



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.127 OF 2025

Yogesh @ Ritik Digamber Kolhe
Age: 35 years, Occu.: Nil,
R/o. Shivai Building, Patil Wada,
Asoda, Tq. And Dist. Jalgaon.

.. Petitioner

Versus

1. The District Magistrate Jalgaon,
Jalgaon.
2. The State of Maharashtra
(Through Addl. Chief Secretary
to the Government of Maharashtra
Mantralaya)
Home Department, Mantralaya,
Mumbai-32.
3. The Superintendent of Central Prison,
Nagpur, District Nagpur.

.. Respondents

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Mr. Avinash Reddy h/f Mr. A. M. Pawar, Advocate for the petitioner.
Mr. N. R. Dayama, APP for the respondents/State.

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

DATE : 04 MARCH 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Avinash Reddy holding for
Mr. A. M. Pawar for the petitioner and learned APP Mr. N. R.
Dayama 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 30.05.2024 bearing No.Dandapra/KAVI/MPDA/20/2024 passed by respondent No.1 as well as the approval order dated 10.06.2024 and the confirmation order dated 04.12.2024 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, four offences were considered i.e. **(i)** Crime No.84 of 2018 registered with Ramanand Nagar Police Station, District Jalgaon for the offences punishable under Sections 143, 147, 148, 149, 323 of Indian Penal Code, under Sections 37(1)(3), 135 of the Maharashtra Police Act, 1951, **(ii)** Crime No.64 of 2019 registered with Jalgaon Taluka Police Station, District Jalgaon for the offences punishable under Sections 395, 353, 332, 337, 379 of

Indian Penal Code read, under Section 22 of the Mineral Act, 1957, under Section 48(7)(8) of Maharashtra Land Revenue Code, 1966, under Sections 71 (177), 3(181) of Motor Vehicles Act, 1988, **(iii)** Crime No.147 of 2021 registered with Jalgaon Taluka Police Station, District Jalgaon for the offences punishable under Sections 326, 323, 504, 506 read with Section 34 of Indian Penal Code and **(iv)** Crime No.12 of 2024 registered with Nashirabad Police Station, District Jalgaon for the offences punishable under Sections 307, 353, 353, 332, 333, 427, 146, 147, 148, 149, 379 of Indian Penal Code, under Section 7 of the Criminal Law Amendment Act, 2013 and under Section 48(7) of the Maharashtra Land Revenue Code, 1966. Learned Advocate for the petitioner submits that the detaining authority has considered all the offences pending since 2018 against the petitioner for passing the impugned order. The petitioner is involved in seven offences out of which four offences have been considered. There was absolutely no live link between those offences and the detention order. Further, the in-camera statements are stated to have been recorded on 23.02.2024 and 24.02.2024. Proposal was submitted on 20.05.2024. It is then stated that detention order was passed on 30.05.2024, but it is said that it is served on 15.10.2024 and

this appears to be in violation of or after not following the procedure under Section 7 of the M.P.D.A. Act. Though the prosecution states that the petitioner was absconding, yet there was a procedure provided and thereafter, it was stated that when the petitioner was arrested in connection with Crime No.181 of 2024 registered with Taluka Police Station for the offence punishable under Sections 392, 323, 504, 506, 120-B read with Section 34 of Indian Penal Code, under Sections 3 and 4 punishable under Section 25 of the Arms Act, the detention order has been tried to be served when the petitioner was in judicial custody, however, that application came to be rejected. The applicant was released on bail on 15.10.2024 and thereafter, the order has been served. These are the lame excuses on the part of the detaining authority. The order is basically illegal and 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 relies on the affidavit-in-reply of Mr. Ayush Prasad, District Magistrate, Jalgaon, who has stated as to what was the material before him when he passed the impugned order and on what material he had arrived at the subjective satisfaction. He submits that there is no delay in passing the order, but as the petitioner was absconding it could not be served on him. When it was made known that the petitioner has been arrested in one fresh matter i.e. Crime No.181 of 2024 and was in MCR with learned Judicial Magistrate First Class, Jalgaon, attempt was made to serve the detention order by filing an application before the learned Magistrate, but that application was refused. Therefore, the detaining authority had no option, but to wait for the release of the petitioner on bail and then only he could have been served. These facts were beyond the control of the detaining authority. The order has been approved by the Advisory Board and all the other legal

requirements have been fulfilled. 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) 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 Buji** (*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 this case, in all four crimes pending against the petitioner have been considered. The first crime was committed on 03.04.2018 for which the FIR came to be lodged on 04.04.2018. Petitioner was arrested on 13.04.2018. Charge-sheet is filed and the petitioner has been enlarged on bail. There could not have been a live link between this offence and the detention order that was passed on 30.05.2024. Similar is the case in respect of Crime No.64 of 2019 dated 23.02.2019 wherein the petitioner was arrested on 10.03.2019, charge-sheet is filed and then the petitioner is released on bail. Similarly, there could not have been live link in Crime No.147 of 2021 dated 15.05.2021 in which on the same day i.e. 15.05.2021, the petitioner was arrested and later on, came to be released on bail by appropriate Court. Thereafter, last offence was stated to have been committed on 06.02.2024 for which FIR vide Crime No.12 of 2024 came to be lodged on 07.02.2024. Interesting point to be noted is that the petitioner came to be released on anticipatory bail by the

appropriate Court. The reasons while granting anticipatory bail appears to have not been considered by the learned District Magistrate. Thus, the detaining authority could have considered only one offence in which the petitioner has been released on anticipatory bail. The dates are already given, however, it is to be noted that they are repeated here just to have clarity. Confidential statements were recorded on 23.02.2024 and 24.02.2024. Those statements were verified on 06.03.2024, however, the sponsoring authority submitted the proposal to Assistant Police Inspector on 20.05.2024. Even after verification of the confidential statements, why the proposal was kept pending for near about one and half month, is a question. But on the same day i.e. 20.05.2024, Assistant Police Inspector forwarded it to Superintendent of Police and Superintendent of Police forwarded it to District Magistrate on 21.05.2024. Thereafter, the detention order has been passed on 30.05.2024. Now, it is the say of respondents that the petitioner was absconding and, therefore, the detention order could not be served. There is absolutely no document in the file which was with learned APP and no such document has been supplied to the petitioner which would show that search was undertaken and

it was found that the petitioner was absconding. Section 7 of the M.P.D.A. Act deals with the procedure in respect of an absconding accused and how the detention order can be served. In fact, the detention order itself is a warrant and on the basis of that order, the concerned person can be directly arrested. It is then stated that during search it was disclosed that the petitioner was arrested in connection with Crime No.181 of 2024 registered with Taluka Police Station. We were unable to get any document as to when that offence came to be registered and when the petitioner came to be arrested. These particulars are conspicuously absent from paragraph No.11 of the affidavit-in-reply. Even the copy of the application which was placed before the learned 6th Judicial Magistrate First Class, Jalgaon and the order passed therein has not been annexed, nor supplied to this Court along with the affidavit-in-reply. When the application was rejected, why the respondents had not preferred any appeal, revision or appropriate legal proceedings before appropriate Court, is a question. Why the respondents especially the detaining authority should wait till the bail of the petitioner in Crime No.181 of 2024, has not been answered. Therefore, certainly, there is procedural lacuna in the matter which cannot

be approved.

8. 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.

9. 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 30.05.2024 bearing No.Dandapra/KAVI/MPDA/20/2024 passed by respondent No.1 as well as the approval order dated 10.06.2024 and the confirmation order dated 04.12.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner – Yogesh @ Ritik Digamber Kolhe 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