



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1629 OF 2024

Shaikh Tausif Shaikh Afzal
Through Shaikh Afjal Shaikh Gulab
Age: 60 years, Occu.: Labour,
R/o. Fatenagaer Raver,
Tq. Raver, Dist. Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate,
Collector Officer, Jalgaon.
3. The Superintendent Central Prison,
Thane, District Thane.

.. Respondents

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Mr. A. J. Patil, Advocate for the petitioner.

Mrs. P. R. Bharaswadkar, APP for respondents/State.

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

DATE : 28 NOVEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. A. J. Patil for the petitioner and
learned APP Mrs. P. R. Bharaswadkar 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 18.07.2024 bearing No. Dandapra/KAVI/MPDA/27/28/2024 passed by respondent No.2 as well as the approval order dated 29.07.2024 and the confirmation order dated 11.09.2024 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. Crime No.41 of 2017 registered with Raver Police Station, District Jalgaon for the offences punishable under Sections 325, 324, 323, 504, 506, 279, 337, 338, 354 read with Section 34 of Indian Penal Code and under Section 184 of the Motor Vehicles Act, Crime No.250 of 2022 registered with Raver Police Station, District Jalgaon for the offence punishable under Section 394 read with Section 34 of

Indian Penal Code, Crime No.299 of 2023 registered with Raver Police Station, District Jalgaon for the offence punishable under Section 188 of the Indian Penal Code and Crime No.17 of 2024 registered with Raver Police Station, District Jalgaon for the offences punishable under Sections 307, 353, 333, 143, 147, 148, 149, 114, 427 of Indian Penal Code. Learned Advocate for the petitioner submits that the detaining authority had considered all the offences right from 2016 to hold the petitioner as dangerous person, which is against the law. He submits that in respect of last offence which is considered under the caption “Details of offences registered recently within six months”, the detaining authority had taken note of Crime No.17 of 2024. However, it is still under investigation and the petitioner came to be released on bail in that matter. The said aspect of release of petitioner on bail has not been considered properly. There was no subjective satisfaction arrived at by the detaining authority before passing the detention order. Further, there is delay in passing the order, which is not explained and, therefore, he relies on the decision in ***Pradeep Nilkanth Paturkar Vs. S. Ramamurthi, [1994 AIR (SC) 656]***, wherein it has held that unexplained delay in passing the order of detention deserves to

be quashed, as the said delay vitiates the order. Similar view was taken in ***Mr. Shubham Rajendra Hingade Vs. State of Maharashtra and another, [Criminal Writ Petition No.559 of 2021 decided by this Court at Principal Seat on 22.06.2021]*** and ***Balu s/o Waman Patole Vs. The Commissioner of Police and others, [Criminal Writ Petition No.155 of 2019 decided by this Court on 26.03.2019]***.

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 respondent No.2, Mr. Ayush Prasad, the District Magistrate, Jalgaon. He supports the detention order passed by

him and tries to demonstrate as to how he had arrived at the subjective satisfaction. Learned APP further submits that though the detaining authority had taken note of all the five offences registered against the petitioner, however, only one offence i.e. Crime No.17 of 2021 registered with Raver Police Station was considered for detention along with the statements of two in-camera witnesses. A terror was created by the petitioner and, therefore, people were not ready to come before the police to lodge a report against the activities of the petitioner. Proceedings under Section 144(2) of the Code of Criminal Procedure were taken many times against the petitioner, however, it has not yielded the appropriate result. The criminal activities of the petitioner were not curtailed and, therefore, he has been declared as dangerous person and, the detention order has been passed, which has been then approved by the Advisory Board and then confirmed by the State Government.

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 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, we do not find that there is any point as regards delay in passing the order of detention. In fact, the statements of witnesses 'A' and 'B' were taken on 03.06.2024 and 22.05.2024 respectively. The proposal was submitted by the sponsoring authority on 28.06.2024 and prior to that the confidential statements were got verified by the Deputy Superintendent of Police on 27.06.2024. Thereafter, the proposal was forwarded on 03.06.2024 and the impugned order came to be passed by respondent No.2/detaining authority on 18.07.2024. So within 15 days of getting the file, the decision has been taken and, therefore, there is no delay. However, the impugned order cannot be approved for the simple reason that the detaining authority has considered the offences right from 2017 i.e. Crime No.41 of 2017, Crime No.250 of 2022, Crime No.299 of 2023 as well as Crime No.17 of 2024. There could not have been a live link between those offences i.e. Crime No.41 of 2017, Crime No.250 of 2022 and Crime No.299 of 2023, which came to be registered on 19.05.2017, 29.06.2022 and 28.06.2023

for passing the detention order on 18.07.2024. When these three offences have also been considered, it will have to be held that, that piece of material was not appropriate and legal for arriving at a subjective satisfaction. If the detaining authority intends to say that he has considered only last offence i.e. Crime No.17 of 2024 under Sections 307, 353, 333 etc of Indian Penal Code, which came to be registered on 22.01.2024, in which the petitioner has been arrested on 29.03.2024, in that case, it ought to have been considered by the detaining authority that the petitioner came to be released on bail by the learned Additional Sessions Judge, Bhusaval on 06.04.2024. The reasons given in the bail order ought to have been then considered by the detaining authority.

8. Another fact to be noted is that in 2024 itself it appears that two proceedings were undertaken under Section 144(2) of the Code of Criminal Procedure i.e. on 03.06.2024 and 10.06.2024. Perusal of Section 144 of the Code of Criminal Procedure would show that it is in respect of power to issue order in urgent cases of nuisance or apprehended danger. Sub-section (2) of Section 144 of the Code of Criminal Procedure prescribes that an order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a

notice upon the person against whom the order is directed, be passed *ex parte*. Whether the sponsoring authority or the police authority or even the District Magistrate or Sub Divisional Magistrate had considered that the act of the petitioner was amounted to nuisance and as they had no time to serve the notice, then proceeded to pass *ex parte* order as contemplated under Section 144(2) of the Code of Criminal Procedure. However, it is not on record as to whether those proceedings to be taken to the logical end or not. Merely by passing interim order, the District Magistrate or Sub Divisional Magistrate cannot end the proceedings. There should be compliance of Section 144(1) of the Code of Criminal Procedure at the end of the proceedings, which prescribes that where District Magistrate or Sub Divisional Magistrate, who has been specially empowered by the State Government is of the opinion that there is sufficient ground for proceeding under this Section and immediate prevention or speedy remedy is desirable, then by a written order stating the material facts of the case and served in the manner provided by Section 134, direct any person to abstain from a certain act to take certain order with respect to certain property in his possession or under his management etc. We reiterate that the

law does not permit District Magistrate or Sub Divisional Magistrate or any other Executive Magistrate only to pass an *ex parte* order under Section 144(2) of the Code of Criminal Procedure, but the impugned order states that for about five times in total only the order under Section 144(2) of the Code of Criminal Procedure has been passed. Further, it is to be noted that if the proceedings under Section 144 of the Code of Criminal Procedure are undertaken, then sub-section (4) of Section 144 prescribes that such order passed under the Section shall not remain in force more than two months from the making thereof. The copies of order passed under Section 144(2) of the Code of Criminal Procedure have not been attached and served on the petitioner and even they are not available to this Court, but the detaining authority takes a note that in order to deceive the petitioner from criminal activities they had taken preventive actions under Section 110 of the Code of Criminal Procedure as well as Section 144(2) of the Code of Criminal Procedure, but there was no improvement in his activities. Thus, without going through those orders, it appears that those observations have been made by respondent No.2. One more aspect that is required to be considered is that considering the provisions of Section 144

of the Code of Criminal Procedure, proviso to sub-section (2) of Section 144 prescribes that if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification. That means the State Government has the power to extend the duration order of such preventive activity till six months. The proceedings to be undertaken under the Code of Criminal Procedure can be said to be the ordinary law and the action under the preventive detention is under the special enactment. Now, when there is provision under the ordinary law and it has not been taken to the logical end, then neither respondent No.2 nor respondent No.1 could have gone ahead with the proceedings under the detention law.

9. If we consider the contents of the FIR vide Crime No.17 of 2024, then it can be seen that some procession was arranged in Raver and the procession was proceeding on the public road. At that time, it is alleged that the petitioner and his associates had

pelted stones and pieces of bricks on the police personnel posted at *Bandobast* and it is stated that it is with an intention to kill them. Perusal of the FIR would show that suddenly about six named persons and 30 to 32 unknown persons came suddenly running and pelted stones. Every riot cannot be considered as against public at large and, therefore, due to the said offence, there was no question of public disorder. Further, only one offence cannot be considered to brand a person as dangerous person. The statements of in-camera witnesses would show that the petitioner was demanding amount, which was refused by the witness and thereupon, he was assaulted and there was forcible extraction of money. In respect of witness 'A' is concerned, he is a small food seller and the petitioner consumed omlet and bread worth Rs.70/- and when witness 'A' demanded the amount, it was refused. Thereupon, he was assaulted by the petitioner and from witness 'B' he has taken amount of Rs.50/-. These are the crimes against individual. Though it is stated that the neighbouring persons had intervened, it will not amount to public order.

10. 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.

11. 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 18.07.2024 bearing No. Dandapra/KAVI/MPDA/27/28/2024 passed by respondent No.2 as well as the approval order dated 29.07.2024 and the confirmation order dated 11.09.2024 passed by respondent No.1, are hereby quashed and set aside.
- III)** Petitioner – Shaikh Tausif Shaikh Afzal 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