



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1165 OF 2024

Akash @ Aau Kalyan Jadhav
Age. 25 Yrs, Occu. Labour,
R/o. Kamble Galli, Sambhajanagar
Jalna, Tq. & Dist. Jalna.

.. Petitioner

Versus

1. District Magistrate, Jalna,
District. Jalna.
2. The State of Maharashtra,
Through the Additional Chief Secretary,
Govt. of Maharashtra, Home Department
Mantralaya, Mumbai-32.
3. The Jail Superintendent,
Central Prison, Harsool,
Aurangabad.

.. Respondents

...
Mr. Satej S. Jadhav, Advocate for the petitioner.
Mr. A. M. Phule, APP for the respondents – State.

...

**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

DATE : 12 AUGUST, 2024.

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Satej S. Jadhav 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 petition challenges the detention order passed by respondent No.1 against him bearing No.2024/RB-Desk-1/Pol-1/MPDA/Kavi-68 dated 21.03.2024 and the approval order dated 28.05.2024 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 order and the material which was before the detaining authority at the time of passing the detention order and the material that has been supplied to him.

5. Though in all five cases have been registered against the petitioner, only three cases appears to have been considered for passing the detention order, (i) Crime No.519 of 2022 registered with Sadar Bazar Police Station, District Jalna under Sections 307, 324, 504, 506 of Indian Penal Code, which is now pending for trial, (ii) Crime No.453 of 2023 registered with Badnapur Police Station under Section 3 punishable under Section 25 of the Arms Act and (iii) Crime No.1092 of 2023 registered with Sadar Bazar Police Station under Section 3 punishable under

Section 25 of the Arms Act. The last two offences are still under investigation. It is further submitted that as regards Crime Nos.453 of 2023 and 1092 of 2023 are concerned, in fact, those arms were not seized from the custody of the petitioner. It is stated that those arms were discovered upon the statement of the co-accused, so also in view of the said statement which has no evidentiary value, the petitioner came to be arrayed as accused. He submits that the other two offences were also considered. In fact, Crime Nos.316 of 2019, 372 of 2022 and 519 of 2022 were considered when action was taken under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (for short "MPDA Act") against the petitioner on 20.07.2022, however, that action was revoked. When these three offences were considered in the past and the action was revoked, then those three offences could not have been considered again by the detaining authority while passing the impugned order and, therefore, the impugned order is bad as it suffers from subjective satisfaction. It has been further submitted that as regards the in-camera statements are

concerned, the copy of the statement of witnesses 'A' and 'B' were not at all supplied to the petitioner and, therefore, when these mandatory provisions have not been adhered to, the State ought not to have confirmed the detention order.

6. Per contra, learned APP strongly supports the action taken against the petitioner. He submits that though the three offences were part of earlier action under MPDA Act against the petitioner, yet since those are pending before trial still those can be taken into consideration as a past history. Arms have been recovered from the co-accused and the arms are in the nature of pistol (firearm). Definitely, it would have been procured for disturbing the public order. The statements of the confidential witnesses were recorded, seen and verified by the detaining authority and thereafter, the detention order has been passed. Thereafter, entire papers were presented before the Advisory Board and based upon the opinion for the approval to the detention of the petitioner, the confirmation order has been passed.

7. The original file has been made available for perusal of this Court and taking into consideration the papers in the original file it can be certainly noted that earlier action under MPDA was

revoked. The revocation order was passed by the State Government on 31.10.2022. Perusal of the said order would show that after the Advisory Board had opined that there is no sufficient cause for continuation of the detention of the petitioner, the said order was revoked. The said opinion of the Advisory Board is not made available to this Court, but suffice it to say that earlier when the detention order was passed, it was later on revoked. The detaining authority had considered Crime Nos.316 of 2019, 375 of 2022 and 519 of 2022 registered with Sadar Bazar Police Station, Jalna. The present detention order could not have been passed on the basis of those offences because it was already the subject matter of the earlier proceedings, which was not approved by the State Government. This clearly shows that present detention order, in which these three offences have been considered, has been passed in mechanical manner. In other words, there was no subjective satisfaction by the detaining authority.

8. We would like to rely on the Three Judge Bench decision of the Hon'ble Supreme Court in ***Nevanath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367]***, wherein after considering various judgments, the legal position has been

summarized as follows -

“43. We summarize our conclusions as under :-

- (i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,
- (ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,
- (iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,
- (iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,

- (v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,
- (vi) The satisfaction cannot be inferred by mere statement in the order that "it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order". Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,
- (vii) Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,
- (viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and
- (ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction

is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention. For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.”

9. As regards the two offences, which would have been the subject matter i.e. one registered with Badnapur Police Station and another with Sadar Bazar Police Station under the Arms Act are concerned, the prosecution story as narrated in the detention order would certainly show that the discovery is at the behest of some other accused and in view of the statement of the co-accused, it appears that the present petitioner has been arrayed as accused in the said cases. When the petitioner was not at all found possessing the arm which is stated to be a pistol (firearm), the petitioner cannot be branded as dangerous person as contemplated under the MPDA Act, who would disturb the public order. To explain this concept, we may take help of the observations in ***Nevanath*** (*Supra*) made in paragraph No.32 :-

“32. The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression ‘law and order’ is wider in scope inasmuch as contravention of law always affects order, ‘Public order’ has a narrower ambit, and could be affected by only such contravention, which affects that community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of ‘law and order’ and ‘public order’ is one of degree and extent of the reach, of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. In other words, the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. [See: *Union of India v. Amrit Lal Manchanda*, (2004) 3 SCC 75].”

10. There appears to be total violation of constitutional rights of the petitioner when the copies of the statements of the confidential witnesses 'A' and 'B' were not supplied to the petitioner. All those documents on which the detention order is based; should be supplied to the detenu. In **Nevanath** (*Supra*) itself it has been observed by the Hon'ble Supreme Court that the order of detention is of the colonial era and the illegal detentions cannot be allowed to sustain. When it is demonstrated that the documents on which the detention order is based are not provided to the detenu, then such order cannot be allowed to sustain even for a moment.

11. Even if for the sake of arguments, we take into consideration the statement of the confidential witnesses 'A' and 'B', then at the most they would have raised law and order situation and not the public order, as it was the action alleged to be taken against the said in-camera witnesses.

12. The opinion of the Advisory Board in respect of present action against the detention has also not been made available. Therefore, we are unable to get as to whether it was placed before Advisory Board, whether from their own earlier opinion such

action was dropped and whether the earlier opinion was then considered by the Advisory Board while considering the present action or not. In ***Nevanath*** (*Supra*), the role of the Advisory Board has been explained and it is observed that an Advisory Board is not a mere rubber-stamping authority for an order of preventive detention. If the earlier opinion of the Advisory Board would have been placed before the Advisory Board once again at this time also, then there could have been a proper assessment by the Advisory Board.

13. Taking into consideration the above-said observations, it can be certainly said that the petitioner could not have been branded as a dangerous person as contemplated under MPDA Act and, therefore, the impugned order deserves to be quashed and set aside. Hence, we pass the following order :-

ORDER

- I)** The writ petition is allowed.
- II)** The detention order dated 21.03.2024 passed by respondent No.1 bearing No.2024/RB-Desk-1/Pol-1/MPDA/Kavi-68 and the approval order dated 28.05.2024 passed by

respondent No.2, are hereby quashed and set aside.

III) The petitioner, namely, Akash @ Aau Kalyan Jadhav shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm