



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1625 OF 2024

Sherkhan @ Shreya s/o
Samandarkhan Pathan
Age: 24 years,
R/o. Nandkheda, Tq. & Dist.
Parbhani

.. Petitioner

Versus

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

.. Respondents

...
Mr. Rupesh A. Jaiswal, Advocate for the petitioner.
Mr. S. A. Gaikwad, APP for the respondents/State.
...

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

DATE : 29 NOVEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. R. A. Jaiswal for the petitioner
and learned APP Mr. S. A. Gaikwad 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 14.05.2024 bearing No.2024/Home/A-1/POL/CR-03 passed by respondent No.1 as well as the approval order dated 22.05.2024 and the confirmation order dated 05.07.2024 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, three offences were considered i.e. Crime No.403 of 2023 registered with Nanalpeth Police Station, District Parbhani for the offences punishable under Sections 307, 143, 147, 148, 149 of Indian Penal Code and under Section 3 punishable under Section 25 of the Indian Arms Act, Crime No.02 of 2024 registered with Nanalpeth Police Station, District Parbhani for the offence punishable under Sections 323 read with Section 34 of Indian

Penal Code and Crime No.71 of 2024 registered with Nanalpeth Police Station, District Parbhani for the offence under Section 4 punishable under Section 25 of the Indian Arms Act. Learned Advocate for the petitioner submits that the three offences which were considered for passing the detention order consisted of one N.C. case and if the prosecution story in respect of all the offences are considered, then they were not affecting the public order. Even considering the in-camera statements of witnesses 'A' and 'B', it can be said that at the most law and order situation would have arisen. The personal liberty of the petitioner is thereby curtailed. There was no material before the detaining authority to arrive at the subjective satisfaction. Indirectly, the detaining authority has considered all the nine offences for holding the petitioner as a dangerous person, which is not permissible and, therefore, the impugned order deserves to be set aside.

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 by Mr. Raghunath Gawade, District Magistrate, Parbhani. In his affidavit, he has tried to place on record the same material and states that on the basis of the said material there was sufficient evidence before him to arrive at the subjective satisfaction. The petitioner had used pistol while committing offence under Section 307 of Indian Penal Code etc. vide Crime No.403 of 2023 and the sanction under Section 39 of the Indian Arms Act to prosecute him was given on 29.12.2023. In respect of offence vide Crime No.71 of 2024 under Section 4 punishable under Section 25 of the Indian Arms Act, the petitioner was found possessing the Kukari, which was 15 inch long edged weapon. There is notification of the Home Department, Mantralaya, Bombay dated 06.09.1980, which is issued in the name of Governor of Maharashtra, wherein the notification that

is required to be issued for the offence punishable under Section 4 of the Arms Act was issued and Parbhani City area has been included in the same. Therefore, with the dangerous weapons, the petitioner is committing offences, because of which the general public is under terror and, therefore, the applicant has been rightly categorized as a dangerous person under M.P.D.A. in the impugned order.

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 and the foremost fact that is required to be noted is that even the N.C. case under Section 323 read with Section 34 of Indian Penal Code has been considered for passing the detention order. When the law itself states that it is a non cognizable that means even the police cannot take cognizance of the same, so for passing the detention order, in fact, the District Magistrate is not required to consider such N.C. cases. It is not the case before respondent No.2 that in respect of the said non cognizable case, the concerned police had

undertaken the procedure under Section 155(2) of the Code of Criminal Procedure. Therefore, in respect of the said offence, at the most, there can be a right to the victim to approach the concerned Magistrate by filing a private complaint and, therefore, the detaining authority ought not to have considered the said case. In other words, the said N.C. case could not have been the subject for arriving at a subjective satisfaction of the respondent No.2.

8. As regards the offence vide Crime No.403 of 2023 is concerned, no doubt it appears from the prosecution story that the present petitioner had tried to commit murder by a pistol, for which there appears to be no licence with him. It appears that the said offence had taken place around 00.01 hours on 04.10.2023. It is stated that the informant was the owner of Raigad Hotel and after closing down the hotel, he was waiting in front of his hotel. His friend is owner of Syndicate Hotel situated at a different road. His friend asked him that since he was ill and his Manager has reported that some persons were harassing the customers; upon the request of his friend, the informant went to the Hotel of his friend along with his tree friends. He says that he found that the present petitioner and his associates were

abusing the customer. Therefore, the said informant had resolved the dispute and went back to his hotel. Then around 00.01 a.m., he received phone call from unknown person asking him to come to Syndicate Hotel. He then says that he went along with his friends at the said place whereupon he found the present petitioner and others waiting there. It is his statement that after the petitioner told as to why he had intervened in the dispute, the petitioner tried to shoot at him with pistol. He even pulled the trigger, but the cartridge did not come out. From the story, it can be gathered that when the actual incident of Section 307 took place, public was not involved. The present petitioner was released on bail by the competent Court on 20.12.2023. In respect of the last offence under Section 4 punishable under Section 25 of the Arms Act, the said notification dated 06.09.1980 appears to be not before the detaining authority and taking into consideration the contents it appears that around 2.30 p.m. on 09.02.2024, the petitioner was found possessing the Kukari. In the FIR it is not stated whether the said weapon was concealed by the petitioner under his clothes, nor there is a statement that the petitioner was holding the Kukari in his hand and roaming in the public. Here also then the public is not

involved and further, taking into consideration the punishment prescribed under Section 25(1-B)(b) of the Indian Arms Act, which shall not be less than two years but which may extend to five years, he has been served with notice under Section 41-A(1) of the Code of Criminal Procedure. Thus, none of the acts was touching to the public at large. Even as regards the statements of witnesses 'A' and 'B', it is stated that he was carrying sharp knife, but there is no statement that public was around those witnesses. Therefore, the material before the learned District Magistrate was not sufficient for arriving at the subjective satisfaction.

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 14.05.2024 bearing No.2024/Home/A-1/POL/CR-03 passed by respondent No.1 as well as the approval order dated 22.05.2024 and the confirmation order dated 05.07.2024 passed by respondent No.1, are hereby quashed and set aside.
- III)** Petitioner - Sherkhan @ Shreya s/o Samandarkhan Pathan 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