



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.37 OF 2025

Sainath @ Dadya Raju Gayakwad
Age: 21 years, Occu.: Labour,
R/o. Harsh Nagar, Labour Colony,
Behind Municipal Corporation
Hospital, Chh. Sambhajinagar.

.. Petitioner

Versus

1. The Commissioner of Police,
Chhatrapati Sambhajinagar.
2. The State of Maharashtra
Through the Additional Chief
Secretary, Govt. of Maharashtra,
Home Department, Mantralaya,
Mumbai-32.
3. The Jail Superintendent,
Central Prison,
Chhatrapati Sambhajinagar.

.. Respondents

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Mr. Rohit Patwardhan, Advocate for the petitioner.
Mr. G. A. Kulkarni, APP for the respondents/State.

...

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

DATE : 26 FEBRUARY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Rohit Patwardhan for the
petitioner and learned APP Mr. G. A. Kulkarni 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 04.11.2024 bearing No. 2024/CB/MPDA/DET-12/CR-84 passed by respondent No.1 as well as the approval order dated 13.11.2024 and the confirmation order dated 18.12.2024 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, two offences were considered i.e. Crime No.200 of 2024 registered with City Chowk Police Station, District Chhatrapati Sambhajanagar for the offences punishable under Sections 324, 323, 504, 506 of Indian Penal Code and Crime No.218 of 2024 registered with City Chowk Police Station, District Chhatrapati Sambhajanagar for the offences punishable under Sections 307, 326, 504, 506 of Indian Penal Code. Learned Advocate for the

petitioner submits that two offences and statements of confidential witnesses 'A' and 'B' were considered by the detaining authority for passing the detention order. The first offence that was considered was Crime No.200 of 2024 dated 03.06.2024 under Sections 324, 323, 504, 506 of Indian Penal Code. The said offence was pending investigation when the detention order was passed. Perusal of the same would show that the petitioner was not even arrested in that matter, but notice under Section 41(A) of the Code of Criminal Procedure was given. The second offence is stated to have been registered on 17.06.2024 i.e. Crime No.218 of 2024 under Sections 307, 326, 504, 506 of Indian Penal Code and the charge-sheet was filed as well as the petitioner was released on bail. Though the detaining authority states that he had considered the bail order, yet it appears that the observations have not been considered at all. The contents of both the FIRs as well as the statements of witnesses 'A' and 'B' would show that at the most law and order situation would have been created and not the public order.

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 submits that in most probability the initiation of action under the M.P.D.A. started with recording of statements. Statement of witness ‘A’ was recorded on 21.10.2024 and statement of witness ‘B’ recorded was on 22.10.2024. He relies on the affidavit-in-reply of Mr. Pravin Pawar, the Commissioner of Police, Chhatrapati Sambhajinagar, wherein he has stated as to what was the material before him while arriving at the conclusion that the petitioner is a dangerous person. Though in Crime No.200 of 2024 the petitioner was not arrested, yet in the second offence i.e. Crime No.218 of 2024, he was arrested. The contents of the FIR would show that the informant had gone to the place where the incident occurred to fetch his nephew, who was amongst persons,

who were sitting in round shape. The informant had taken objection of the presence of his nephew with those persons, who were having questionable background. At that time, he was assaulted by the petitioner on his neck from backside by means of knife. He has received bleeding injury. Threat was given to kill him and when he as well as his nephew tried to seek help from the people, who were present there, due to the terror of the petitioner nobody helped them. In the said FIR itself, the situation was not only law and order, but also the public order situation. It was then confirmed or got reiterated when the statements of witnesses 'A' and 'B' were recorded and, therefore, there was ample evidence to arrive at the subjective satisfaction for the detaining authority to pass the detention order, as the criminal activities of the petitioner were not curtailed.

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. From the impugned order it can be seen that

the petitioner is involved in, in all, four offences one was of 2021 and other three were of 2024. Out of those three offences, first was Crime No.28 of 2024 dated 23.01.2024 under Section 392 of Indian Penal Code. Then these two offences i.e. Crime No.200 of 2024 and Crime No.218 of 2024 came to be registered on 03.06.2024 and 17.06.2024 respectively. If as contended on behalf of the State that in the FIR vide Crime No.218 of 2024 there was a public order situation and the informant cried for help but due to terror of the petitioner nobody came to help him out, then the question arises as to why the sponsoring authority took about four months to record the statements of in-camera witnesses 'A' and 'B'. The incident in question in Crime No.218 of 2024 had taken place on 17.06.2024. The sponsoring authority cannot start the action as per its own wish. If the petitioner was a dangerous person in June 2024 itself, then the public cannot be left at the mercy of the detaining authority or the sponsoring authority. Further interesting point is that nowhere it is disclosed by any authority as to how they came to know about the names of witnesses 'A' and 'B'. There is no affidavit on behalf of the sponsoring authority as to what exactly had happened just prior to 21.10.2024. In addition, it is observed that in connection with

Crime No.218 of 2024, the petitioner was released on bail on 06.07.2024. When the sponsoring authority had recorded those statements on 21.10.2024 and 22.10.2024 and came to know about some incidents, then why no action for cancellation of his bail was not undertaken. Thus, when the criminal activities of the petitioner could have been controlled by resorting to the general law or legal provisions; there was no necessity to invoke the detention law. Further, it appears that Chapter Case No.09 of 2024 under Section 110(e)(g) of the Code of Criminal Procedure was initiated against the petitioner, but it is stated that it was dropped in view of action taken under M.P.D.A. When already one action under the general law was undertaken, then it ought to have been taken to its logical end. There ought to have been reason as to why the said action could not have curtailed the criminal activities of the petitioner.

8. Though the detaining authority has stated that it has considered the bail order that has been passed in Crime No.218 of 2024 by learned Additional Sessions Judge, Aurangabad on 06.07.2024, yet it appears that the observations were not at all considered. Of course, the detaining authority cannot assess the evidence that has been collected from judicial point of view, but

the observations would then ought to have been considered wherein the concerned Judge has observed that since the injury is simple in nature (as stated in the injury certificate), *prima facie* Section 326 of Indian Penal Code is not attracted and looking to the part of body which suffered assault, even attract Section 307 of Indian Penal Code would come under doubt. We have also perused the injury certificate. The probable weapon that is stated to have been used is stated to be hard and blunt, whereas in the FIR it is stated that knife was used. The material which was on record therefore was not sufficient to arrive at any subjective satisfaction. At the most, the law and order situation would have been created. The authorities under the M.P.D.A. are supposed to take action under the said enactment as a last resort, that too upon the observations and decisions of Hon'ble Apex Court as well as this Court. When the said authority is a quasi judicial authority, then it cannot restrict itself to the proposal that has been submitted by the sponsoring authority.

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. 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.

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 04.11.2024 bearing No. 2024/CB/MPDA/DET-12/CR-84 passed by respondent No.1 as well as the approval order dated 13.11.2024 and the confirmation order dated 18.12.2024 passed by respondent No.2, are hereby quashed and set aside.
- III)** Petitioner - Sainath @ Dadya Raju Gayakwad 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