



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1747 OF 2024

Shaikh Yunus @ Yunnu @ Bhurya
Shaikh Jabbar,
Age: 30 years, Occu.: Business,
R/o. Himayatnagar, Chaus Colony,
Chhatrapati Sambhajinagar.
Tq. And Dist. Chh. Sambhajinagar

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department (Special),
Government of Maharashtra,
Mantralaya, Mumbai-32.
2. The Commissioner of Police,
Chh. Sambhajinagar,
Tq. And Dist. Chh. Sambhajinagar.
3. The Police Inspector,
City Chowk Police Station,
Chh. Sambhajinagar,
Tq. And Dist. Chh. Sambhajinagar
4. The Superintendent of Jail,
Harsul Central Jail, Chh. Sambhajinagar,
Tq. And Dist. Chh. Sambhajinagar.

.. Respondents

...
Mr. R. D. Khadap, Advocate for the petitioner.
Mr. V. K. Kotecha, APP for the respondents/State.
...

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

DATE : 13 DECEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. R. D. Khadap for the petitioner and learned APP Mr. V. K. Kotecha 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 11.05.2024 bearing No.2024/CB/MPDA/DET-08/CR-33 passed by respondent No.2 and the approval order dated 22.05.2024 as well as the confirmation order dated 07.08.2024 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. **(i)** Crime No.07 of 2024 registered with Begampura Police Station, District Chhatrapati

Sambhajnagar for the offence punishable under Section 380 read with Section 34 of Indian Penal Code, **(ii)** Crime No.30 of 2024 registered with City Chowk Police Station, District Chhatrapati Sambhajnagar for the offences punishable under Sections 307, 143, 504, 341 of Indian Penal Code and **(iii)** Crime No.109 of 2024 registered with City Chowk Police Station, District Chhatrapati Sambhajnagar for the offence punishable under Section 392 of Indian Penal Code. Learned Advocate for the petitioner submits that perusal of the prosecution story in the three offences which were considered for passing detention order as well as the statements of in-camera statements would show that public was not involved. It is casually stated by both the witnesses that when the incident was going on, the people who had gathered, fled away from the spot due to fear.

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/detaining authority and submits that though the petitioner was externed in the past, he had not curtailed the activities. The language that has been used that he is the don of the area would show that he want supremacy to be created in the area, thereby creating fear in the mind of people. He was in general extracting the amount from the person of the people and used to give threats, so that those persons should refrain themselves from lodging the FIR. Therefore, these activities were dangerous to the public at large, which were required to be curtailed.

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. Taking into consideration the fact that three offences have been considered for passing the order of detention, it is to be noted that in case of Crime No.07 of 2024, the FIR is lodged by a partner, who had purchased the plot and had erected compound wall. When he went to the spot, he found that the door of the compound wall was open and he could see the articles got scattered. The MSEB meter was not found and then he says that from the persons in the adjoining area, he came to know about three names, namely, Innu, Ansar and Akhtar Muskan. As regards present petitioner is concerned, he was not even knowing that and had not given the complete name. As regards the said offence is concerned, the petitioner has been granted anticipatory bail. As regards Crime No.30 of 2024 is concerned, it appears to have been arisen out of petitioner's resistance to erect Khibla wall. It is stated that on the earlier occasion the petitioner had given threat to kill the informant and another person with him. Then the informant says that he was proceeding in his car, but they were followed by two wheeler, which is stated to be occupied by the petitioner and two other persons. He then says that they were intercepted and, therefore, they had got down from the car. The petitioner told Mujahid Patel that he will not be spared.

Stones were pelted on him and then he says that the petitioner had assaulted Mujahid Patel with knife. Public appears to be not involved in this case. As regards Crime No.109 of 2024 is concerned, it is alleged that the informant was intercepted and by giving threats amount was forcibly extracted. No doubt, he mentions that due to the fear of the petitioner, nobody came to rescue him. Even if we take the case as it is, only one case will not be sufficient for passing illegal detention order. Therefore, even if those facts are taken as it is, public order was not involved. As regards in-camera statements also, they are stereotyped statements. The impugned order lacks in giving reason as to how the ordinary law would not have been sufficient to curtail the activities of the petitioner. Before the extreme step of curtailing the constitutional rights of a person it is the bounden duty of the police authority as well as any other authority to see how the action proposed to be taken does not curtail the fundamental rights of the citizen.

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) Writ Petition stands allowed.

II) Detention order dated 11.05.2024 passed by respondent No.2 bearing No.2024/CB/MPDA/DET-08/CR-33 and approval order dated 22.05.2024 as well as the confirmation order dated 07.08.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner viz. Shaikh Yunus @ Yunnu @ Bhurya Shaikh Jabbar 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