



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1639 OF 2024

Mangesh Siddharth Jadhav
Age: 24 years, Occu.: Labour,
R/o. Near Savitribai Phule High
School, Bhim, Bhausingpura,
Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra
Through Secretary, Home Department,
Mantralaya, Mumbai-32.
2. The Section Officer,
Home Department, Hutatma
Rajguru Chowk, Madham Kama
Road, Mantralaya, Mumbai-32.
3. The Commissioner of Police,
R/o. Officer of the Commissioner,
Mill Corner, Tq. And Dist. Aurangabad.
4. The Police Inspector,
Cantonment Police Station,
Cantonment Area, Aurangabad,
Tq. And Dist. Aurangabad.

.. Respondents

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Mr. S. G. Magre, Advocate h/f Mr. P. D. Jadhav, Advocate for the petitioner.

Mr. N. R. Dayama, APP for the respondents/State.

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

DATE : 11 NOVEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. S. G. Magre holding for learned Advocate Mr. P. D. Jadhav for the petitioner and learned APP Mr. N. R. Dayama 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 14.11.2023 bearing No. D.O.2023/MPDA/DET-16/CB-169 passed by respondent No.3 as well as the approval order dated 24.11.2023 and the confirmation order dated 28.12.2023 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.198 of 2023 registered with Cantonment Police Station, District Chhatrapati

Sambhajanagar for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code and Crime No.534 of 2023 registered with Cantonment Police Station, District Chhatrapati Sambhajanagar for the offence punishable under Section 4 punishable under Section 25 of the Indian Arms Act. It is submitted that even if we consider these two offences registered against the petitioner, yet it can be seen that they were not affecting the public order. He relies upon the decision of the coordinate Bench at Nagpur of this Court in **Ashok s/o Uttamrao Pawar Vs. State of Maharashtra and others, [Criminal Writ Petition No.738 of 2022 dated 08.02.2023]**, wherein based on the decision of the Hon'ble Supreme Court in **Hasan Khan Ibne Haider Khan Vs. R. H. Mendonca and Ors.,[(2000) 3 SCC page 511]** as well as the decision of this Court in **Jay @ Nunya Rajesh Bhosale Vs. The Commissioner of Police, Pune and Ors., [2015 ALL MR (Cri.) 4437]**, it has been held that unless there is a subjective satisfaction, the authority under the MPDA Act will not get jurisdiction to pass an order under Section 3 of the MPDA Act and for arriving at the subjective satisfaction, it has to be considered that there is breach of public order and not only the disturbance of the law and order. Even the in-camera statements

are also on the same line and, therefore, such illegal order cannot be allowed to sustain.

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. Manoj Lohiya, the then Commissioner of Police, Chhatrapati Sambhajnagar. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. 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. Learned APP further submits that the petitioner was involved in, in all, three

offences, out of which two were considered. He was found possessing *Gupti* and, therefore, offence vide Crime No.534 of 2023 came to be registered against him. The consideration was not only based on those two offences, but also the in-camera witnesses 'A' and 'B' and, therefore, there is no illegality in the order, as the order has been then approved by the Advisory Board. The representation of the petitioner has also been decided in reasonable time and communicated to 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. As aforesaid, two offences were considered i.e. Crime No.198 of 2023 and Crime No.534 of 2023. Taking into consideration the facts in the FIR leading to offence vide Crime No.198 of 2023, it appears that the quarrel had started and there appears to be some previous transaction or enmity, as the informant says that he was forcibly made to sit on the motorcycle and he was abducted. At that time, the petitioner asked informant as to why he had pushed his sister. That means there

was some incident earlier. Further, it can be seen that in the said matter bail has been granted to the petitioner on 17.07.2023. The said offence appears to be against the individual due to some previous rivalry.

8. The second offence that has been occurred on 29.10.2023 when the informant police officer was on patrolling duty. It is stated that after petitioner saw that the police were coming, he started running, but then police nabbed him, interrogated, upon search of his person thereby knife was found on the waist. If we consider the measurement of the knife/*Gupti*, it is said that the blade was 20 cms long and 2 cm in width and it had handle of 15 cms and it had also an iron pipe of 27 cms. It is hard to believe that such a big weapon could have been concealed by tying it to the waist, but still even if the FIR is accepted on its face, the offence that has been registered is under Section 4 punishable under Section 25 of the Indian Arms Act. No other offence like Maharashtra Police Act have been invoked. Now, as regards Section 4 of the Indian Arms Act is concerned, there has to be a notification by the Central Government regarding prohibition of such weapon in and around Chavani Police Station area. Such notification has not been referred to have been seen or within the

knowledge of the detaining authority i.e. the Police Commissioner, Chhatrapati Sambhajanagar. When that notification itself has not been perused, it cannot be said that there was a subjective satisfaction stating that the petitioner is involved in the said offence. Further it says that the petitioner was found with the said weapon around 1.50 a.m. Therefore, there was no question of public involved at such a late night hours. As regards the in-camera witnesses 'A' and 'B', their statements have been recorded on 03.11.2023 and 04.11.2023 respectively. They have stated that the offences against them was committed somewhere in the last week of September 2023. When such an unusual and scary incident takes place, then definitely person would remember the date or day. One has taken place at 19.30 hours and another at 21.00 hours giving almost the same story. By merely stating that due to fear he had not lodged the report and was desirous of keeping his name secret will not be sufficient to take cognizance of. Thus, there was no such material to arrive at a subjective satisfaction before the detaining authority. The two offences registered against the petitioner and considered by the detaining authority as well as the two in-camera statements were definitely not showing that the public

order would have been breached. As we are coming to the conclusion that the impugned order is illegal and it cannot be allowed to sustain, the approval and confirmation thereof by the Advisory Board and the State Government as well as rejection of representation of the petitioner cannot be considered in favour of the respondents.

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 stands allowed.

II) The detention order dated 14.11.2023 bearing No. D.O.2023/MPDA/DET-16/CB-169 passed by respondent

No.3 as well as the approval order dated 24.11.2023 and the confirmation order dated 28.12.2023 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner – Mangesh Siddharth Jadhav 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