



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.46 OF 2025

Rushikesh @ Bhavadya Ashok Bade
Age: 24 years, Occu.: Labour,
R/o. Sarasnagar, Tq and Dist.
Ahilyanagar.

.. Petitioner

Versus

1. The State of Maharashtra
Through Section Officer,
Home Department (Special),
2nd Floor, Mantralaya, Mumbai-32.
2. The District Magistrate
Office of the District Magistrate
Office, Tq. And Dist. Ahilyanagar.
3. The Superintendent,
Central Prison, Nashik,
Tq. And Dist. Nashik.

.. Respondents

...

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

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

DATE : 07 MARCH 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Ms. S. G. Sonawane 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 18.11.2024 bearing No.DC/Desk-9C1/1613/2024 passed by respondent No.2 as well as the approval order dated 29.11.2024 and the confirmation order dated 17.01.2025 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. She submits that though several offences were registered against the petitioner, yet for the purpose of passing the impugned order, the detaining authority has considered only one offence i.e. Crime No.496 of 2024 registered with Bhingar Camp Police Station, District Ahilyanagar for the offences punishable under Sections 395, 201 of Indian Penal Code, under Section 4 punishable under Section 25 of the Arms Act and under Section 142 of the Maharashtra Police Act. The facts in the said FIR at the most would have raised law and order situation and not the public order. The charge-sheet is also filed in the said matter. The bail has been granted by the concerned Court on 05.10.2024. The statements of witnesses 'A' and 'B' would also show that it would raise only law and order situation and not the public order. The statements have been recorded on 04.11.2024 and 06.11.2024 in respect of the incident alleged to have committed in June 2024 and July 2024 respectively.

This material cannot be said to be sufficient to arrive at the subjective satisfaction.

5. Learned Advocate for the petitioner, in support of her submissions, relies on the following decisions :-

I) Nilesh Sunil Pendulkar Vs. The District Magistrate, Ahmednagar and others, [Criminal Writ Petition No.1820 of 2023 decided by the coordinate Bench of this Court on 29.02.2024];

II) Alakshit s/o Rajesh Ambade Vs. The State of Maharashtra and another, [Criminal Writ Petition No.626 of 2022 decided by this Court Bench at Nagpur on 20.12.2022];

III) Ashokrao s/o Uttamrao Pawar Vs. State of Maharashtra and others, [Criminal Writ Petition No.738 of 2022 decided by this Court Bench at Nagpur on 08.02.2023];

IV) Pintu @ Sidharth Bhagwan Devde Vs. The State of Maharashtra and others, [Criminal Writ Petition No.1501 of 2023 decided by the coordinate Bench of this Court on 06.11.2023] and;

V) Pappu Kacharu Chorpade Vs. State of Maharashtra and others, [Criminal Writ Petition No.1107 of 2024 decided by this Court on 04.09.2024].

6. Per contra, the learned APP strongly supports the action taken against the petitioner. She 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. Siddharam Salimath, District Magistrate, Ahilyanagar, wherein he demonstrates as to what was the material before him for taking cognizance. He further submits that the petitioner was externed for two years from Ahilyanagar district by order dated 19.05.2022, still his criminal activities were not curtailed and immediately after the duration of externment came to an end, one more offence has been committed by the petitioner. The petitioner was involved in serious offences against body i.e. two offences were under Section 395 of Indian Penal Code, one offence is under Section 384 of Indian Penal Code and another is under Section 307 of Indian Penal Code. His criminal activities could have been curtailed only upon the detention order.

7. 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].***

8. 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. Here, in the order of detention, the detaining authority has taken note of six cognizable offences including

the last offence which has been considered for issuing detention order and four preventive actions taken against him. As regards the preventive actions those were taken against the petitioner, three out of them are the chapter cases. In three cases, the final bond duration had expired, that means the order had come to an end and it appears that though three offences appear to have been committed during the period of those bonds under Section 110(e)(g) of the Code of Criminal Procedure, no further action appears to have been taken by the police. The last chapter case is stated to have been disposed of in view of action under M.P.D.A. The externment order came to be passed on 19.05.2022 and the petitioner was externed for a period of two years from Ahilyanagar. When offence vide Crime No.1317 of 2023 came to be registered with Kotwali Police Station, District Ahilyanagar against the petitioner on 31.10.2023 and the charge-sheet came to be filed vide Sessions Case No.50 of 2024, it appears that again the prosecution had not taken any action. Offence under Section 142 of the Maharashtra Police Act was not registered at that time, but then it has been registered now along with this offence i.e. Crime No.496 of 2024, which was considered for passing the detention order. The offence in this case is stated to have been committed on 22.05.2024. On that day, the externment order had come to an end. Therefore, certainly, the offence under Section 142 of the Maharashtra Police Act was not made out. The police or the

prosecution is not taking action which is available under the general law, then in that situation, the detention order which is termed as draconian rule, ought not to have been passed at all. Another important point is that while passing the detention order note has been taken by the District Magistrate that, in the said offence, the petitioner has been released on bail by the learned Additional Sessions Judge on 05.10.2024. We observe that mere statement that District Magistrate has considered the fact that petitioner has been released on bail is not sufficient. Recently, in ***Joyi Kitty Joseph Vs. Union of India and Ors., [Criminal Appeal No.____ of 2025 (arising out of Special Leave Petition (Crl.) No.16893 of 2024) decided by the Hon'ble Supreme Court on 06.03.2025]***, reliance has been placed on the decision in ***Ameena Begum v. State of Telangana and others, [(2023) 9 SCC 587]*** and it has been observed that preventive detention is impermissible when the ordinary law of the land is sufficient to deal with the situation was *per incuriam* to the Constitution Bench decision in ***Haradhan Saha vs. State of W.B. [(1975) 3 SCC 198]***, in the limited judicial review available to constitutional courts in preventive detention matters. However, in ***Ameena Begum (Supra)***, the Hon'ble Supreme Court explained the true distinction between a threat to "law and order" and acts "prejudicial to public order" and it is stated that it cannot be determined merely by the nature or quality of the act complained of, but in the proper degree and

extent of its impact on the society. Further, it is observed that “When bail was granted by the jurisdictional Court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention ordered. The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the Magistrate while granting bail for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging in further like activities.”

9. Perusal of the statements of in-camera witnesses ‘A’ and ‘B’ would show that first two paragraphs are copy paste. Even if we consider that the incident that is stated had happened against them, yet that will give rise to law and order situation only.

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 18.11.2024 bearing No.DC/Desk-9C1/1613/2024 passed by respondent No.2 as well as the approval order dated 29.11.2024 and the confirmation order dated 17.01.2025 passed by respondent No.1, are hereby quashed and set aside.
- III) Petitioner – Rushikesh @ Bhavadya Ashok Bade 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