



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1820 OF 2024

Vinod @ Khangya Vijay Chavan,
Age 22 years, Occu.: Labour,
R/o. Ashoknagar, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.
Presently R/o Sajapur Shivar,
behind Campeq Company,
MIDC, Waluj, Chhatrapati Sambhajnagar.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Additional Secretary,
Home Department, Government of Maharashtra
Mantralaya, Mumbai-32.
2. The Section Officer,
Home Department (Special),
Government of Maharashtra,
Mantralaya, Mumbai-32.
3. The Commissioner of Police,
Chhatrapati Sambhajnagar.
4. The Deputy Commissioner of Police
Zone-II, Chhatrapati Sambhajnagar.
5. Assist Commissioner of Police,
Cidco Division, Chhatrapati Sambhajnagar.
6. Police Inspector,
Cidco Police Station,
Chhatapati Sambhajnagar.

.. Respondents

...

Mr. M. S. Shaikh, Advocate for the petitioner.

Mr. A. M. Phule, APP for the respondents/State.

...

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

DATE : 02 DECEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. M. S. Shaikh for the petitioner and learned APP Mr. A. M. Phule 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 27.01.2024 bearing No. D.O.2024/CB/MPDA/DET-1/CR-04 passed by respondent No.3 as well as the approval order dated 06.02.2024 and the confirmation order dated 27.09.2024 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,

three offences were considered i.e. Crime No.459 of 2023 registered with M.I.D.C. Cidco Police Station, District Chhatrapati Sambhajanagar for the offences punishable under Sections 395, 392, 120-B read with Section 34 of Indian Penal Code, Crime No.660 of 2023 registered with Cidco Police Station, District Chhatrapati Sambhajanagar for the offences punishable under Sections 395, 392, 120-B read with Section 34 of Indian Penal Code and Crime No.664 of 2023 registered with Cidco Police Station, Chhatrapati Sambhajanagar for the offences punishable under Sections 395, 392, 120-B read with Section 34 of Indian Penal Code. Learned Advocate for the petitioner submits that the impugned order is illegal in view of the fact that the detaining authority has not considered as to whether the ordinary law would have been sufficient to curtail the activities of the petitioner. There was no subjective satisfaction arrived at before taking the decision. Only lodging of the case should not be the criteria. Even the statements of in-camera witnesses would show that at the most law and order situation would have arisen and therefore, such kind of order needs to be quashed and set aside.

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 relied on the affidavit-in-reply of Mr. Manoj Lohiya, the then Commissioner of Police, Chhatrapati Sambhajnagar/detaining authority and submits that it has been demonstrated in the same as to how the subjective satisfaction has been arrived at. The petitioner is involved in chain snatching activity. It appears that the petitioner and his associates used to keep a watch on the elderly persons, especially ladies and taking help of each other, they used to snatch the gold chain or other such articles. Now, the discovery is from even the present petitioner and his associates. The detaining authority is also explaining as to why there was delay in serving the grounds of detention in the affidavit. The graph of

criminal activities of the petitioner was going high and, therefore, there was no alternative to the detaining authority to declare him as dangerous person and detain him.

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) Aameena 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, we would like to consider the grounds of delay. Here, the detention order has been passed on 27.01.2024, but the detention order has been served on the petitioner on 17.08.2024. The entire file has been made available in this case, however, it is to be noted that we are unable to get that the detaining authority had ever taken up the proceeding as per Section 7 of the MPDA Act. There is no document to show that the police authorities had approached the Magistrate under Section 82 of the Code of Criminal Procedure. The learned APP was relying on the report of the Police Sub Inspector, Crime Branch, Chhatrapati Sambhajnagar dated 06.10.2023 to Police Inspector, CIDCO M.I.D.C. Police Station, Chhatrapati Sambhajnagar to show that there is discovery of articles in

Crime No.660 of 2023 at the hands of present petitioner. We want to stress that if he was arrested in the said case prior to 06.10.2023 and was released by learned Additional Sessions Judge, Court No.3, Aurangabad on bail on 27.11.2023, then first of all why action for cancellation of bail was not undertaken and secondly, when the record shows that the grounds of detention have been served by getting permission from the Magistrate in whose custody he was on 17.08.2024, then it ought to have been clearly stated that the earlier attempts to nab him had failed and he had gone absconding. We are unable to get the date of arrest of the petitioner in connection with Crime No.375 of 2024 in which he was under Magisterial custody, but certainly he was arrested much prior to 17.08.2024. Without taking the procedure that is required to be undergone as per Section 7 of the MPDA Act, it cannot be said that the accused was absconding and therefore, there is delay in serving the grounds of detention. The said delay is certainly fatal.

8. Now, as aforesaid, the detaining authority has taken into consideration three offences i.e. Crime No.459 of 2023, Crime No.660 of 2023 and Crime No.664 of 2023. All are for the offences punishable under Sections 395, 392, 120-B read with Section 34

of Indian Penal Code. If we peruse each of the FIR, then it is against unknown person. It is stated that one or two persons had come on motorcycle and then by snatching the Mangalsutra from the neck of the informant, those persons fled away on motorcycle. When the detaining authority passed the detention order, there was nothing to suggest that the identification parade was conducted by the investigating officer and the informant in all the three FIR's had identified the petitioner. Unless there is connection between the crime alleged and the accused, it cannot be said that it is the same accused, who is involved in the crime. The detaining authority ought to have then insisted for having the identification parade and upon establishing the same connection could have proceeded to decide the proposal for detention. No such course has been undertaken. Another fact to be noted is that the procedure under Section 110(e)(g) of the Code of Criminal Procedure was taken up against the petitioner, however, it has been dropped/closed. It is now stated in the reasons that as the said procedure was not sufficient to prevent the petitioner from indulging in criminal and dangerous activities, it has been closed. This reason is absolutely not justified. Another fact that has not been considered by the

detaining authority is that other accused persons were also involved in the three crimes, then whether similar action has been taken against the other accused or not ought to have been gathered. The sponsoring authority and/or the detaining authority cannot pick and choose such coercive action only against one of the co-accused. The impugned order therefore appears to be tainted and just to honour the sponsoring authority; it has been passed.

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 stands allowed.

II) The detention order dated 27.01.2024 bearing No. D.O.2024/CB/MPDA/DET-1/CR-04 passed by respondent No.3 as well as the approval order dated 06.02.2024 and the confirmation order dated 27.09.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner – Vinod @ Kangya Vijay Chavan 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