



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.158 OF 2025

Shaikh Ahemad Shaikh Mohammed
Age: 45 years, Occu.: Business,
R/o. Umapur, Tq. Georai,
District Beed.

.. Petitioner

Versus

1. The State of Maharashtra
Through Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai – 400032.
2. District Magistrate, Beed,
Collector Office,
Nagar Road, Beed.
3. The Superintendent
Central Prison, Harsul,
Chhatrapati Sambhajinagar.

.. Respondents

...

Mr. H. B. Suryavanshi a/w Mr. Aniket Singh, Advocate for the petitioner.
Mr. A. R. Kale, APP for the respondents/State.

...

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

**RESERVED ON : 02 APRIL 2025
PRONOUNCED ON : 21 APRIL 2025**

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. H. B. Suryavanshi for the petitioner
and learned APP Mr. A. R. Kale 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 14.11.2024 bearing No.2024/RB-Desk-1/Pol-1/MPDA-20 passed by respondent No.2 as well as the approval order dated 25.11.2024 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. He submits that though several offences were registered against the petitioner, yet for the purpose of passing the impugned order, two offences were considered i.e. Crime No.147 of 2024 registered with Chaklamba Police Station, District Beed for the offences punishable under Sections 307, 353, 379 read with Section 34 of Indian Penal Code and Crime No.287 of 2024 registered with Chaklamba Police Station, District Beed for the offences punishable under Sections 303(2), 3(5) of Bhartiya Nyaya Sanhita and under Section 184 of the Motor Vehicles Act. Perusal of the record in respect of Crime No.147 of 2024 would show that the FIR is lodged by Police Head Constable attached to SDPO office, Majalgaon,

District Beed. On a secret information received by Assistant Superintendent of Police, Sub Division, Majalgaon, they had laid the trap for a vehicle which was to bring sand by illegal means. Around 3:30 hours of 22.02.2024, a yellow colour Bharat Benz Hyva having no passing number was tried to be stopped and was tried to be intercepted by the police party. The vehicle did not stop, however, by taking reverse, it tried to go, however, the police party managed to overpower the driver. The driver informed that the Hyva belongs to the petitioner, thereby the present petitioner is involved in the matter. In the second case also i.e. Crime No.287 of 2024, it is almost the same story, however, then in the second story, it is tried to be stated that the petitioner came after the driver informed him and the petitioner had offered amount to the police officer, but when the police officer refused and asked the driver to take the vehicle to the police station, then the present petitioner instigated the driver to take away the Hyva at a different place. The detaining authority has not considered the bail orders passed in both the matters. Both the matters are under investigation and in fact, the detaining authority has stated on the basis of the documents before him that the present petitioner was absconding. The entire order does not show as to when the petitioner came to be arrested. The statements of in-camera witnesses 'A' and 'B' were taken on 25.09.2024 and 27.09.2024, whereas the detention order came to be passed on 14.11.2024 thereby

there was a delay of two months at least. Under these circumstances, the detention order is unsustainable.

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. Avinash Pathak, District Magistrate, Beed to demonstrate as to what was the material before him to arrive at the subjective satisfaction. The present petitioner is involved in excavating sand illegally and upon obstruction in his illegal activities, he is going to the extent of giving threats to kill. The said illegal excavation is causing damage to the environment. Even the in-camera witness 'B' states that the petitioner had shown him pistol while giving threats to him. The petitioner does not carry any legal licence for a firearm and, therefore, it appears that he is involved in the illegal activities. The action for preventive detention taken against the

petitioner has not yielded proper result and, therefore, the detention order is legal. The Advisory Board has confirmed the said order and, therefore, the State Government has approved and confirmed the said order in due course within the time span available under law.

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, two offences i.e. Crime No.147 of 2024 and Crime No.287 of 2024 were considered by the learned District Magistrate, Beed for passing the detention order. Both the cases were still under investigation when the detention order was passed. Important point to be noted is that after the offence vide Crime No.147 of 2024 was registered on 22.05.2024, which was considered for passing the detention order, it appears that the preventive action under Section 129 of the Bharatiya Nagarik Suraksha Sanhita was initiated against the petitioner on 16.08.2024 i.e. Chapter Case No.23 of 2024 and final bond was also taken from the petitioner. Then the next offence vide Crime No.287 of 2024 came to be registered on 24.09.2024. The question is then what has been done with the final bond that was taken under Section 129 of Bharatiya Nagarik Suraksha Sanhita. Merely passing the order under Chapter Case and taking bond is not expected. If there is breach of the said bond, then the appropriate authority should take the appropriate action for the said breach. Instead of taking that action, if drastic action of detention has been taken up, then such action

cannot be said to be legal. Another fact to be noted is that while referring both the matters, the detaining authority has not considered as to whether on the date of passing the detention order, the petitioner has been released on bail or not. When he was arrested when the order was passed, if he was still in jail, then it ought to have also been seen by the detaining authority as to whether really the action of preventive detention is then necessary when the petitioner is in jail. Mere anticipation that he would be released on bail in future cannot be the reason for passing detention order and therefore, when the bail orders have not been considered at all, such order of detention cannot be said to be based on sound principles.

8. The in-camera statements of witnesses 'A' and 'B' were recorded on 25.09.2024 and 27.09.2024 respectively. No doubt, it appears that Senior Police Inspector, LCB has forwarded the proposal on 03.11.2024 and the detention order came to be passed on 14.11.2024 may not show that there is delay, but if we go by chronology, then the delay emerges. As aforesaid, the in-camera statements of witnesses were recorded on 25.09.2024 and 27.09.2024 respectively. The sponsoring authority had then put the proposal on 24.10.2024. The verification was done on 29.10.2024 and then Senior Police Inspector, LCB forwarded the proposal on 03.11.2024. The District Magistrate/Detaining Authority verified those in-camera statements on 14.11.2024 and passed the

detention order on the same day. The question therefore would be why the sponsoring authority was sitting over the file for about more than a year, if the petitioner was to be branded as dangerous person. Another aspect to be noted is that though the detention order has been passed on 14.11.2024, it is stated that it was served on the petitioner on 26.11.2024 and then the grounds of detention were served on 28.11.2024. No record is produced to show that between 14.11.2024 to 26.11.2024, the detaining authority with the help of police had taken the procedure under Section 7 of M.P.D.A. i.e. for the absconding accused. Further, the facts show that prior to the serving of grounds of detention on 28.11.2024, the report was already submitted to the State Government under Section 3(3) of MPDA on 18.11.2024 itself. That means, the grounds of detention were not ready with the detaining authority on 18.11.2024. It appears that the detaining authority has acted as per the requirement of the sponsoring authority without application of mind.

9. If we consider the facts of the offence, in one matter the petitioner was not present at all at the spot and in another matter, it is stated that he was called by the driver of the Hyva. At the most law and order situation had arisen not only as per the contents of both the FIRs, but also from the in-camera statements of witnesses 'A' and 'B'. 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.”

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 14.11.2024 bearing No.2024/RB-Desk-1/Pol-1/MPDA-20 passed by respondent No.2 as well as the approval order dated 25.11.2024 and the confirmation order dated 17.01.2025 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner - Shaikh Ahemad Shaikh Mohammed 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