



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1599 OF 2024

Hanuman Vishwanath Karhale
Age: 25 years, Occu.: Labour,
R/o. Digras Karhale, Hingoli,
Tq. And Dist. Hingoli.

.. Petitioner

Versus

1. The State of Maharashtra
Through, Section Officer,
Home Department, Mantralaya,
Mumbai.
2. The District Magistrate,
Collector Office, Hingoli.
3. The Superintendent of Jail,
Harsul Central Jail, Aurangabad.

.. Respondents

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Mr. Ashok Gaikwad, Advocate for the petitioner.
Mrs. R. P. Gour, APP for the respondents/State.

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

DATE : 24 OCTOBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Ashok Gaikwad for the
petitioner and learned APP Mrs. R. P. Gour 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 28.03.2024 bearing No. 2024 DC-1/KAVI-165/2024/1140 passed by respondent No.2 as well as the approval order dated 04.04.2024 and the confirmation order dated 15.05.2024 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.120 of 2024 registered with Hingoli Rural Police Station, District Hingoli for the offence under Section 4 punishable under Section 25 of the Indian Arms Act and Crime No.119 of 2024 registered with Hingoli Rural Police Station, District Hingoli for the offence punishable under Sections 342, 384 of the Indian Penal Code. Learned Advocate for the petitioner submits that the material before the detaining

authority was not sufficient to arrive at a conclusion that extreme step like detention was the only remedy to curb the activities of the petitioner. Detaining authority had considered only two crimes out of eight crimes and perusal of the FIR in both the cases would show that they came to be arrested on the same day i.e. 11.03.2024 in quick succession. Crime No.119 of 2024 was registered first, which was under Section 342, 384 of Indian Penal Code, which could have been only qua the informant. The FIR was against unknown person and the documents on record would show the prosecution story that in the process of investigation, accused No.4 Vinod Pande in that case had prepared the plan. There is statement of one lady, who has stated that there was love affair between the petitioner and herself since last two years and even accused No.4 was in her contact. Earlier night when accused No.4 Vinod Pande and the lady witness were talking with each other, the petitioner with two other persons went there, assaulted accused No.4 and petitioner claimed that there is damage to the extent of Rs.1,50,000/- to his car which he demanded from accused No.4 and then accused No.4 made up a plan of his abduction by the petitioner and other two and then demanding amount of Rs.10,00,000/- from Vinod's brother.

Then when the informant i.e. Vinod's brother approached police, they had a plot. A dummy bag was prepared and kept at the location and the police were watching the affair from a distance. Accused Omkar @ Shootar Keshav Mukhmahale had gone to take that bag. He apprehended there itself and the other accused persons i.e. petitioner, one Nitin @ Jadu Rameshwar Karhale and accused No.4 Vinod Sheshrao Pande came to be arrested. This entire story would show that public was not involved and then it is said that at the time of arrest, the petitioner was found with *Khanjar* and for that purpose offence vide Crime No.120 of 2024 has been registered. When public was not involved, the ordinary law had taken its course. It cannot be said that petitioner is therefore a dangerous person. Preventive action under Section 110 of the Code of Criminal Procedure was taken on two occasions i.e. Chapter Case No.27 of 2021 and Chapter Case No.20 of 2024, however, it is stated that those cases have been closed. When and at what stage those cases were closed have not been stated.

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 Mr. Jitendra Shrikumar Papalkar, District Magistrate, Hingoli giving details as to how he has arrived at the subjective satisfaction. Learned APP submits that the petitioner is involved in eight offences since 2018. Time and again he was arrested in respective cases, however, his activities have not been curtailed. The statements of in-camera witnesses would also show that there is terror in the mind of general public against the petitioner. In spite of action under Section 110 of the Code of Criminal Procedure, he was committing offence after he would be released on bail and therefore, the action taken is perfectly legal.

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) Aameena 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**

(*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. We have already noted the background in both the above-said offences which have been considered by the detaining authority for passing the detention order. Crime No.119 of 2024 and Crime No.120 of 2024 has connection with each other. The background in Crime No.119 of 2024 is already noted, therefore, we do not want to repeat. It appears from those papers forming part of the investigation that basic conspiracy or thought/mastermind behind the incident was accused No.4 Vinod Pande as the prosecution intends to put a picture. It has not been placed on record that similar action under preventive detention is also taken against the other accused persons. If the action is taken against the petitioner only, then certainly it will have to be inferred that respondent No.2, the then detaining authority's mind was prejudiced with the pending earlier cases. In fact, two more offences were registered against the petitioner on 08.03.2024 and 09.03.2024 i.e. 3-4 days prior to the two offences which were considered by the detaining authority, but for the reasons best known to the detaining authority, he has

considered only two offences, which came to be registered on 11.03.2024. For action under Section 110 of the Code of Criminal Procedure it appears that the other cases were also considered, but instead of taking the said action to its logical end, those chapter cases appear to have been closed without assigning reason. Though a lame excuse has been stated that since the action under detention laws was initiated, the said action under Section 110 of the Code of Criminal Procedure had not proceeded further or was closed down. In fact, this should have been opposite. It should be the endeavour of the detaining authority to see whether ordinary law would be sufficient to curb the activities of the person to be detained. This switching over from ordinary law to detention law is impermissible or is against the law which governs the preventive detention.

8. In respect of in-camera statements, it appears that they were referring to the incidents in respect of other offence i.e. Crime No.115 of 2024 and Crime No. 117 of 2024. Witness 'A' says that he had come to know about eight days prior to his statement dated 15.03.2024 that the accused and his associates have damaged certain articles from cemetery. Thereupon, this witness and others when were at Digras Phata asked the

petitioner as to why he has done so, thereupon the petitioner has stated to have acted arrogantly against the witness and gave him threat that if he informs the police, then he would put entire village to fire. In fact, when already offence was registered, where was the question of giving threat to this person. Witness 'B' says that when he had gone to cemetery he found that the petitioner and his associates were searching for silver in the ashes in the cemetery and when he was asked, he gave threat to the witness. It is our impression that these statements are got up with statements taking into consideration the nature of the offence that was already registered. Further we were shocked to see the original statement of witness 'B', especially in respect of his occupation. Since the authority has kept confidentiality, we do not want to disclose it here also, but we will definitely observe that if persons like him would prefer not to lodge the FIR though the incident is stated to have occurred with him, then it can be said that it is a failure of the police machinery to create confidence in common public. The Advisory Board in its opinion, which has been made available to us, has not considered all the aspects involved and just mechanically supported the action taken.

9. 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.

10. 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 28.03.2024 bearing No. 2024 DC-1/KAVI-165/2024/1140 passed by respondent No.2 as well as the approval order dated 04.04.2024 and the confirmation order dated 15.05.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Hanuman Vishwanath Karhale 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