



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1688 OF 2024

Ravi s/o Radheshyam Wakte
Age: 27 years, Occu.: Labour,
R/o. Nathapur, Tq. And Dist.
Beed.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate,
Beed. Tq. And Dist. Beed.
3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad.

.. Respondents

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Mr. S. S. Gangakhedkar, Advocate for the petitioner.

Mr. G. A. Kulkarni, APP for the respondents/State.

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

DATE : 02 DECEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. S. S. Gangakhedkar for the
petitioner and learned APP Mr. G. A. Kulkarni 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 12.08.2024 bearing No.2024/RB-Desk-1/Pol-1/MPDA-13 passed by respondent No.2 as well as the approval order dated 21.08.2024 and the confirmation order dated 27.09.2024 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, two offences were considered i.e. Crime No.26 of 2024 registered with Pimpalner Police Station, District Beed for the offences punishable under Sections 436, 427, 504, 506 of Indian Penal Code and Crime No.142 of 2024 registered with Pimpalner Police Station, District Beed for the offences punishable under Sections 341, 323, 504, 506 of Indian Penal Code. Learned Advocate for the petitioner submits that while considering the two offences for

passing the detention order, the detaining authority has not taken into consideration the fact that in the first offence i.e. Crime No.26 of 2024, petitioner came to be arrested on 15.04.2024 and was granted bail on 26.06.2024. As the detention order has been passed on 12.08.2024, the detaining authority ought to have considered the bail order. In Crime No.142 of 2024, there is no mention of date of arrest. Taking into consideration the Sections involved, the investigating officer would not have been justified in arresting the petitioner in view of ***Arnesh Kumar Vs. State of Bihar and another, [(2014) 8 SCC 273]***, however, if he still wants to arrest, then by giving reasons, he could have arrested. No such fact has taken place in this case. Therefore, when notice under Section 41-A of the Code of Criminal Procedure was available as a recourse under ordinary law, it has not been so pressed into service. The story in the FIRs would show that it was the personal cause of action for those informants. It would not have created public order situation. Same is the case as regards the in-camera witnesses and therefore, such order need not be continued.

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 has relied on the affidavit-in-reply of Mr. Avinash Prabhakar Rao Pathak, District Magistrate, Beed/detaining authority. He has explained what was the material on the basis of which he has arrived at the subjective satisfaction. Even the in-camera statements would show about the criminal activities of the petitioner and, therefore, the impugned order is rightly passed.

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 only two offences have been considered. As regards Crime No.26 of 2024 is concerned, the investigation is complete and charge-sheet is filed vide R.C.C. No.272 of 2024. Perusal of the order would show that there is no mention as to when petitioner came to be arrested and when he has been released on bail. It is not the case of the respondents that the petitioner was not arrested in the matter at all. As aforesaid, the date of arrest of the petitioner is not mentioned in respect of the second offence i.e. Crime No.142 of 2024. If we peruse the FIR in Crime No.142 of 2024, then it can be seen that it was filed on 31.05.2024 in respect of the incident dated 19.01.2024. He says that as the petitioner is a dangerous person he had not filed the FIR earlier to 31.05.2024. He has filed the same as he came to know that the petitioner is in jail. As aforesaid, the petitioner was arrested in connection with Crime No.26 of 2024 on 15.04.2024 itself, then this informant was not justified in waiting till 31.05.2024 to lodge the report in respect of incident dated 19.01.2024. In any manner that FIR has been registered for the offence punishable under Sections 341, 323, 504, 506 of Indian Penal Code, out of which Sections 341 and 343 are cognizable offences. Whether under the circumstance given

those Sections are applicable or not itself is a question, otherwise for other offences, it should have been non cognizable offence. In any manner, both the offences would have at the most created law and order situation. Same is the case as regards statements of in-camera witnesses 'A' and 'B'. The material before the detaining authority was not sufficient to arrive at the subjective satisfaction requiring action under detention law.

8. 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.

9. 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 12.08.2024 bearing No. 2024/RB-Desk-1/Pol-1/MPDA-13 passed by respondent No.2 as well as the approval order dated 21.08.2024 and the confirmation order dated 27.09.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Ravi s/o Radheshyam Wakte 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