



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.1581 OF 2024**

Mohammad Imran s/o Mohammad Latif  
Age: 24 years, Occu.: Student,  
R/o. Aurangabad Times Colony,  
Aurangabad.

**.. Petitioner**

***Versus***

1. The Police Commissioner,  
Aurangabad.
2. The Superintendent,  
Central Prison, Harsool,  
Aurangabad.
3. The State of Maharashtra

**.. Respondents**

...  
*Mr. M. A. Latif, Advocate for the petitioner.*  
*Mr. V. K. Kotecha, APP for the respondents/State.*  
...

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

**DATE : 11 NOVEMBER 2024**

**JUDGMENT (Per Smt. Vibha Kankanwadi, J.)**

. Heard learned Advocate Mr. M. A. Latif 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 28.12.2023 bearing No. D.O.2023/MPDA/DET-18/CB-197 passed by respondent No.1 as well as the approval order dated 05.01.2024 and the confirmation order dated 05.07.2024 passed by respondent No.3, 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.304 of 2023 registered with Jinsi Police Station, District Chhatrapati Sambhajnagar for the offence punishable under Section 392 of the Indian Penal Code and Crime No.335 of 2023 registered with Jinsi Police Station, District Chhatrapati Sambhajnagar for the offences punishable under Sections 392, 504, 506, 427 read with Section 34 of Indian Penal Code. Learned Advocate for the petitioner submits that the order is basically illegal, as both the offences which were considered for passing the order could not have created any disturbance to the public order or threat to the public

order. Further, the externment proceedings were taken up in the past under Section 56(1)(a)(b) of the Maharashtra Police Act, but it is then stated that those proceedings were dropped as action was taken under MPDA and then he was detained under Section 3(1) of the MPDA Act for a year by order dated 23.12.2019. The said period had ended in December 2020 and the said fact has also been considered, which was otherwise ought not to have been considered, as there was no live link. Every past action could not have been considered while passing the present order. The in-camera statements of witness 'A' and 'B' would also show that the activities of the petitioner as alleged were not prejudicial to the maintenance of the public order.

5. Learned Advocate for the petitioner further submits that the detention order came to be passed on 28.12.2023, however, it was served on 18.05.2024. Therefore, there was delay in serving and it has not been properly explained. The 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 and, therefore, there was no subjective satisfaction of the detaining authority, yet the impugned order has been passed, which is illegal.

6. Learned Advocate for the petitioner, in support of his submissions, relies on the following decisions :-

**(1) Lahu Shrirang Gatkal Vs. State of Maharashtra, Through the Secretary and Ors., [AIR 2017 SC 3770];**

**(2) Nafisa Khalifa Ghanem Vs. Union of India, [1982 (1) SCC 422];**

**(3) Abubakar @ Bagla Rais Ansari Vs. The Commissioner of Police and Ors., [2014 ALL MR (Cri.) 4655];**

**(4) Vilas Siddhu Jadhav Vs. M. N. Singh & Ors., [2003 ALL MR (Cri.) 1450];**

**(5) Anil @ Antya s/o. Shriram Jadhav Vs. State of Maharashtra and Ors., [2008 ALL MR (Cri.) 1259];**

**(6) Smt. Farzana Salam Nakhawa Vs. Shri. R. H. Mendonca and Ors., [2000 ALL MR (Cri.) 1773];**

**(7) P. M. Hari Kumar Vs. Union of India and others, [AIR 1996 SC 70];**

**(8) Prem Chand Vs. Union of India, [AIR 1981 SC 613];**

**(9) Smt. Savita Shankar Lokhande Vs. Shri. M. N. Singh and Ors., [2001 ALL MR (Cri.) 846];**

**(10) Anil @ Antya s/o Shriram Jadhav Vs. State of Maharashtra and Ors., [2008 ALL MR (Cri.) 1259];**

**(11) Shri. Harun Habibullah Shaikh Vs. R. H. Mendonca, Commissioner of Police, Thane and Ors.,**

***[1997 ALL MR (Cri.) 1270];***

***(12) Vinod Ramjiyawan Rajbhar Vs. A. N. Roy, Commissioner of Police and others, [2006 (2) Mh.L.J. (Cri.) 411];***

***(13) Dinesh Kisan Wanjale Vs. State of Maharashtra, [Writ Petition No.421 of 2022 decided by this Court at Principal Seat on 22.04.2022];***

***(14) Ashok Kisan Jadhav Vs. The State of Maharashtra and Another, [2021 ALL MR (Cri.) 1873]***

7. Per contra, 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 is relying upon the affidavit-in-reply of Mr. Manoj Lohiya, the then Police Commissioner, Chhatrapati Sambhajnagar. He demonstrates as to what was the

material before him and how he had arrived at the subjective satisfaction. Learned APP also points out that in the affidavit-in-reply, the detaining authority has stated that there is no violation of safeguard of provision of Article 22(5) of the Constitution of India, as the petitioner's father i.e. the present Advocate appearing for the petitioner was defending his case on every stage. The search was conducted when the petitioner went absconding i.e. when he was tried to be served with the grounds of detention and, therefore, after compliance of Section 7 of the MPDA Act, the sponsoring authority had submitted proposal before the learned Judicial Magistrate First Class, Court No.2, Chhatrapati Sambhajnagar for proclamation order under Section 82 of the Code of Criminal Procedure against the petitioner. However, the petitioner was then found at Girgaon Chaupati, Mumbai on 18.05.2024 and, therefore, the said order is served on him on 18.05.2024 itself. If we consider the contents of both the First Information Reports and the statements of the in-camera witnesses, then it can be seen that it is the regular feature of the petitioner to give threats to the persons by showing weapons and then extracting money from them. These activities have led the authority to declare him as dangerous person. The earlier

detention order, though the petitioner had undergone, appears to have not stopped him from committing further acts. Since 2022 and 2023 there were further four offences came to be registered against the petitioner and, therefore, the detention of the petitioner is justified.

8. 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].**

9. 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 Buji** (*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. At the outset, it is to be noted that the two offences which have been considered by the detaining authority for passing the order are still under investigation. As regards Crime No.304 of 2023 under Section 392 of Indian Penal Code is concerned, the place in which the offence has been committed is a Jewellery shop. The bail has been granted to the petitioner on 23.11.2023 in the said offence. As regards Crime No.335 of 2023 is concerned, it is under Sections 392, 504, 506, 427 read with Section 34 of Indian Penal Code and in this matter, bail has been granted to the petitioner on 02.12.2023. The place where this offence is stated to have been committed is a hotel wherein the

informant says that the petitioner along with associates had gone and asked for meal to be supplied to them without any charge and thereafter, the amount was forcibly taken from the informant and further amount was demanded. Both these offences would have created situation of law and order, though they were public places in a sense that the other public might have been involved or capable of being involved. The general public was not threatened and, therefore, the ordinary law was sufficient to take care of the activities of the petitioner. Further, upon inquiry, learned APP submits that no such detention process was taken up against the co-accused of the petitioner. Therefore, when other persons were shown to have been involved along with the petitioner, then the detaining authority or the sponsoring authority cannot adopt pick and choose method. There has to be a ground to say that why action is taken only against a particular person. That reason is missing in the present case.

10. Now, as regards the delay in serving the order is concerned, the detaining authority has come with the case that the petitioner was absconding. The police authorities tried to search for him. The original file is made available to us and it can be seen from the record that only till 29.01.2024, there was attempt

to nab or arrest the petitioner. Thereafter, there is no such record. The detaining authority in his affidavit has stated that the sponsoring authority submitted application before the Judicial Magistrate First Class for proclamation order, however, he has avoided to give the said date and there is no such document that is produced along with his affidavit or is in the original file, which would show that such application was filed. It is then stated in the affidavit that the petitioner was found at Girgaon Chaupati, Mumbai on 18.05.2024. There is no evidence to show that the detention order, which can be considered as a warrant as per the law, was made available to the Mumbai police and on the basis of the said detention order to be considered as warrant, the petitioner was taken into custody and then served with the detention order. Therefore, certainly, there is a delay in serving the order on the petitioner, which is unexplained and, therefore, the impugned order cannot be allowed to sustain.

11. Learned APP has relied on the opinion given by the Advisory Board whereupon the approval was given by the State Government, however, we are of the opinion that the Advisory Board has not considered whether proper steps have been adopted under Section 7 of the MPDA Act. Point of delay was not

at all considered by Advisory Board. In fact, it is hard to believe that when the detenu was heard and his representation is stated to have been considered, the said point of delay would not have been raised before the Advisory Board. As regards the role of Advisory Board is concerned, we may lay our hands on the decision in **Nevanath (Supra)**, wherein the role of the Advisory Board has been explained and the observations in respect of the same in paragraph Nos.55 to 58 are important :-

“55. What can be discerned from a bare perusal of the above-mentioned provisions is that the Advisory Board performs the most vital duty of independently reviewing the detention order, after considering all the materials placed before it, or any other material which it deems necessary. When reviewing the detention order along with the relevant materials, the Advisory Board must form an opinion as to the sufficiency of the cause for warranting detention. An order of detention passed under the Act, 1986 can only be confirmed if the Advisory Board is of the opinion that there exists sufficient cause for the detention of the detenu.

56. The framers of the Constitution being in *seisin* of the draconian nature of an order of preventive detention and its adverse impact on individual liberty, have specifically put in place safeguards within Article 22 through the creation of

an Advisory Board, to ensure that any order of preventive detention is only confirmed upon the evaluation and scrutiny of an independent authority which determines and finds that such an order for detention is necessary.

57. The legislature in its wisdom has thought it fit, to entrust the Advisory Board and no one else, not even the Government, with the performance of this crucial and critical function which ultimately culminates into either the confirmation or revocation of a detention order. The Advisory Board setup under any preventive detention law in order to form its opinion is required to; (i) consider the material placed before it; (ii) to call for further information, if deemed necessary; (iii) to hear the detenu, if he desires to be heard and; (iv) to submit a report in writing as to whether there is sufficient cause for “such detention” or whether the detention is justified.

58. An Advisory Board is not a mere rubber-stamping authority for an order of preventive detention. Whenever any order of detention is placed before it for review, it must play an active role in ascertaining whether the detention is justified under the law or not. Where it finds that such order of detention is against the spirit of the Act or in contravention of the law as laid down by the courts, it can definitely opine that the order of detention is not sustainable and should not shy away from expressing the same in its report.”

12. 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.

13. 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 28.12.2023 bearing No. D.O.2023/MPDA/DET-18/CB-197 passed by respondent No.1 as well as the approval order dated 05.01.2024 and the confirmation order dated 05.07.2024 passed by respondent No.3, are hereby quashed and set aside.

**III)** Petitioner – Mohammad Imran Mohammad Latif 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