



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.185 OF 2025

Nagesh s/o Uttamrao Lade
Age: 25 years, Occu.: Labour,
R/o. Mendhale (Kh.), Tq. Ardhapur,
District Nanded

.. Petitioner

Versus

1. The State of Maharashtra
Through Secretary of Home Department,
Mantraya, Mumbai.
2. District Magistrate
Office of District Magistrate,
Nanded.
3. Superintendent
Central Prison, Harsul,
Chh. Sambhajinagar,
Tq. And Dist. Chh. Sambhajinagar.

.. Respondents

...

Ms. Maya Jamdhade h/f Mr. N. R. Jamdhade, Advocate for the petitioner.
Mr. V. K. Kotecha, APP for respondents/State.

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

DATE : 08 APRIL 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Ms. Maya Jamdhade holding for learned
Advocate Mr. N. R. Jamdhade for the petitioner and learned APP Mr. V.
K. Kotecha 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 07.11.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-57 passed by respondent No.2 as well as the approval order dated 14.11.2024 and the confirmation order dated 02.01.2025 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, four offences were considered i.e. (i) Crime No.222 of 2024 registered with Ardhapur Police Station, District Nanded for the offences punishable under Section 395 of Indian Penal Code, under Section 4 punishable under Section 25 of the Arms Act, (ii) Crime No.210 of 2024 registered with Ardhapur Police Station, District Nanded for the offences punishable under Sections 399, 401, 402 of Indian Penal Code and under Sections 4 punishable under Section 25 of the Arms Act, (iii) Crime No.400 of 2024 registered with Nanded Rural Police Station, District Nanded for the offences punishable

under Section 380 of Indian Penal Code and (iv) Crime No.175 of 2024 registered with Shivajinagar Police Station, District Nanded for the offences punishable under Sections 379 read with Section 34 of Indian Penal Code. Learned Advocate for the petitioner submits that though the petitioner as per the impugned order was involved in all ten offences, the detaining authority has considered only four offences. If we consider the contents of the FIR, it can be seen that those offences were personal i.e. individualistic and public was not affected by the alleged acts of the petitioner. He submits that though the petitioner has been released on bail in all of the offences, which were considered, yet the bail orders have not been considered at all. Even the statements of in-camera witnesses 'A' and 'B' would show that at the most the alleged acts would have caused law and order situation and not the public order. Learned Advocate for the petitioner further submits that there is delay in passing the order, which has not been explained by the respondents. A specific ground was also raised in the petition that the statements of in-camera witnesses 'A' and 'B' were not supplied to the petitioner. In the affidavit-in-reply, this point has not been clarified or denied. When vital documents have been withheld by the detaining authority from the petitioner, such 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 Mr. Abhijit Raut, the District Magistrate, Nanded/detaining authority. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. He further states that his order has been approved by the State Government and also by the Advisory Board. Thereafter, the confirmation has been given. He further submits that the preventive action under Section 110 of the Code of Criminal Procedure has not deterred the petitioner from staying away from committing offences and, therefore, the State Government had no option, but to detain the petitioner under the detention 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. At the outset, it is to be noted that perusal of the facts of all the four offences which were considered for passing the detention order would show that at the most law and order situation would have been created and not the public order. Further, it is to be

noted that the statements of in-camera witnesses 'A' and 'B' were recorded on 15.08.2024 and 14.08.2024 respectively. The proposal was then submitted by the sponsoring authority on 16.08.2024. It appears that the confidential statements came to be verified on 16.09.2024 and 17.09.2024. The DCP then forwarded the said proposal to the detaining authority on 26.09.2024 and the detention order has been passed on 07.11.2024. That means, there is delay in passing the detention order. The affidavit-in-reply by Mr. Abhijit Raut, District Magistrate, Nanded, who is the detaining authority, is totally silent on the point of delay. This ground alone is sufficient to set aside the detention order. Further, there is absolutely no answer to the ground raised by the petitioner that the copies of in-camera statements of witnesses 'A' and 'B' were not supplied to the petitioner. When such necessary documents were not supplied at all, it amounts to violation of the fundamental right of the petitioner. Another important point to be noted is that though the petitioner was released on bail in all the offences which were considered for passing the detention order, yet the detaining authority has not considered the bail orders while passing the detention 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. As regards in-camera statements of witnesses 'A' and 'B' are concerned, the incidents in both the cases would show that general public was not involved. At the most law and order situation would have been created.

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 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.

10. 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 07.11.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-57 passed by respondent No.2 as well as the approval order dated 14.11.2024 and the confirmation order dated 02.01.2025 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Nagesh s/o Uttamrao Lade 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