



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1612 OF 2024

Bhaiyya s/o Mangal Patil
Age: 30 years, Occu.: Labour,
Through his father,
Mangal s/o Pandurang Patil
Age: 52 years, Occu.: Labur,
R/o. Arun Nagar, Chopda,
Tq. Chopda, Dist. Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra
The Secretary, Home Department,
Mantralaya, Mumbai-32.
2. The Collector and District Magistrate,
Jalgaon, Dist. Jalgaon.
3. The Superintendent of Police,
Jalgaon, Dist. Jalgaon.
4. The Police Inspector,
City Police Station Chopda,
Chopda, Dist. Jalgaon.
5. The Secretary, Advisory Board,
Govt. of Maharashtra, Home Dept,
Mantralaya, Mumbai-32.

.. Respondents

...
Mr. B. R. Warma, Advocate for the petitioner.
Mr. G. A. Kulkarni, APP for the respondents/State.
...

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

DATE : 14 DECEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. B. R. Warma for the petitioner and learned APP Mr. G. A. Kulkarni 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 orders dated 18.04.2024 and 22.04.2024 passed by respondent No.2 bearing No.Dandapra/KAVI/MPDA/17/2024 and approval order dated 26.04.2024 as well as 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, four offences were considered i.e. **(i)** Crime No.148 of 2018 registered with Chopda City Police Station, District Jalgaon for

the offences punishable under Sections 395, 323, 504, 506 of Indian Penal Code, Section 51 punishable under Section 177, 130(1) punishable under Section 177 of the Motor Vehicles Act, **(ii)** Crime No.30 of 2022 registered with Chopda Police Station, District Jalgaon for the offences punishable under Sections 395, 341, 323, 504, 506, 427 of Indian Penal Code, **(iii)** Crime No.256 of 2023 registered with Chopda City Police Station, District Jalgaon for the offences punishable under Sections 4, 5 of the Maharashtra Prevention of Gambling Act, 1887 and **(iv)** Crime No.558 of 2023 registered with Chopda City Police Station, District Jalgaon for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code. Learned Advocate for the petitioner submits that paragraph No.5 of the grounds of detention would show that in all four offences were considered by the detaining authority. The first is Crime No.148 of 2018 and it cannot be said that for passing order of detention on 18.04.2024, there was any live link between the said offence and the order. The second offence that is considered is Crime No.30 of 2022 which is stated to have been registered on 31.01.2022 and the petitioner was arrested on 07.02.2022. The order further contends that Sub Divisional Magistrate, Amalner

by order dated 15.11.2022 had externed the petitioner from jurisdiction of Yawal, Chopda, Shirpur, Amalner, Dharangaon, Jalgaon and Dhule Talukas. That means, based upon Crime No.30 of 2022 preventive action was taken against the petitioner. Therefore, it cannot be the subject matter once again. Further, the detaining authority had not considered that the said order passed by the Sub Divisional Magistrate on 15.11.2022 was challenged before the Divisional Commissioner, Nashik Division, Nashik, By order dated 27.03.2023, the said proposal to extern the petitioner was set aside. The copy of the said order has been produced on record which clearly says that only Crime No.30 of 2024 was considered by the Sub Divisional Magistrate and the appellate authority has stated on the basis of judgment of this Court that one crime cannot be said to be sufficient material for externment against the petitioner. Therefore, when the preventive action was held to be not maintainable or has been wrongly taken against the petitioner on the basis of FIR, it ought not to have been considered once again. The other two offences i.e. Crime No.256 of 2023 and Crime No.558 of 2023 would show that public order was not involved. As regards the in-camera statements also, they are too in general not involving the public.

Another point that is raised by way of rejoinder is that there is no compliance of the mandate of Section 41-B, 50-A and 60-A of the Code of Criminal Procedure. The decision of the Advisory Board was not made available to the petitioner and, therefore, taking into consideration all the aspects, petitioner deserves to be released by setting aside the impugned order.

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. Ayush Prasad, the District Magistrate, Jalgaon, who demonstrates as to which material he has considered for arriving at a subjective satisfaction. In spite of so many preventive actions

taken against the petitioner, his activities have not been curtailed and, therefore, there was no option, but to declare him dangerous person and to detain him.

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 detaining authority ought not to have considered Crime No.148 of 2018 filed against the petitioner for passing the detention order, as there was absolutely no live link. Surprisingly, from the chart it can be seen that the detaining authority has not considered the offence which was registered against the petitioner in 2019 and then he has directly jumped to Crime No.30 of 2022 and Crime No.256 of 2023. Certainly, offence vide Crime No.30 of 2022 was the subject matter before the Sub Divisional Magistrate when he had passed the order dated 15.11.2022 and then in appeal that order was set aside. A set aside order cannot be considered for passing any order such as detention. In clear terms, in the grounds of detention, the detaining authority says that the petitioner is committing offence since 2015 and in spite of bail granted to him, he is misusing the same. Thus, the detaining authority has taken into consideration

all the offences, which were registered against the petitioner to arrive at a conclusion that he is a dangerous person. This is impermissible in law for the simple reason that there has to be a live link. Crime No.256 of 2023 is the offence under Section 4 and 5 of the Maharashtra Gambling Act, in which the petitioner was not even arrested, but only notice under Section 41(1) of the Code of Criminal Procedure has been issued. Crime No.558 of 2023 is under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code. It is stated in the FIR that the informant has been assaulted by means of stone. In fact, stone is not an instrument of cutting, shooting, stabbing etc., which can be considered for the offences punishable under Section 324 of Indian Penal Code. It is doubtful as to whether the ingredients of the offence under Section 324 of Indian Penal Code were involved in the said case. Even if we consider the facts as it is, it is stated that the informant had gone to ask the petitioner as to why he had assaulted informant's nephew. Thus, the reason is personal and public is not involved.

8. Perusal of the statement of witness 'A' would show that the concerned authority had not taken precaution in respect of not to reveal the identity of the witness. In the said statement it is

clearly stated that he is the informant in Crime No.30 of 2022. He has then tried to say that he has stuck to the version in the FIR, though the petitioner was pressurizing him to take back the FIR. It is then stated that the petitioner is on bail and the said case i.e. the case on the basis of FIR vide Crime No.30 of 2022, would stand up for hearing. Then in first week of February 2024, he was threatened by the petitioner and others with dire consequences if he deposes against the petitioner. It was not considered by the detaining authority that if the contents of the statement were true, then it would be a good ground for cancellation of bail to the petitioner, but no such action has been taken. As regards witness 'B' is concerned, apart from the general statements, he says that amount was demanded from him also, but the further details have not been given. In statements of witnesses 'A' and 'B', it can be seen that many general statements and what are the activities of the petitioner have been given and it is doubtful as to whether those witnesses would have had that much of knowledge. In any way no public order would have been disturbed. At the most, law and order situation might have been created. As regards the points raised in the rejoinder, it can be seen that they were not raised in the main petition and, therefore,

there is no necessity to consider them. There was no material before the detaining authority, upon which it can be said that the subjective satisfaction was arrived at. Such order cannot be allowed to sustain.

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) Writ Petition stands allowed.

II) Detention orders dated 18.04.2024 and 22.04.2024 passed by respondent No.2 bearing No.Dandapra/KAVI/MPDA/17/2024 and approval order dated 26.04.2024 as well as the confirmation order dated 07.06.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner viz. Bhaiyya s/o Mangal Patil shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm