



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.105 OF 2025

Nilesh Bhila Koli
Age: 51, Occu.: Labour,
R/o. Utran, Tq. Erandol,
District Jalgaon

.. Petitioner

Versus

1. The State of Maharashtra
Through its Additional Secretary
Home Department (Special),
Mantralaya, Mumbai.
2. The District Magistrate, Jalgaon,
Detaining Authority.
3. The Superintendent,
of Central Prison, Thane
Central Jail

.. Respondents

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Ms. Khushi K. Varma, 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 : 12 MARCH 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Ms. Khushi K. Varma 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 07.01.2025 bearing No.Dandapra/KAVI/MPDA/47/2024 passed by respondent No.2 as well as the approval order dated 15.01.2025 and the confirmation order dated 25.02.2025 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, only one offence was considered i.e. Crime No.189 of 2024 registered with Kasoda Police Station, District Jalgaon for the offence punishable under Sections 379 of Indian Penal Code, under Section 48(7)(8) of the Maharashtra Land Revenue Code, 1966. Learned Advocate for the petitioner submits that in the detention order the detaining authority has given tabular chart of the cases pending against the petitioner and it appears that he has taken note of six cognizable offences including the offences registered within six months, four non cognizable offences and two preventive proceedings. However, it appears that the detaining authority had considered only Crime No.189 of 2024 registered with Kasoda Police Station, District Jalgaon for the offence punishable under Section 379 of Indian Penal Code and under Section 48(7)(8) of the Maharashtra Land

Revenue Code, which came to be registered on 22.10.2024, in which the petitioner was arrested on 18.12.2024 and released on bail on 20.12.2024. Though the note of bail order has been taken, yet the reasons have not been considered at all and also several conditions were imposed while releasing the petitioner on bail. Whether those conditions were sufficient to curb the criminal activities ought to have been considered. The in-camera statements of witnesses are considered, however, the District Magistrate failed to consider that those statements were recorded on 03.09.2024, yet he proceeded to pass the detention order on 07.01.2025 and in the meantime, the petitioner was released on bail by imposing conditions on 20.12.2024. Therefore, all these facts ought to have been taken note of by the detaining authority, Advisory Board as well as the State Government. The impugned order therefore cannot be allowed to sustain

5. 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. The APP relies on the affidavit-in-reply of Mr. Ayush Prasad, District Magistrate, Jalgaon, who shows that he has given all the reasons for arriving at the subjective satisfaction. The criminal activities of the petitioner were not curtailed even after the preventive action that was taken. Perusal of the FIR vide Crime No.189 of 2024 would show that it is lodged by the Police Patil. It is in respect of sand which was illegally excavated. Therefore, the property of the State has been so illegally excavated and thereby the petitioner and his gang is trying to make profit and for that purpose, he is creating terror. Even if it may be taken that the conditions were not properly considered by the District Magistrate, yet this Court in ***Harish Patil Vs. State of Maharashtra and others, [(2016) 3 AIR Bom. R (Cri.) 715]*** has considered the decisions of the Hon'ble Supreme Court as well as this Court and held that a detention order can be still passed on the basis of in camera statements. In the statements of witnesses 'A' and 'B' it can be considered that due to the terror of the petitioner though the incident in respect of them had taken place in August 2024, yet they had not come forward to lodge the report. The arrogance of the petitioner is increasing thereby his criminal activities are increasing and, therefore, in order to curtail them, the detention order has been passed, which cannot be said to be illegal or

erroneous.

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. The first and the foremost fact to be noted is that the FIR lodged by the Police Patil itself is a classic example as to how the revenue authorities had not taken note of the incident and had not registered any offence on the basis of information supplied by the FIR on 11.04.2024 to the Circle Officer as well as then Tahsildar. Even a panchanama was drawn by tahsildar on 11.04.2024 and it was handed over to the Police Patil. Later on, the entire machinery woke up only on 01.10.2024 i.e. after a period of almost six months. An inquiry was made as to whether the said 600 brass sand is still in the possession of Police Patil or not. Therefore on 02.10.2024 said Police Patil went to the place where the sand was kept, but he could not find the sand. Then the Police Patil says that he made local inquiry and came to know that in all six persons including the petitioner are involved in stealing away the said sand which was alleged to be in the possession of Police Patil. The Police Patil says that the information was supplied to the Circle Officer as well as Tahsildar orally, yet no action was taken and, therefore, he went to police station on 22.10.2024 and lodged the FIR. Thus, the FIR appears to be on the basis of hearsay information. This appears to have

been taken note of by the learned Judicial Magistrate First Class and the petitioner and the co-accused persons were released on bail by imposing condition. Note of the condition has been taken by the detaining authority that the petitioner shall not commit any offence similar to the offence of which he is accused of. Attendance was given to the police station till the filing of the charge sheet or till 20 February, 2025 whichever is earlier. It ought to have been considered as to whether those conditions would have curtailed the criminal activities of the petitioner or not in the impugned order by the District Magistrate. 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.”

8. In this case confidential statements of witnesses ‘A’ and ‘B’ were recorded on 03.09.2024. Those statements were got verified on 18.10.2024 by Sub Divisional Police Officer and then the proposal has been submitted by the sponsoring authority on 11.11.2024. We do not approve this procedure. After the statements are verified by a superior authority, how those statements would go to the sponsoring authority, is a question. But then it appears that the proposal was then given to Sub Divisional Police Officer. Then, he forwarded it to District Superintendent of Police, Jalgaon on 26.12.2024. First of all, in this case, there is no

affidavit-in-reply on behalf of Sub Divisional Police Officer, Pachora, District Jalgaon to explain as to why there was delay in verification. Thereafter, the District Superintendent of Police had forwarded it to the District Magistrate on the next day i.e. 27.12.2024 and the detention order has been passed on 07.01.2025. Further, there is no delay, but in the entire process, the bail order came to be passed on 20.12.2024. Thus, we hold that there is a delay in the present matter, which has not been explained at all on behalf of the respondents. In **Harish Patil (Supra)** note has been taken of the decision in **Phulwari Jagdambaprasad Pathak (Supra)**, wherein the Hon'ble Apex Court specifically made it clear that facts stated in the materials relied upon should be true and have a reasonable nexus with the purpose for which the order is passed. Though the endorsement in the present case has also has been made regarding the satisfaction, yet, as aforesaid, the revenue officer itself appear to be not interested in taking action in respect of illegal excavation of sand from village Girna. The sponsoring authority who had recorded those statements on 03.09.2024 were not clear enough in saying that when exactly the theft has been committed. In statement of witness 'A' the date of incident is 17.07.2024 and in statement of witness 'B' the date of incident is 12.08.2024. So after 03.09.2024, what action was taken by the police has not been stated. Under such circumstance, whether the last resort of preventive detention

can be taken which affects the personal liberty of a person and then when he is released on bail, that means his personal liberty has been restored by imposing conditions then whether that ought to have been taken away, ought to have been considered by the detaining 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 offence 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.

10. For the aforesaid reasons, the petition deserves to be allowed. Hence, following order is passed :-

ORDER

I) Criminal Writ Petition stands allowed.

II) The detention order dated 07.01.2025 bearing No.Dandapra/KAVI/MPDA/47/2024 passed by respondent No.2 as well as the approval order dated 15.01.2025 and the confirmation order dated 25.02.2025 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Nilesh Bhila Koli 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