cases have also been considered for arriving at subjective satisfaction, which is illegal as there was no live link. The detention order in fact mainly suffers from delay, which is not properly explained and it appears that it has not been considered by the State Government as well as by the Advisory Board. Though affidavit-in-reply has been filed by respondent No.3, proper procedure under MPDA Act has not been followed. Neither the petitioner was declared as habitual offender, nor he was declared as absconding thereby taking the procedure of proclamation. There was no subjective satisfaction of the detaining authority and, therefore, the impugned order 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 10.11.2023 bearing No. D.O.2023/MPDA/DET-9/DC-381 passed by respondent No.1 as well as the approval order dated 17.11.2023 and the confirmation order dated 08.08.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner – Amol Avinash Kunde 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