



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.415 OF 2025

Danish Shaikh Aslam Shaikh
Age: 28 years, Occu.: Labour,
R/o. Nagad Road, Chalisgaon,
Taluka Chalisgaon, District Jalgaon.

.. Petitioner

Versus

1. District Magistrate,
Jalgaon, Taluka and
District Jalgaon.
2. State of Maharashtra
Through Additional Chief Secretary,
Home Department (Special),
Mantralaya, Mumbai-32;
3. The Superintendent,
Central Prison Nagpur,
Taluka and District Nagpur.
4. Superintendent of Police,
Jalgaon, Taluka and
District Jalgaon.
5. Police Inspector,
Chalisgaon City Police Station,
Taluka Chalisgaon,
District Jalgaon.

.. Respondents

...

Mr. Pritam P. Jadhav h/f Mr. Yogesh A. Jadhav, Advocate for the petitioner.

Mr. A. R. Kale, APP for the respondents/State.

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

DATE : 29 APRIL 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Pritam P. Jadhav holding for learned Advocate Mr. Yogesh A. Jadhav 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 07.01.2025 bearing Dandapra / KAVI / MPDA / 46 / 2024 passed by respondent No.1 as well as the approval order dated 17.01.2025 and the confirmation order dated 25.02.2025 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, only one offence was considered i.e. Crime No.342 of 2024 registered with Chalisgaon City Police Station, District Jalgaon for the offences punishable under Sections 308 (2) (3) (5), 324 (4), 351 (2), 352 of the Bhartiya Nyaya Sanhita, 2023. Learned Advocate for the petitioner submits that the impugned order states that the detaining authority had received the

information regarding nine offences earlier pending against the petitioner and three preventive actions taken against him, but the detaining authority has considered only one offence i.e. crime No.342 of 2024 registered on 31.07.2024. On the same day, the petitioner was arrested. The investigation was completed and charge-sheet has been filed bearing Regular Criminal Case No.357 of 2024 on 05.11.2024. Though it is stated in the impugned order that note has been taken in respect of the bail order passed by the Court, the detaining authority failed to consider that the said bail order was passed subject to the terms and conditions to be followed by the petitioner. There was no material before the detaining authority to show that from the date of the bail order till the proposal had received to him, there was any breach of terms of bail by the petitioner. The statements of witnesses 'A' and 'B' would show that at the most law and order situation would have been created and not the public order. The detaining authority have unnecessarily curtailed the liberty of the petitioner and, therefore, the impugned order deserves to be quashed and set aside.

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/detaining authority, who had passed the impugned order. In the said affidavit it is stated as to what was the material before him to arrive at the subject satisfaction. Though only one offence was considered, yet the manner in which the said offence was committed has been considered and the preventive actions taken against the petitioner have not deterred him from committing further offence. If we peruse the statements of in-camera witnesses 'A' and 'B', it can be seen that the present petitioner had exhibited firearm as well as the sharp weapon while committing the offence. Due to the fear, those witnesses had not lodged any report and even when their statements were recorded, it was their condition that their names should not be disclosed as they fear that the petitioner may take revenge against them. All the material which was before the learned District Magistrate was sufficient for him to arrive at the conclusion that the petitioner is a dangerous person. Immediately, the report was submitted as per Section 3(3) of the MPDA Act for the perusal of the State Government.

Thereafter, the approval order has been passed on 17.01.2025. The matter was placed before the Advisory Board. Even the petitioner was heard by the Advisory Board on 12.02.2025. After the opinion was received, the confirmation order has been passed under Section 12 of the MPDA Act. Thus, there is no procedural lacuna in the matter.

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, as aforesaid, the chart which was before the District Magistrate was containing in all nine offences and three preventive actions. However, if we consider the impugned order, only one offence has been considered by the District Magistrate for passing the order of detention. It can be seen that in all those nine offences, the petitioner has been released on bail. The offence which was considered i.e. Crime No.342 of 2024 was registered on 31.07.2024. It appears that on 19.09.2024, the learned Additional Sessions Judge, Jalgaon had allowed the application under Section 483 of the Bhartiya Nyaya Suraksha Sanhita, 2023 i.e. for regular bail filed by the petitioner upon conditions. Thus, though the offence is stated to have been committed on 30.07.2024, the FIR was registered on 31.07.2024 and after his arrest on 31.07.2024, the petitioner was in jail till 19.09.2024. Prior to that as per the record, statements of in-camera witnesses 'A' and 'B' were recorded on 08.09.2024, however, the

proposal has been sent by the sponsoring authority on 19.12.2024. That means, it was after about two months of releasing the petitioner on bail with conditions. There is no document which would show that the petitioner had disobeyed the terms of bail till the said proposal was submitted. There is no affidavit from the sponsoring authority to give any explanation that after the statements of in-camera witnesses were recorded why proposal was not immediately sent. Learned APP has tried to explain it orally, however, we cannot consider his explanation when it is expected that the person, who commits delay or takes time, should explain the same. It appears that prior to proposal was sent on 19.12.2024, on 26.09.2024 Sub Divisional Police Officer, Pachora Sub Division, Pachora had verified the statements of in-camera witnesses. If the verification was done by Sub Divisional Police Officer on 26.09.2024, then again the question is why the sponsoring authority had kept the proposal pending till 19.12.2024. After the proposal reached to the District Magistrate, it appears that confirmation by him was on 31.12.2024 and then the detention order has been passed on 07.01.2025. Though the District Magistrate has considered that the petitioner was enlarged on bail in Crime No.342 of 2024, yet he had failed to consider that whether the petitioner had committed any breach of terms of bail and, therefore, 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. Perusal of the statements of in-camera witnesses ‘A’ and ‘B’ would show that at the most law and order situation would have been created and not the public order. From the bunch of documents which has been supplied to the petitioner we could see that the petitioner is not remaining present in some of the matters. In Regular Criminal Case No.24 of 2019 right from 26.04.2019 till 04.08.2023, the petitioner never remained present. Similarly in Regular Criminal Case No.390 of 2023 since beginning the petitioner has remained absent. Similar is the case in respect of Summary Criminal Case No.853 of 2023. The petitioner is absent since 17.08.2023. The prosecution has not taken steps to secure the presence of the petitioner. In Sessions Case No.27 of 2017, it appears that by order dated 17.02.2022, Non Bailable Warrant was issued against the present petitioner, who is accused No.1 in that matter and till 15.06.2023, the present petitioner had not got the said warrant cancelled. Thus, instead of taking steps in these matters wherein the petitioner is remaining absent, it appears that the sponsoring authority was interesting in taking action only under MPDA.

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 is allowed.
- II) The detention order dated 07.01.2025 bearing Dandapra / KAVI / MPDA / 46 / 2024 passed by respondent No.1 as well as the approval order dated 17.01.2025 and the confirmation order dated 25.02.2025 passed by respondent No.2, are hereby quashed and set aside.
- III) Petitioner - Danish Shaikh Aslam Shaikh 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