



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1754 OF 2024

Ajay s/o Satyaprakash Singh Thakur
Age: 21 years, Occu.: Service,
R/o. Chiragalli, Itwara, Nanded,
Dist. Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
Through the Additional Secretary,
Home Department,
Government of Maharashtra,
Mantralaya, Fort, Mumbai.
2. Home Department of Government
(Special) of Maharashtra
Through its Section Officer,
Mantralaya, Mumbai.
3. District Magistrate,
Nanded, District Nanded.

.. Respondents

...
Mr. S. G. Deshmukh, Advocate for the petitioner.
Mrs. R. P. Gour, APP for the respondents/State.
...

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

DATE : 13 NOVEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. S. G. Deshmukh for the
petitioner and learned APP Mrs. R. P. Gour 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 05.08.2024 bearing No. 2024/RB-1/Desk-2/T-4/MPDA/CR-28 passed by respondent No.3 as well as the approval order dated 14.08.2024 and the confirmation order dated 23.09.2024 passed by respondent No.2, 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, only one offence was considered i.e. Crime No.56 of 2024 registered with Itwara Police Station, District Nanded for the offence punishable under Section 4 punishable under Section 25 of the Indian Arms Act. Learned Advocate for the petitioner submits that only one offence i.e. Crime No.56 of 2024 under Section 4 punishable under Section 25 of the Indian Arms Act as well as two in-camera statements were considered for passing

detention order. In the said offence, the charge-sheet has been filed i.e. R.C.C. No.445 of 2024 on 08.04.2024 and the petitioner has been released on bail by the concerned Court. The detaining authority had not considered the bail order and in fact, it was not even produced before it. He therefore relies on the decision of this Court in ***Vijay Baburao Avhad Vs. State of Maharashtra and others, [Criminal Writ Petition No.1118 of 2022 with companion matters decided on 24.03.2023]***, wherein this Court has observed, based upon the decisions of Hon'ble Supreme Court where there was an occasion to consider the aspect of grant of bail in respect of the offences which form the genesis for passing the detention order; that when bail is granted it indicates that the said person is at liberty to move and the detention order intends to curtail the said liberty of movement. If the bail is granted after considering all the material including the antecedents, such objective consideration by the Court by granting bail would be relevant and vital for the authorities passing an order of detention. Therefore, when such order is passed in respect of bail, then it should be considered. The second point on which the learned Advocate for the petitioner is harping is delay in passing the detention order. The proposal was

submitted on 13.03.2024 and the detention order is passed on 05.08.2024. The said delay has not been explained in the affidavit-in-reply and, therefore, the order deserves to be quashed and set aside, as the material which was placed before the detaining authority was not sufficient enough to pass a detention order and the impugned order does not show that the subjective satisfaction was arrived at.

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. Abhijit Rajendra Raut, District Magistrate, Nanded, which is nothing but the reiteration of the reasons for passing the

detention order to demonstrate as to how he had arrived at the subjective satisfaction. It is submitted that taking into consideration the graph of the criminal activities, the detention order has been 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. At the outset, the chronology is required to be considered. The statements of in-camera witnesses 'A' and 'B' are taken on 01.03.2024. The proposal was then submitted by the sponsoring authority on 13.03.2024. It appears that the confidential statements came to be verified on 14.03.2024. The Superintendent of Police forwarded the said proposal to the detaining authority on 19.03.2024 and the detention order has been passed on 05.08.2024. That means, there is delay of at least five months in passing the detention order. The affidavit-in-reply by Mr. Abhijit Rajendra Raut, District Magistrate, Nanded, who is the detaining authority, is totally silent on the point of delay. This ground alone is sufficient to set aside the detention

order.

8. The detaining authority has considered only one offence i.e. Crime No.56 of 2024 under Section 4 punishable under Section 25 of the Indian Arms Act. Perusal of the FIR would show that the petitioner was alleged to have been found possessing a dagger. Neither in the FIR, nor in the charge-sheet there is any mention of notification regarding prohibition from carrying arm in the said area where the petitioner alleged to have been found possessing the iron dagger. Unless there would have been a notification, the offence cannot be said to have been made out. That notification appears to have not been even perused by the detaining authority, as there is no mention about the same in the impugned order as well as in his affidavit-in-reply. The subjective satisfaction cannot be only on the basis of the documents in the charge-sheet, but it should be as to whether there is supporting evidence to support the FIR. Another classic point to support the view that in the present case, there was no subjective satisfaction or application of mind by the detaining authority, because he refers the informant who had lodged the FIR vide Crime No.56 of 2024 as “**Plaintiff**”. The word Plaintiff is defined under Code of Civil Procedure as the person who files a plaint and the person

who lodges an FIR under Section 154 of the Code of Criminal Procedure is referred as “Informant”. Respondent No.3 detaining authority being District Magistrate should use the words those are as per the respective law.

9. The statements of in-camera witnesses ‘A’ and ‘B’ are almost identical statements i.e. the first paragraph and, therefore, even in paragraph No.5(i) and 5(ii) while taking note of what they have stated, the first paragraph from the impugned order is also copy paste, except the changes in respect of the place and amount of money. At the most, these statements would raise law and order situation and not the public order. Another aspect to be noted is that it appears that proceedings under Section 110(e)(g) of the Code of Criminal Procedure were undertaken against the petitioner on 22.02.2024 i.e. Chapter Case No.11 of 2024, but the present status that has been shown in the impugned order is closed. Who and why the said case was closed is not reflected in the impugned order and how that normal general law was not sufficient to curtail the activities of the petitioner has also not been dealt with by the detaining authority properly in the impugned order. If that proceedings would have taken to the logical end, then there was no necessity for invoking the

detention proceedings against the petitioner. We, therefore, arrive at a conclusion that there was no subjective satisfaction and the impugned order suffers from delay and, therefore, deserves to be set aside.

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 05.08.2024 bearing No. 2024/RB-1/Desk-2/T-4/MPDA/CR-28 passed by respondent No.3 as well as the approval order dated 14.08.2024 and the confirmation order dated 23.09.2024 passed by respondent

No.2, are hereby quashed and set aside.

III) Petitioner – Ajay s/o Satyaprakash Singh Thakur 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