



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 CRIMINAL WRIT PETITION NO. 1888 OF 2024

Dipak @ Lolya Tarasingh Mohil @ Thakur
Age 28 years, Occ. Nil,
R/o. Chiraggalli, Itwara,
district Nanded

...Petitioner

versus

1. The State of Maharashtra
Through Secretary
Home Department,
Mantralaya, Mumbai

2. The District Magistrate, Nanded
Tq. And district Nanded

...Respondents

...
Advocate for the Petitioner : Mr. Ravindra J. Nirmal
APP for Respondents: Smt. P.R. Bharaswadkar

.....

**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.
DATED : 29th JANUARY, 2025**

JUDGMENT (PER SANJAY A. DESHMUKH, J.) :-

1. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the parties.

2. By invoking the powers of this Court under Article 226 of the Constitution of India, the petitioner challenges the order of detention, dated 19/03/2024, passed by section officer to Government of Maharashtra, Home department in MPDA-0224/CR-84/SPL-3B and

order dated 01/02/2024 in no.2014/RB-1/DESK-2/T-4/MPDA/CR-08 passed by District Magistrate.

3. 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. Learned advocate submits that the offences referred in the grounds of detention are pending the investigation and the action under 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 the "MPDA Act") is not justifiable. Learned advocate further submits that respondent nos.1 and 2 have erroneously interpreted the provisions of MPDA Act while passing the detention order without affording an opportunity of being heard to the petitioner. The two in camera statements, which are recorded by the detaining authority are not helpful to arrive at the subjective satisfaction. There is delay caused for taking action against the petitioner. He further submits that the alleged offences do not constitute that the petitioner is a habitual offender and based on the said the action taken against the petitioner is a drastic one. Learned advocate for the petitioner further submits that detention order is not sustainable in the eyes of law as it causes

injustice to the petitioner.

4. The learned APP for the respondents submits that the petitioner is a dangerous person as defined under the provisions of MPDA Act. The detaining authority has relied on two in-camera statements and the subjective satisfaction has been arrived at. There is no error committed by the detaining authority while recording the in-camera statements of the witnesses. Due to the grave terror created by the petitioner, the people in surrounding area are not coming forward to lodge report against the petitioner and, therefore, it affects the public order. There is absolutely no delay in passing the order and the impugned order came to be passed immediately upon receipt of the proposal. The petitioner is involved in serious crimes against the body and property and, therefore, he has been put in the category of dangerous person as per the MPDA Act. The activities of the petitioner could not have been stopped except upon his detention. There is no error committed by the detaining authority while passing the impugned order. The learned A.P.P. therefore, prays for dismissal of the writ petition.

5. Considered the submissions advanced by learned advocates for both the sides. Perused the order of detention. Before considering the case on merits, it would be proper to take into consideration the judicial pronouncements of the Hon'ble Supreme

Court in the following cases:-

(i) ***Nenavath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367]***, in which the Hon'ble Supreme Court held that preventive detention being a draconian measure, any order of detention as a result of a capricious or routine exercise of powers must be nipped in the bud and must be struck down at the first available threshold.

(ii) ***Ameena Begum Vs. The State of Tamilnadu and Ors., [2023 LiveLaw (SC) 743]***; in which the Hon'ble Supreme Court held that discretion must be exercised in accordance with the statute. However, if statute is silent, the authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness.

(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]***; In this case, the Honourable Supreme Court held that the test to be adopted for the act affects law and order or public order is : Does it lead to disturbance of the current of life of community so as to amount to a disturbance of public order or does it affect merely an individual leaving the tranquility of the society undisturbed.

(iv) ***Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, [1995 (3) SCC 237]***; in which the Hon'ble Supreme Court held that mere dragging and beating a businessman on public road and beating a witness doubting that he was informing the police about his anti-social activities is not relevant for detention order.

(v) ***Pushkar Mukherjee and Ors. Vs. The State of West Bengal, [AIR 1970 SC 852]***; in which the Hon'ble Supreme Court held that there must be subjective satisfaction and not objective satisfaction. The validity of detention can be challenged on the ground of *mala-fides* or that ground supplied are vague or irrelevant.

(vi) ***Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751)***, in which the Hon'ble Supreme Court held that satisfaction of detaining authority shall not be based on stray incidents.

(vii) ***Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, [(1981) 4 SCC 647]***, in which the Hon'ble Supreme Court held that advisory board has discretion to grant such representation in the particular circumstances.

6. Perused the impugned order of detention as well as all the relevant documents.

7. Taking into consideration the legal position as discussed above, it is to be noted here 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. As aforesaid, the detaining authority has considered Crime No.253 of 2023 lodged with Itwara Police Station, District Nanded. Perusal of the FIR would show that the informant arrested the petitioner with a weapon i.e. Khanjir on 10.8.2023 at 11.30 p.m. Here, we have intentionally taken the contents of the FIR into consideration to see as to whether public order was involved. But except possessing of the weapon i.e. Khanjir by the petitioner, there appears to be no other public order issue involved. From the FIR the clear *mens-rea* cannot be gathered, but it appears to be totally personal as the informant was knowing the petitioner.

8. As regards the in-camera statements, it can be seen that both the statements are in respect of extortion of money from the individuals at the instance of the petitioner by giving them threats. Statement of "A" is in respect of extortion of an amount of Rs.3000/- in the month of July, 2023 whereas the statement of "B" is in respect of extortion of an amount of Rs.2,000/- in the month of August, 2023. No specific date is mentioned in both the statements. The alleged two incidents are individual in nature. Here also issue of public order was not involved. Thus, it is to be noted that the detaining authority has not considered these material aspects in its proper perspectives while passing the detention order. Therefore, it cannot be said that the material before the detaining authority was sufficient to arrive at the subjective satisfaction. Though the impugned order has been approved by the Advisory Board, we are of the opinion that the points which we have discussed above were not considered by the Advisory Board in view of the law laid down in the authority of **Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another** (supra).

9. There is unreasonable delay of 12 days caused for passing of order of approval from the date of issuance of detention order. Three weeks delay is caused to refer the matter to Advisory Board. After seven weeks, detinue was heard by the Advisory Board. Thus delay is unreasonably caused at the hands of respondent Nos.1 and 2.

10. Taking into consideration the above reasons and ratio in the decisions of the Hon'ble Apex Court, in the case of ***Nenavath Bujji etc. Vs. State of Telangana and others*** (supra) at the most, the in camera statements as well as the offences allegedly committed would reveal that the petitioner had not created issue of law and order situation and not caused 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 relevant material before the detaining authority to categorize the petitioner as a dangerous person or bootlegger. The fundamental rights of the petitioner are affected. We hold that the impugned order is therefore, illegal and not sustainable in the eyes of law.

11. For the aforesaid reasons, the petition deserves to be allowed. Hence, the following order :-

O R D E R

- I) The writ petition is allowed.
- II) The detention order dated 19/03/2024 passed by section officer to Government of Maharashtra, Home department in MPDA-0224/CR-84/SPL-3B AND Order dated 01/02/2024 in no.2014/RB-1/DESK-2/T-4/MPDA/CR-08 passed by District Magistrate, Nanded

are hereby quashed and set aside.

III) Petitioner Dipak @ Lolya Tarasingh Mohil @ Thakur shall be released forthwith, if not required in any other crime.

IV) Rule is made absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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