



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1706 OF 2024

Mirza Shabbir Baig Mirza Gafar Baig
Age : 34 years, Occ : Labour,
R/o Khadakpura, Nanded
Tq. & Dist. Nanded.

..PETITIONER

-VERSUS-

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

..RESPONDENTS

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Advocate for the petitioner : Mr. Vijay S. Wakade
APP for Respondent- State : Mr. V.K. Kotecha

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CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.

DATED : 13th JANUARY, 2025.

JUDGMENT (PER ROHIT W. JOSHI, J.) :

. The present petition is filed under Article 226 of the
Constitution of India challenging the order of preventive detention
dated 27.03.2024 passed by Respondent No.2 – District Magistrate,
Nanded, which has been confirmed by Respondent No.1, vide order

dated 15.05.2024. The order of preventive detention is passed under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders/ Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (Hereinafter referred to as “MPDA” for the purpose of brevity) by exercising powers conferred upon Respondent No.2 under Section 3(2) of the MPDA. The order of preventive detention dated 27.03.2024 came to be approved by Respondent No.1 under Section 3(3) of the MPDA, vide order dated 03.04.2024. The matter was placed for opinion before the Advisory Board as per Section 10 of the MPDA and Advisory Board has given a positive recommendation for continuation of preventive detention on 06.05.2024. This opinion is given after considering the representation made and affording opportunity of hearing to the petitioner. Based on the said report dated 06.05.2024, Respondent No.1 has passed the order of confirmation of preventive detention under Section 12(1) of MPDA on 15.05.2024.

2. It appears from the record that the in-camera confidential statements of two witnesses were recorded on 12.02.2024 and thereafter on 13.02.2024 a proposal was forwarded to the Superintendent of Police, Nanded for placing the petitioner under

preventive detention under MPDA. The Superintendent of Police forwarded the proposal to Respondent No.2 on 23.02.2024. Based on the proposal and material provided, Respondent No.2 has passed the order of preventive detention against the petitioner on 27.03.2024, which was served on the petitioner on 28.03.2024 along with grounds of detention. The matter was referred to Respondent No.1 on 29.03.2024 and Respondent No.1 has passed the order of approval as per Section 3(3) of MPDA on 03.04.2024.

3. Mr. Rajendra Hange, learned counsel for the petitioner has draws our attention to grounds of detention dated 27.03.2024. He points out that there is reference to 10 offences in all which are registered from the year 2014 onwards till the year 2024. Apart from this, there have been four instances of preventive action taken against the petitioner under Sections 107 and 110(e) and (g) of the Code of Criminal Procedure. The last action was taken in April, 2023. Respondent No.2 has recorded that subjective satisfaction for placing the petitioner under preventive detention is arrived at on the basis of two in-camera confidential statements and offence registered against the petitioner on 08.01.2024, vide Crime No.13/2024, for the offences punishable under Sections 326, 325, 323, 504 read with Section 34 of the IPC. The learned counsel for the petitioner submits that an

inference that the petitioner is dangerous person under MPDA could not have been drawn on the basis of sole offence registered on 08.01.2024. He refers to the FIR with respect to the said offence and contends that at the best the contents of FIR will demonstrate that the petitioner was responsible for creating law and order situation and not public order situation. He points out that the alleged incident in relation to the said FIR had occurred on 30.12.2023 and the FIR is lodged after an inordinate delay on 08.01.2024. He states that Respondent No.2 has also not considered as to whether the petitioner was released on bail in relation to the said offence or not. Apart from this, learned counsel also states that the proposal for preventive detention was forwarded by the Superintendent of Police to Respondent No.2 – District Magistrate on 23.02.2024. The District Magistrate has passed the order of preventive detention on 27.03.2024 after a period of one month and four days. This delay of over one month according to the learned counsel breaks the live link between the alleged wrongful activity and the order of preventive detention. As regards in-camera statements, he states that the said statements taken on their face value do not indicate that the petitioner is threat to public order. He states that at the best inference of the petitioner indulging in activities detrimental to law and order can be drawn.

4. Mr.V.K. Kotecha, learned APP opposes the petition stating that the petitioner has become a nuisance to the public order. He states that the petitioner indulges in routine activities of criminal nature resulting in terror in the area which has disrupted smooth flow of life of public at large. As regards the aspect of delay, he states that delay of one month cannot be said to be of such magnitude that the delay by itself would be sufficient ground for quashing order of preventive detention. He states that this Court in exercise of its writ jurisdiction cannot sit in appeal over the subjective satisfaction arrived at by the detaining authority.

5. We have heard the learned Advocates as aforesaid and also perused the record of the case with their assistance. We have minutely observed the grounds of detention, two in-camera statements, FIR No.13/2024 which has been taken into consideration for arriving at subjective satisfaction as also the judgment and order dated 23.04.2024 passed in Criminal Writ Petition No.373/2024.

6. Perusal of FIR No.13/2024 indicates that the allegation against the petitioner is that on 30.12.2023, the petitioner and two others had apprehended the informant while he was returning to his home late in the night at around 12.40 a.m. and started beating him

since he had not given his house on rent to Mirza Sabbir Beg, one of the accused persons. FIR records that while the informant was being beaten up by kicks and fist blows, he fell down and at that time, the petitioner inflicted a blow on his left hand with an iron rod causing a fracture injury. The FIR does not indicate that the incident had occurred in public view. The highest offence in FIR is under Section 326 of the IPC i.e. causing grievous hurt by a weapon. In our opinion, the incident relates to breach of law and order and not public order by any stretch of imagination.

7. This offence does not indicate that the petitioner has created any public order issue. The act on the part of the petitioner will at best be an offence falling under category of law and order and not under category of public order. The distinction between the terms “law and order” and “public order” is explained by the Hon’ble Supreme Court in the matter of *Pushkar Mukherjee Vs. State of West Bengal* reported in *AIR 1970 SC 852*. The Hon’ble Supreme Court has expressed that every act of assault or injury to specific person or persons will not lead to a public disorder. It will be only law and order issue. Every contravention of law will not result in disturbing public order. In order to fall under category of public disorder, the act complained of must affect community or public at large. The said

judgment of the Hon'ble Supreme Court is followed recently in the matter of *Nenavath Bujji etc Vs. State of Telangana* reported in *AIR 2024 SC 1610*. Elaborating further on the aspect, the Hon'ble Supreme Court has held in the matter of *Nenavath Bujji etc (supra)* that it is the potentiality of the act to disturb even tempo of life of community or society at large, which makes the act prejudicial to the maintenance of public order. A crime that affects an individual or a few individuals would give rise to a law and order problem and not a public order issue. The Hon'ble Supreme Court has also went on to warn that the action of preventive detention is draconian measure which should not be resorted to in a routine manner.

8. The offence which the detaining authority has taken into consideration when considered in the light of the aforesaid judgments of the Hon'ble Supreme Court leaves us with no doubt whatsoever that the said offence is one which falls under the category of law and order and not public order.

9. The detaining authority has also referred to two in-camera confidential statements of persons referred as witness "A" and witness "B". Witness "A" has stated that the petitioner is infamous by the name of Shabbir Don in the area. He states that the petitioner and his three

brothers are active criminals. People in the area are afraid of them and despite repeated criminal activities are not willing to make complaints against them. He states that the petitioner always carries with him a deadly weapons like sword and daggers and regularly collects ransom money from small traders, shop keepers, hotel owners, etc. He also randomly stops people to extract money from them. These are general allegations that the witness "A" has made. He has not provided any particulars or details of the alleged criminal activities. He has however also narrated an incident when the petitioner had allegedly come to his shop asking for ransom of Rs.35,000/- and upon refusal he threatened to kill him by taking out dagger that he was carrying with him. He alleges that people in the area intervened as a consequence of which he became even more aggressive. The witness states that the petitioner had become so aggressive that all the people fled from the spot and taking advantage of situation the petitioner also left the spot discreetly. The witness has not given the date and time of the alleged incident. He has also not provided names of persons, who had allegedly gathered at the spot. One thing however is clear that the petitioner did not physically attack him. It will also be pertinent to mention here that the witness is absolutely silent about the events that had occurred on the next day or within span of few days thereafter from which we can infer that the alleged incident was not repeated.

10. As regards witness “B”, the general allegations levelled by this witness are similar to those which were levelled by witness “A”. As regards specific incident, this witness speaks about an incident that had occurred eight days before the date of recording of his statement i.e. on 04.02.2024 at around 9.30 p.m. He states that the petitioner and his accomplices had intercepted a person, who was going to his village in bus stand area and extorted money from him. He states that the person tried to resist, however, he was threatened with dagger and was asked to leave. The persons, who were in the vicinity were also threatened by the petitioner by uttering the words “ क्या देखरे सालो, बताऊ क्या तुमको”

11. The offence taken into consideration and the statements of the two witnesses, whose in-camera statements are recorded do not indicate that the activities of the petitioner were detrimental to public order and as such resort to preventive detention laws cannot be taken. It will also be pertinent to note that both the witnesses could narrate only one specific incident each. The other allegations in their statements are general and vague in nature. In the case of ***Nenavath Buji (supra)*** also the allegations against detainee in the said case were similar. The Hon’ble Supreme Court was dealing with definition of the term “Gunda” has defined under Telangana Act, provisions whereof are

pari materia with MPDA. The Hon'ble Supreme Court has stated that the actions of the detenue in the said case fall within the category of law and order problem and not public order problem. It is stated that a person can be said to be acting in a manner prejudicial to public order only when his activities are of such nature that ordinary laws cannot deal with him. Mere inability on the part of police machinery to tackle law and order situation cannot be a justification for resorting to measures of preventive detention.

12. We are of the opinion that the subjective satisfaction of the detaining authority is based on irrelevant material. The subjective satisfaction stands vitiated due to this and as such order of preventive detention is liable to be quashed.

13. Lastly we may also state that the process for placing the petitioner in preventive detention was initiated on 12.02.2024 when confidential statements were recorded. The Police Inspector of the concerned Police Station forwarded a proposal to the Superintendent of Police on the following date i.e. 13.02.2024. The Superintendent of Police verified the confidential statements on 22.02.2024 and forwarded the proposal to the detaining authority/respondent no.2 on 23.02.2024. The order of preventive detention was thereafter passed on

27.03.2024. There is time lag of one month and four days between the proposal forwarded by the Superintendent of Police and order of detention. Likewise, from the date of recording the confidential statements, a period of almost 40 days has lapsed till the date of passing of order of preventive detention. Delay caused in the matter has clearly disrupted the live link rendering the order of preventive detention unsustainable in law. In the result, we pass the following order :-

ORDER

- I) The Writ Petition stands allowed.
- II) The detention order dated 27.03.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-32 passed by respondent No.2 as well as the approval order dated 03.04.2024 and the confirmation order dated 15.05.2024 passed by respondent No.1 stand quashed and set aside.
- III) Petitioner - Mirza Shabbir Baig Mirza Gafar Baig shall be released forthwith, if not required in any other offence.
- IV) Rule is made absolute in the above terms.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/