



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.453 OF 2025

Karan s/o Pandurang Pawar
Age: 25 years, Occu.: Labour,
R/o. Near Ayodhya Nagari,
Bhamri Chowk, Latur,
Taluka and District Latur

.. Petitioner

Versus

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

.. Respondents

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Mr. P. V. Gole, Advocate h/f Mr. V. D. Gunale, Advocate for petitioner.
Mr. G. A. Kulkarni, APP for respondents/State.

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

DATE : 07 MAY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. P. V. Gole holding for learned
Advocate Mr. V. D. Gunale 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 13.11.2024 passed by respondent No.2 bearing No.2024/MAG/MPDA/DESK-2/WS-471 and the approval order dated 22.11.2024 as well as the confirmation order dated 10.01.2025 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.361 of 2024 registered with MIDC Latur Police Station, District Latur for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code and Crime No.654 of 2024 registered with MIDC Latur Police Station, District Latur for the offences punishable under Sections 118(1), 115, 352, 351(2), 3(5) of the Bhartiya Nyaya Sanhita. Learned Advocate appearing for the petitioner submits that the District Magistrate, Latur while passing the impugned order had considered two offences in which the petitioner has been shown to be involved and two statements of in-camera witnesses

for concluding the petitioner to be the dangerous person, however in Crime No.361 of 2024, the investigating officer had not even arrested the petitioner. Notice under Section 41(A)(1) of the Code of Criminal Procedure was given. The said offence is still under investigation. In respect of second offence i.e. Crime No.654 of 2024, it is stated that the petitioner is still absconding. That means, the order came to be passed allegedly when the petitioner is absconding. No steps under Section 7 of the M.P.D.A. have been taken. Taking into consideration the contents of both the FIRs and the statements of in-camera witnesses 'A' and 'B', at the most law and order situation would have been created and not the public order.

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 Ms. Varsha

Thakur Ghuge, the District Magistrate, Latur, wherein she has explained as to what was the material before her to arrive at the subjective satisfaction. She categorically states that after arriving at the subjective satisfaction, she has passed the order. The overall criminal graph of the petitioner would show that he was continuing with his dangerous activities and thereby going on committing crimes, because of which he has created terror in the area and, therefore, the said act on the part of the petitioner amounts to creating public order situation. The statements of in-camera witnesses especially show that with the help of iron scythe, injuries were caused to those persons and amount has been extracted. Those witnesses have specifically stated that because of the terror created by the petitioner, people had not come forward even to help them. 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 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, it appears that list of seven offences is separately given and two matters in which preventive actions under Section 107 of the Code of Criminal Procedure and Section 126 of the Bhartiya Nagrik Suraksha Sanhita were taken. She has considered two offences i.e. Crime No.361 of 2024 and Crime No.654 of 2024. Both the offences were registered with MIDC Latur Police Station, District Latur.

The first offence is under Sections 324, 323 etc. of Indian Penal Code and the second offence is under Sections 118(1), 115, 352, 351(2), 3(5) of Bhartiya Nyaya Sanhita. That means, the Sections are similar. In both the matters, it is stated that the petitioner along with his associates had assaulted the informants with the help of iron *Katti* causing injury to both of them. In Crime No.361 of 2024, the petitioner has been given notice under Section 41(A) of the Code of Criminal Procedure. We are taking note of the earlier chart i.e. the chart in respect of seven offences and out of them, in five offences, the petitioner has been given notice under Section 41(A) of the Code of Criminal Procedure. That means, at no point of time in respect of those five offences as well as Crime No.361 of 2024, the investigating officer thought that the arrest of the petitioner is necessary. The Sections which have been invoked in Crime No.654 of 2024 are same. However, it is to be noted that in respect of this offence, the petitioner is absconding and could not be arrested. When we are considering notice under Section 41(A) of the Code of Criminal Procedure, we should take note of Section 41 also which deals with powers of the police to arrest without warrant. Section 41(1)(b)(ii) (a) of the Code of Criminal Procedure prescribes that if the police officer is satisfied that the arrest is necessary, he can arrest a person to prevent such person from committing any further offence. When so many offences are stated to be registered against the petitioner, how at no

point of time, any investigating officer had not felt that in order to prevent any offence in future, the petitioner can be arrested. Section 35 of the Bhartiya Nagrik Suraksha Sanhita corresponds to Section 41 and 41(A) of the Code of Criminal Procedure. When the police officer had not thought it fit to arrest the petitioner, then against such person taking action of preventive detention is unjustifiable.

8. We would like to rely on the decision of the Hon'ble Supreme Court in ***Arjun s/o Ratan Gaikwad Vs. The State of Maharashtra and others, [Criminal Appeal (Arising out of SLP (Crl.) No.12516 of 2024 dated 11.12.2024 :: 2024 INSC 968]***, wherein it has been observed that :-

“16. In the present case, all the six cases are with regard to selling of illicit liquor. Though six cases are registered, the Excise Authority did not find it necessary to arrest the appellant even on a single occasion. It would have been a different matter, had the appellant been arrested, thereafter released on bail and then again the appellant continued with his activities. However, that is not the case here.”

Though this is a case under the provisions of Maharashtra Prohibition Act, yet the ratio is required to be considered in respect of notice.

9. As regards statements of in-camera witnesses 'A' and 'B' are concerned, we had the opportunity to open the sealed packet of the statements those have been kept in the record and we found that there is no verification endorsement by the learned District Magistrate. Verification of such in-camera statements is necessary because that is going to lead the District Magistrate to arrive at a conclusion as to whether the said person can be considered as dangerous person. The Hon'ble Supreme Court in many cases, time and again, has held that the action of preventive detention is a symbol of draconian rule and it can be used in exceptional circumstances to prevent any wrong against the public at large. Basic precautions appears to have been taken in the present matter. How and under which circumstance the petitioner came before the District Magistrate is a question. No steps under Section 7 of the MPDA Act were ever taken and, therefore, this is a fit case where we should exercise our constitutional powers under Article 226 and 227 of the Constitution of India.

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) Detention order dated 13.11.2024 passed by respondent No.2 bearing No.2024/MAG/MPDA/DESK-2/WS-471 and approval order dated 22.11.2024 as well as confirmation order dated 10.01.2025 passed by respondent No.1, are hereby quashed and set aside.
- III) Petitioner viz. Karan Pandurang Pawar 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