



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.130 OF 2025

Suyog @ Chotya Machhindra Pradhan
Age: 24 years, Occu.: Labour,
R/o. Malives, Beed,
Taluka and District Beed.

.. Petitioner

Versus

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

.. Respondents

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Mr. D. S. Patil, Advocate for the petitioner.
Mr. G. A. Kulkarni, APP for respondents/State.

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

DATE : 18 MARCH 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. D. S. Patil for the petitioner and
learned APP Mr. G. A. Kulkarni for 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 10.05.2024 bearing No.2024/RB-Desk-1/Pol-1/MPDA-11 passed by respondent No.2 as well as the approval order dated 17.05.2024 and the confirmation order dated 23.07.2024 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. Learned Advocate for the petitioner submits that though the detention authority has taken note of nine offences against the petitioner, yet it is stated that only one offence i.e. Crime No.05 of 2024 registered with Beed Rural Police Station, District Beed for the offence punishable under Section 3 punishable under Section 25 of the Arms Act was considered for passing the detention order. The detaining authority has not considered the bail order that was passed in that case. The statements of witnesses 'A' and 'B' would show that at the most law and order situation would have arisen and not the public order. Therefore, the impugned order 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 relied on the affidavit-in-reply of Ms. Deepa Mudhol Munde, the then District Magistrate, Beed, wherein she has given the circumstances and the evidence which was before her to arrive at the subjective satisfaction. The petitioner was found possessing country made pistol with cartridges and then he has stated upon inquiry that the said Pistol was purchased by him from one Poonamchand Jariya, R/o. Badwani Madhya Pradesh State. The statements of witnesses ‘A’ and ‘B’ would also show that the petitioner was carrying pistol at that time and by showing the same, he had snatched the money from the person of the witnesses. 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. Here, the impugned order shows that in all nine offences have been registered against the petitioner and all of them are stated to be pending. Out of nine offences, three are still under investigation which are under Section 3 punishable under Section 25 of the Arms Act. Now, the detaining authority states that only one offence

i.e. Crime No.05 of 202 was considered for passing the detention order. Perusal of the FIR therein would show that on the secret information, the police party with panchas went to the spot. They apprehended petitioner who was trying to flee away and when the search of his person was taken, he was found with pistol and cartridges in his sack. Learned Advocate appearing for the petitioner has produced the photocopy of the order of bail which was passed by the learned Magistrate on 06.01.2024. Copies of bail application and objection by the prosecution have also been produced. Attendance was also granted as a condition for granting bail by the learned Magistrate. The attendance was till filing of charge-sheet or expiration of 60 days whichever is earlier. Note of sending the petitioner to police custody till 06.01.2024 has been taken in the order but what happened on 06.01.2024 is absolutely not mentioned in the impugned order. We would like to rely on the decision 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]***, wherein 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. The statements of witnesses 'A' and 'B' would show that those statements were recorded on 27.03.2024 and 29.03.2024 respectively and they say about the incident dated 20.03.2024 and 24.03.2024. That means, after the alleged incident, the statements were recorded within a

period of eight days. However, there is no attempt on the part of the police to seek the cancellation of bail in Crime No.05 of 2024 granted on 06.01.2024. The statements of confidential witnesses cannot be used only for the detention purpose under MPDA, but it could have been certainly used for getting the bail cancelled. The obvious reaction on the part of the police is missing in this case though police got to know about use of pistol again by the petitioner. The pistol and the cartridges which were the property in Crime No.05 of 2024 were seized on 03.01.2024 itself, then the question arises how another pistol came in possession of the petitioner on 20.03.2024 and 24.03.2024 as stated by witnesses 'A' and 'B'. Therefore, immediate action on the part of police was required, if they were believing what the witnesses had told in their statements. Those statements were got verified on 19.04.2024. Now, we will have to take into consideration that when a person, against whom the proposal is made that he should be declared as dangerous person and should be detained, stated to have threatened the witnesses by country made pistol, then there should be immediate verification. It appears that the Superintendent of Police, Beed forwarded the said proposal to detaining authority on 21.04.2024 and the order came to be passed on 10.05.2024. Technically, there may not be so much of delay, but when the State authority are insisting upon the fact that the petitioner is habituated to use pistol by procuring them, then certainly a deeper

probe/investigation was necessary. The offences under Section 3 punishable under Section 25 of the Arms Act lodged against the petitioner on 09.08.2023 and 20.09.2023 are stated to be still pending for investigation. When police themselves are adopting a lethargic attitude and not able to curtail the activities by adopting general law procedure, the detaining authority cannot try to take action under the detention laws.

9. In the present matter, though the order of detention was passed on 10.05.2024, it is stated to have been served on 03.06.2024. We made inquiry with learned APP as to why there was delay. Learned APP informs that the petitioner was absconding. We are surprised to note that during the said period of almost a month, no steps were taken under Section 7 of the MPDA and then the police are coming with the case that the petitioner was then arrested in connection with Crime No.101 of 2024 registered with Beed City Police Station, District Beed for the offences punishable under Section 392 read with Section 34 of Indian Penal Code and at that time, the present impugned order was served. We have considered the entire file, but we are unable to get any such document that at any earlier point of time there was an attempt to serve the grounds of detention and, the order of detention served on the petitioner. It appears that the petitioner came to be arrested on 29.05.2024 in connection with said Crime No.101 of 2024 and then by taking permission from Chief Judicial Magistrate, Beed on 01.06.2024,

the order of detention and the grounds were served on 03.06.2024 to the petitioner. We have also considered the FIR vide Crime No.101 of 2024. It is to be noted that it is filed by Police Inspector, (Wireless Branch), Chhatrapati Sambhajinagar in respect of incident dated 05.05.2024 and he says that his gold ring, Bluetooth device and cash of Rs.5,000/- was taken away by two unknown persons. Thus, the delay in serving the detention order is not at all explained properly and the proper procedure has not been then adopted. By no stretch of imagination it can be said that the activities of the petitioner had raised public order situation.

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 10.05.2024 bearing No.2024/RB-Desk-1/Pol-1/MPDA-11 passed by respondent No.2 as well as the approval order dated 17.05.2024 and the confirmation order dated 23.07.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Suyog @ Chotya Machhindra Pradhan 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