



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1753 OF 2024

Akash Madhukar Birhade
Age: 22 years, Occu.: Labour,
R/o. Siddhartha Nagar, Yawal,
Dist. Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra
Through Deputy Secretary,
Home Department (Special),
Mantralaya, Mumbai.
2. The State of Maharashtra,
Through District Magistrate,
Jalgaon.
3. The State of Maharashtra
Through Superintendent,
Central Prison, Mumbai.

.. Respondents

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Mr. H. P. Randheer, Advocate for the petitioner.
Mr. A. V. Lavte, APP for the respondents/State.

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

DATE : 16 DECEMBER 2024

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :-

. Heard learned Advocate Mr. H. P. Randheer for the
petitioner and learned APP Mr. A. V. Lavte 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 26.08.2024 bearing Dandapra/Kavi/M.P.D.A./32/2024 passed by respondent No.2 as well as the approval order dated 06.09.2024 and the confirmation order dated 11.10.2024 passed by respondent No.3, 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.131 of 2023 registered with Yawal Police Station, District Jalgaon for the offences punishable under Sections 353, 307, 332, 143, 147, 148, 149 of Indian Penal Code, under Section 135, 37(1)(3) of the Mumbai Police Act, 1951, Crime No.210 of 2024 registered with Yawal Police Station, District Jalgaon for the offences punishable under Sections 323, 324, 143, 147, 148, 149, 504, 506 of Indian Penal

Code, under Section 135, 37(1)(3) of the Mumbai Police Act, Crime No.214 of 2024 registered with Yawal Police Station, District Jalgaon for the offences punishable under Section 160 of Indian Penal Code, under Section 112, 117, 135, 37(1)(3) of the Mumbai Police Act, 1951 and Crime No.218 of 2024 registered with Yawal Police Station, District Jalgaon for the offences punishable under Sections 341, 323, 504, 506 of Indian Penal Code. Learned Advocate for the petitioner submits that in fact the detaining authority has taken into consideration all the seven previous offences into consideration and especially serial Nos.6, 7, 10 to 12 for arriving at a conclusion that the petitioner is a dangerous person. He failed to consider that when proceedings under Section 56(1)(a)(b) of the Mumbai Police Act for externment was taken, at that time, in all seven offences against the petitioner were considered i.e. Crime No.131 of 2023, Crime No.57 of 2023, Crime No.51 of 2013 and Crime No.575 of 2023, which are common i.e. from the impugned order and the said externment proceedings. By order dated 16.01.2024, the Additional Collector-cum-Sub Divisional Magistrate, Faizpur, had rejected the proposal for externing the petitioner on the basis of those offences registered against the petitioner. Therefore, once

again for some preventive detention, those offences ought not to have been considered. Further, it appears that the preventive action was taken in the past against the petitioner which appears to have not been taken to the logical end. The offences those were specifically considered are Crime Nos.131 of 2023, Crime No.210 of 2024, Crime No.214 of 2024 and Crime No.218 of 2024. Out of them, Crime No.210 of 2024, Crime No.214 of 2024 and Crime No.218 of 2024 are the offences prescribed as bailable offences and no arrest was made for those offences. Therefore, the subjective satisfaction could not have been arrived at on the basis of those offences to arrive at a conclusion that the activities of the petitioner would have created or had created public order situation. Even the statements of the in-camera witnesses 'A' and 'B' would show that at the most law and order situation would have been created. He also submits that the representation of the petitioner has not been decided as early as possible.

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. Ayush Prasad, District Magistrate/detaining authority, who tries to demonstrate as to how he had arrived at the subjective satisfaction. Learned APP submits that the activities of the petitioner were repeatedly going on and the preventive action had not stopped him from committing further offences. The impression about the petitioner in the mind of public could be reflected from the in-camera statements of witnesses ‘A’ and ‘B’. Due to the fear of the petitioner they had not lodged any report. The considerations for the action of externment and for taking action under M.P.D.A. are different. All the facts regarding whether the petitioner has been released on bail or whether he was arrested or not have not been taken into consideration. As the petitioner was not curtailing his activities, which were detrimental to the public at large, the

detaining authority had no option but to declare him as dangerous person and direct him to be detained.

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. At the outset, it is to be noted that as per the grounds of detention in all four offences were considered. Out of which Crime No.131 of 2023 was also considered by Assistant Collector-cum-Sub Divisional Magistrate, Faizpur in order dated 16.01.2024. In the proposal for externment under Section 56(1)(a)(b) of Mumbai Police Act, 1951, it appears that in all seven offences were considered and those offences according to the concerned authority were not sufficient to extern the petitioner. No doubt, these two actions i.e. for externment and the preventive detention are different and are governed by the different enactment, however, the aim is to curtail the criminal activities which are detrimental to the public at large. Under the said circumstance, the action for externment has to be considered on

a lesser footing taking into consideration the fact that though there would be restrictions on the movements of a person because of such order, yet he would be free to move beyond the certain limit and, therefore, the other constitutional rights of such person would not get affected because of the said action. But as regards the preventive detention is concerned, the authority would be curtailing the activities and movements of a person and confining him to a particular place i.e. always in jail. Therefore, if the seven offences including Crime No.131 of 2023 were held to be not sufficient to extern the petitioner, then certainly the said order ought to have been taken note of by the detaining authority here and taking into consideration the said order, still how the detention is necessary ought to have been answered. It is further to be noted that on 18.03.2023, action under Section 107 of Code of Criminal Procedure was taken. Whether it was taken to the logical end or not has not been mentioned. Whether that action would have curtailed the activities of the petitioner was one of the factor to be considered. The said action was under the common law. The action of preventive detention can be taken when the ordinary law is not sufficient.

8. Now, what has been considered further is the registration of three more offences i.e. Crime No.210 of 2024, Crime No.214 of 2024 and Crime No.218 of 2024. All the offences under which these crimes are registered are bailable. The petitioner was not arrested in any of these matters. Perusal of the contents of the FIR in these three cases would show that public at large was not affected, though in Crime No.210 of 2024 offence regarding unlawful assembly and its common object is stated. It appears that the present petitioner had performed inter-caste marriage and the informant therein was from the caste of the wife of the petitioner. Informant has specifically stated that the persons from his caste were objecting the inter-caste marriage of the petitioner which had taken place on 24.02.2024. The incident is stated to have taken place on 26.06.2024. According to the informant therein the incident had taken place in bus stand chowk. The petitioner had come alone on motorcycle and it is stated that he abused the informant and another person along with him, who were cleaning the area. He says that after the petitioner had abused him he and the person along with him had also abused the petitioner. Then he says that the petitioner called other persons. All of them assaulted the informant and another person

by fists and kicks and went. This is totally a personal dispute and the informant therein does not say that public at large was involved in any case. Taking into consideration the statements of in-camera witnesses 'A' and 'B' also it can be seen that the public was not involved and it was the incident between the witnesses and the petitioner. Reliance can be placed on the recent decision of the Hon'ble Supreme Court in ***Arjun s/o Ratan Gaikwad Vs. The State of Maharashtra and others, [Criminal Appeal (Arising out of SLP (Crl.) No.12516 of 2024 dated 11.12.2024 :: 2024 INSC 968]***.

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 26.08.2024 bearing Dandapra/Kavi/M.P.D.A./32/2024 passed by respondent No.2 as well as the approval order dated 06.09.2024 and the confirmation order dated 11.10.2024 passed by respondent No.3, are hereby quashed and set aside.
- III)** Petitioner - Akash Madhukar Birhade 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