



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.02 OF 2025

Pravin @ Don s/o Gopal Tayade
Age: 28 years, Occu.: Labour,
R/o. Padalsa, Tq. Yaval,
District Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra
Through: the Secretary Home Department
Mantralaya, Mumbai.
2. The District Magistrate,
Jalgaon.
3. The Superintendent,
Central Prison, Nagpur,
Dist. Nagpur.

.. Respondents

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Mr. A. L. Kanade, Advocate for the petitioner.
Mr. A. M. Phule, APP for the respondents/State.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 04 FEBRUARY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. A. L. Kanade 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 26.08.2024 bearing No.Dandapra/KAVI/M.P.D.A./33/2024 passed by respondent No.2 as well as the approval order dated 05.09.2024 and the confirmation order dated 11.10.2024 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, five offences were considered i.e. **(i)** Crime No.136 of 2023 dated 28.06.2023 registered with Faijpur Police Station, District Jalgaon for the offence punishable under Section 379 of Indian Penal Code, **(ii)** Crime No.140 of 2023 dated 29.06.2023 registered with Faijpur Police Station, District Jalgaon for the offence punishable under Section 379 read with Section 34 of Indian Penal Code, **(iii)** Crime No.142 of 2023 dated 29.06.2023 registered with Faijpur Police Station, District Jalgaon for the offence punishable under Section 379 of Indian Penal Code,

(iv) Crime No.40 of 2024 dated 27.02.2024 registered with Savada Police Station, District Jalgaon for the offence punishable under Section 379 read with Section 34 of Indian Penal Code and **(v)** Crime No.57 of 2024 registered with Faijpur Police Station, District Jalgaon for the offence under Section 4 punishable under Section 25 of the Indian Arms Act and under Sections 112, 117, 135 of Maharashtra Police Act. It has been vehemently submitted on behalf of the petitioner that for passing detention order the detaining authority has considered in all five offences, however, out of them for three offences i.e. Crime No.136 of 2023, Crime No.140 of 2023, Crime No.142 of 2023, the FIR was lodged against unknown persons. It has not been stated in the impugned order that how thereafter the offence was connected to the present petitioner. Further, in Crime No.40 of 2024 it was alleged that the petitioner and his associates had stolen baby goat which independently cannot be the offence for issuing detention order. In respect of Crime No.57 of 2024 it is stated that the present applicant was found disturbing the piece of the society by shouting when he was holding iron sword. The detaining authority has not considered when the petitioner was released on bail in that offence. Perusal of the record would show that he

was arrested on 03.03.2024 and produced before the concerned Court on 04.03.2024. On the same day, he had filed application for bail as he was taken in magisterial custody. Say of the investigating officer and learned APP was called and then on 06.03.2024, he has been released on bail. Though the objection was taken, yet the bail has been granted and the State has not challenged that order. Thus, all these facts would disclose that at the most law and order situation would have been created, but not the public order. Same is the case as regards the statements of in-camera witnesses 'A' and 'B'. Further, it appears that all the offences pending since 2015 were considered by the detaining authority to categorize the petitioner as dangerous person, which is against law. Therefore, the impugned order is illegal and cannot be allowed to sustain.

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 filed by Mr. Ayush Prasad, District Magistrate, Jalgaon. He has reiterated as to what was the material before him at the time of passing detention order and how he had arrived at the subjective satisfaction. He has submitted that there is no procedural illegality. All the offences have not been considered but only the offences which have been committed by the petitioner in the recent past have been considered for passing the detention order. The preventive actions under Sections 107 and 110(e)(g) of the Code of Criminal Procedure failed to yield the result, as the petitioner continued his criminal activities.

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. The first and the foremost fact to be noted is

that the authority who passes the detention order has to see that how the detenu has been connected with the crime or what is the *prima facie* evidence that has been collected in the matter against the detenu to connect the criminal activity and that should reflect in his order. Mere statements on the basis of information supplied by the sponsoring authority is not sufficient. Crime No.136 of 2023, Crime No.140 of 2023 and Crime No.142 of 2023 registered with Faijpur Police Station, District Jalgaon are under Section 379 of Indian Penal Code in respect of theft of tractor with battery as stated in the detention order, however, perusal of the FIRs would show that these FIRs were in respect of theft of battery only that too against unknown persons and the batteries have been produced by one Mirza Faisal Baig Salim Baig, Shaikh Lukman Shaikh Kasam etc., who were not the accused persons. Crime No.40 of 2024 is in respect of baby goat which could not have been the case for passing a detention order. The FIR in Crime No.57 of 2024 states that the petitioner was found holding iron sword near Bouddhawada at village Padalsa and he was shouting. The Sections which have been invoked are under Arms Act and Bombay Police Act. For Bombay Police Act, it can be seen that those were the non cognizable offences and as regards

Section 4 of the Indian Arms Act is concerned, the copy of the notification of either of the Central Government or the State Government was not made available to the petitioner. Thus, the facts of these cases would clearly show that there might be law and order situation created due to the behaviour of the petitioner, but not the public order situation as contemplated under ***Nenavath Bujji (Supra)*** and ***Ameena Begum (Supra)***. Same is the case as regards the in-camera witnesses 'A' and 'B'. In fact, no specific date has been given, but it is then stated that the incident had taken place 2–3 months prior to the recording of the statements of the witnesses and that dispute was personal in nature. Here, the confidential statements of witnesses 'A' and 'B' were recorded on 06.05.2024. Verification of the same was done on 24.05.2024, but proposal has been submitted by the sponsoring authority on 04.07.2024. Why there was so much delay in sending the proposal has not been explained by the sponsoring authority. Of course, after the said proposal was received by the detaining authority, there is no such delay, but still the time spent between recording of confidential statements and verification thereof till the detention order, is more than two and half months. If the petitioner was really a dangerous person

and his criminal activities were supposed to be curtailed, then the sponsoring authority cannot afford to remain ideal.

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. As regards the role of Advisory Board is concerned, we may lay our hands on the decision in **Nevanath (Supra)**, wherein the role of the Advisory Board has been explained and the observations in respect of the same in paragraph Nos.55 to 58 are important :-

“55. What can be discerned from a bare perusal of the above-mentioned provisions is that the Advisory Board performs the most vital duty of independently reviewing the detention order, after considering all the materials placed before it, or any other material which it deems necessary. When reviewing the detention order along with the relevant materials, the Advisory Board must form an opinion as to the sufficiency of the cause for warranting detention. An order of detention passed under the Act, 1986 can only be confirmed if the Advisory Board is of the opinion

that there exists sufficient cause for the detention of the detenu.

56. The framers of the Constitution being in *seisin* of the draconian nature of an order of preventive detention and its adverse impact on individual liberty, have specifically put in place safeguards within Article 22 through the creation of an Advisory Board, to ensure that any order of preventive detention is only confirmed upon the evaluation and scrutiny of an independent authority which determines and finds that such an order for detention is necessary.

57. The legislature in its wisdom has thought it fit, to entrust the Advisory Board and no one else, not even the Government, with the performance of this crucial and critical function which ultimately culminates into either the confirmation or revocation of a detention order. The Advisory Board setup under any preventive detention law in order to form its opinion is required to; (i) consider the material placed before it; (ii) to call for further information, if deemed necessary; (iii) to hear the detenu, if he desires to be heard and; (iv) to submit a report in writing as to whether there is sufficient cause for “such detention” or whether the detention is justified.

58. An Advisory Board is not a mere rubber-

stamping authority for an order of preventive detention. Whenever any order of detention is placed before it for review, it must play an active role in ascertaining whether the detention is justified under the law or not. Where it finds that such order of detention is against the spirit of the Act or in contravention of the law as laid down by the courts, it can definitely opine that the order of detention is not sustainable and should not shy away from expressing the same in its report.”

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) The Writ Petition stands allowed.

II) The detention order dated 26.08.2024 bearing No.Dandapra/KAVI/M.P.D.A./33/2024 passed by respondent No.2 as well as the approval order dated 05.09.2024 and the confirmation order dated 11.10.2024 passed by respondent

No.1, are hereby quashed and set aside.

III) Petitioner – Pravin @ Don s/o Gopal Tayade shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm