



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.833 OF 2025

Hemant @ Natya Machindra Pawar
Age: 22 years, Occu.: Labour,
R/o. Tamaswadi, Tq. Parola,
District Jalgaon.

.. Petitioner

Versus

1. District Magistrate,
Jalgaon, District Jalgaon.
2. The State of Maharashtra
Through the Secretary Home
Department (Spl), Mantralaya,
Mumbai.
3. The Superintendent,
Kalamba, Central Prison,
Kolhapur.

.. Respondents

...

Mr. Sudhakar T. Mahajan, Advocate for the petitioner.

Mrs. R. P. Gour, APP for respondents/State.

...

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

DATE : 21 JULY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Sudhakar T. Mahajan for the
petitioner and learned APP Mrs. R. P. Gour 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 No.Dandapra/KAVI/MPDA/45/2024 passed by respondent No.1 as well as the approval order dated 15.01.2025 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.255 of 2024 registered with Parola Police Station, District Jalgaon for the offences punishable under Sections 109, 118(1), 118(2) of Bharatiya Nyaya Sanhita, 2023 and under Sections 135, 142 of the Maharashtra Police Act, 1951. Learned Advocate for the petitioner submits that the detaining authority had considered only one offence and two in-camera statements for passing the detention order. If the contents of the FIR in Crime No.255 of 2024 are considered, then it can be seen that it would have raised only law and order situation at the most and not the public order. Similarly, as regards statements of in-

camera witnesses 'A' and 'B' are concerned, general public was not involved. At the most, law and order situation would have been created and, therefore, the impugned order deserves to be 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 relied on the affidavit-in-reply of Mr. Ayush Prasad, the District Magistrate, Jalgaon/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. Learned APP submits that there is no delay in the order and, 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) Aameena 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. At the outset, it is to be noted that the detaining authority has considered one offence and two in-camera statements for passing the detention order. The contents of the FIR vide Crime No.255 of 2024 would show that on 04.08.2024 around 5.30 p.m. when the informant and his brothers had gone for purchasing meat at the meat shop, as they were waiting in queue, the petitioner broke the queue for buying meat. The informant pointed out the petitioner about the queue but did not raise any objection. Petitioner disliked the interference of the informant. He removed the knife which he had been carrying with himself, climbed on the raised platform of the shop, jumped on the informant and gave blow on the head of the informant. Thereafter, the he ran away. The informant was admitted to hospital and his complaint was recorded by the police at the hospital. He was arrested on the same day and charge-sheet bearing No.162 of 2024 came to be filed on 16.10.2024. This entire story would show that the offence is personal in nature and general public was not involved. At the most, law and order situation would have been created and not the public order. Similarly, as regards statements of witnesses 'A' and 'B' are concerned, the incident in both the cases would show that general public

was not involved. At the most law and order situation would have been created and not the public order.

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 07.01.2025 bearing No.Dandapra/KAVI/MPDA/45/2024 passed by respondent No.1 as well as the approval order dated 15.01.2025 and the confirmation order dated 25.02.2025 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner – Hemant @ Natya Machindra 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