



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.89 OF 2025

Shaikh Zubair Shaikh Khadeer
Age: 20 years, Occu.: Labour,
R/o. Mudkhed Road, Wajegaon,
Nanded, Tq. And Dist. Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate,
Nanded, Tq. And Dist. Nanded.
3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad,
District Aurangabad.

.. Respondents

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Mr. S. S. Gangakhedkar, Advocate for the petitioner.

Mr. S. A. Gaikwad, APP for the respondents/State.

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

DATE : 13 MARCH 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. S. S. Gangakhedkar for the petitioner
and learned APP Mr. S. A. Gaikwad 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 23.10.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-46 passed by respondent No.2 as well as the approval order dated 30.10.2024 and the confirmation order dated 17.12.2024 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, only one offence was considered i.e. Crime No.338 of 2024 registered with Nanded Rural Police Station, District Nanded for the offences punishable under Sections 457, 380 of Indian Penal Code. Learned Advocate for the petitioner submits that the detaining authority has considered one offence and two statements of in-camera witnesses, however, he has not taken into consideration the fact that the FIR was against unknown person and the remand report states that the fingerprints from the spot are matching with co-accused and not the present petitioner. Reasons

given in the bail application are not considered at all. Still even if we take the contents of the FIR as it is and the other documents in respect of that offence, yet law and order situation would have arisen and not the public order. The statements of witnesses 'A' and 'B' would also show that at the most law and order situation would have arisen. The first two paragraphs of the statements of witnesses are identical. Therefore, there was no such material before the detaining authority to arrive at the subjective satisfaction. Further, there is inordinate delay that has been caused in passing the order. It is not explained in the affidavit-in-reply and, therefore, the impugned order deserves 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 relies on the affidavit-in-reply of Mr. Abhijit

Raut, District Magistrate, Nanded/Detaining authority, who has given in detail as to what was the material before him to arrive at the subjective satisfaction. It is stated in the order as well as the affidavit-in-reply that the fact of release of the petitioner on bail was considered in paragraph No.10 of the order. Further, note has also been taken that though in the past the preventive action was taken against the petitioner, yet his criminal activities were not curtailed and, therefore, the fresh offence which he had committed was considered. Therefore, no fault can be found in the impugned order.

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) 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];*

(iii) Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, [1995 (3) SCC 237];

(iv) Pushkar Mukherjee and Ors. Vs. The State of West Bengal, [AIR 1970 SC 852];

(v) Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and

Ors., (2000 (6) SCC 751) and;

**(vi) 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. As aforesaid, in the reasons or grounds of detention, the detaining authority has considered Crime No.338 of 2024 registered with Nanded Rural Police Station, District Nanded for the offence punishable under Sections 457, 380 of Indian Penal Code. Perusal of the said FIR would show that it was against unknown person. The obvious question would be as to what was the material that was placed before the learned District Magistrate to show that the present petitioner is connected to the said crime. The documents which were supplied to the petitioner would show that the sponsoring authority was relying on the remand report dated 21.05.2024. It is stated that the fingerprints from the spot were taken and they were tried to be matched with the fingerprints of the accused persons on record. They matched

with one accused by name Amir Pasha Shaikh. Now, it is stated that from the secret informer, the investigating officer could get that the present petitioner is the colleague or co-accused in other matters or was helping the main accused. Now, this cannot be the ground for a District Magistrate to rely on the fact about involvement of the present petitioner with the crime. There is no such document which was produced before the District Magistrate to show that any recovery of article was made from the present petitioner. The FIR shows that none was present in the house as all the persons from the house had gone to a programme of their relative at a different place. There appears to be no statement of a witness, who had seen the present petitioner entering the house of the said informant. There is no test identification parade that was held in the matter to connect the petitioner with the crime. Therefore, only the registration of the offence is not sufficient. So also, we observe that mere statement that District Magistrate has considered the fact that petitioner has been let 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."

Here also there is same situation. The bail was granted much prior to the detention order in this matter and the conditions those were imposed or they are inherent, were not considered.

8. The first two paragraphs of the statements of in-camera witnesses are copy paste, however, the third paragraph is in respect of alleged incident against them. 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.

9. The most important point in this case is the delay. The confidential statements of witnesses 'A' and 'B' were recorded on 05.06.2024. The sponsoring authority had submitted the proposal to Sub Divisional Police Officer on 06.06.2024. The confidential statements have been verified on 14.06.2024. The Sub Divisional Police Officer has then submitted it further to DSP and then the DSP has forwarded the same to the detaining authority on 19.06.2024, yet the detention order came to be passed on 23.10.2024. This delay has not been sufficiently explained in the affidavit-in-reply.

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 is allowed.
- II) The detention order dated 23.10.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-46 passed by respondent No.2 as well as the approval order dated 30.10.2024 and the confirmation order dated 17.12.2024 passed by respondent No.1, are hereby quashed and set aside.
- III) Petitioner - Shaikh Zubair Shaikh Khadeer 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