



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1730 OF 2024

Mohit @ Chiku s/o Ramesh Godbole
Age: 21 years, Occu.: Labour,
R/o. Degaonchal, Nanded,
Tq. And 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. And Dist. Nanded.
3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad.

.. Respondents

...
Mr. S. S. Gangakhedkar, Advocate for the petitioner.
Mr. N. R. Dayama, APP for the respondents/State.
...

**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 03 JANUARY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. S. S. Gangakhedkar for the
petitioner and learned APP Mr. N. R. Dayama 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 26.07.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-27 passed by respondent No.2 as well as the approval order dated 05.08.2024 and the confirmation order dated 11.09.2024 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 only one offence was considered i.e. Crime No.56 of 2024 registered with Vazirabad Police Station, District Nanded for the offence punishable under Sections 3, 7 punishable under Section 25 of the Indian Arms Act. Learned Advocate for the petitioner vehemently submits that the proposal was submitted by the sponsoring authority on 16.02.2024 and the detention order has been passed on 26.07.2024. The said inordinate delay has not

been explained at all. Only one offence has been considered for passing the detention order, out of the list of nine offences, however, the said offence by itself will not demonstrate that the public order was endangered. In the said offence, the petitioner came to be arrested on the same day i.e. 08.02.2024 and was released on bail on 15.06.2024 by learned Additional Sessions Judge-3, Nanded i.e. prior to the detention order was passed. Still the detaining authority has not taken note of the bail order into consideration. The in-camera statements are in general and no act was committed by the petitioner against the witnesses. Therefore, there was no material before the detaining authority to curtail the liberty of the petitioner by passing the detention order. In fact, action under Section 55 of the Maharashtra Police Act was taken against the petitioner on 13.09.2023. At the most, the action of the petitioner would have created the law and order situation and not the public order requiring his detention. 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 relies on the affidavit-in-reply of Mr. Abhijit Raut, District Magistrate, Nanded/detaining authority. The said affidavit explains the material before the detaining authority to arrive at the conclusion and the subjective satisfaction. The petitioner was in jail in the meantime and, therefore, the order was not passed. It cannot be considered as delay. The action of detention is then approved by the State Government and the Advisory Board had advised that the action that was taken was justifiable and thereafter, confirmation has been given. The representation that was made by the petitioner has also been decided within a reasonable period by the State. In the past also the present petitioner had used weapons like guns while committing the offence and, therefore, the activities of the petitioner could not have been curtailed except by detaining him.

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 Buji** (*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, we would like to say that as per the chart, nine offences came to be registered against the petitioner, however, only one offence i.e. Crime No.56 of 2024 has been considered. In respect of the said offence, investigation was complete and the charge-sheet was filed bearing R.C.C. No.426 of 2024. Upon query, learned Advocate for the petitioner submits that the charge-sheet was not made available by the detaining authority along with the annexures while serving the detention order. The copy of the charge-sheet is not even available in the papers, which are with learned APP. The impugned order also does not show that the entire charge-sheet was perused by the detaining authority. The said offence was under Sections 3 and 7 punishable under Section 25 of the Indian Arms Act. For offence under Section 3 of the Indian Arms Act, previous sanction of the District Magistrate is mandatory. Section 39 of the Arms Act prescribes that no prosecution shall be instituted against any

person in respect of any offence under Section 3 without the previous sanction of the District Magistrate. As the documents are not made available to the petitioner as well as even to this Court, we are deprived of the fact that such previous sanction was given by the detaining authority himself in the capacity as District Magistrate or not. His order does not make a mention that at earlier point of time, he had the occasion to consider the facts of the case i.e. at the time of granting sanction under Section 39 of the Arms Act. That was the best piece of evidence or material to arrive at a subjective satisfaction by the District Magistrate. Thus, when charge-sheet was filed, we cannot presume here that there was compliance of Section 39 of the Indian Arms Act when without the said sanction prosecution cannot be launched. At the cost of repetition we say that the vital point for arriving at the subjective satisfaction has not been considered by the District Magistrate.

8. Perusal of the order passed under Section 55 of the Maharashtra Police Act would show that it was for the duration of six months only and at the time of passing the detention order on 26.07.2024, the said order was not in existence. Still we are surprised to note from the impugned order when note was taken

in respect of preventive action. The learned Magistrate says that even after passing the order when activities of the petitioner were not curtailed, the said order i.e. order under Section 55 of the Maharashtra Police Act was cancelled and proposal is sent under MPDA. The District Magistrate has failed to consider that the duration of that order had come to an end on the date of passing of the order, but that order was in existence when the proposal was submitted on 16.02.2024. It could have been cancelled by the authority, who had passed that order i.e. Superintendent of Police, Nanded. This shows another piece of lack of subjective satisfaction and application of mind.

9. As aforesaid, the proposal was sent on 16.02.2024 and the detention order has been passed on 26.07.2024. There is huge delay of around five months, which has not been explained properly. The custody of the petitioner in Crime No.56 of 2024 is nothing to do with passing up of the order and, therefore, the lame excuse or explanation is unacceptable.

10. Perusal of the in-camera statements of witnesses 'A' and 'B' would show that those are totally general in nature as if they were certifying the criminal activities of the petitioner. No incident had taken place against them wherein the petitioner was

involved. The detaining authority ought not to have relied upon those statements. Unfortunately, the Advisory Board in its opinion has considered the general statements of the witnesses. The point of delay is also not considered in view of the decisions of the Hon'ble Supreme Court.

11. 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 offence 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.

12. 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 26.07.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-27 passed by respondent No.2 as well as the approval order dated 05.08.2024 and the

confirmation order dated 11.09.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner - Mohit @ Chiku s/o Ramesh Godbole 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

scm