



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

CRIMINAL WRIT PETITION NO.1889 OF 2024

Naresh Kantilal Gavali (Yadav), Age – 28
yers, Occ – Labor, R/o Opposite Maroti
Mandir, Naradana Chowfuli, Deopur,
Dhule.

... PETITIONER_

VERSUS

1. The District Magistrate Dhule, Tal &
Dist. Dhule.
2. The State of Maharashtra, (Through
Addl. Chief Secretary to Government
of Maharashtra Mantralaya, Home
Department, Mantralaya, Mumbai)
3. The Superintendent Nashik Road,
Central Prison, Nashik.
4. The Superintendent, LCB, Dhule, Tal
&Dist. Dhule.
5. The Secretary, Hon'ble Advisory
Board, Constituted under Section 9
of M.P.D.A. Act, 1981, Mantralaya,
Mumbai – 400 032.

... RESPONDENTS.

Shri R.L. Jakhade, Advocate h/f Shri S.A. Kulkarni, Advocate
for the petitioner.
Shri V.K. Kotecha, Assistant Public Prosecutor for the
respondent-State.

CORAM : SMT. VIBHA KANKANWADI AND ROHIT W. JOSHI, JJ.
DATE : 22.01.2025.

JUDGMENT :

Heard. **RULE.**

2. The matter is taken up for final disposal by consent of the learned Counsel appearing for the parties.

3. The petitioner in the present matter, has invoked our extraordinary writ jurisdiction under Article 226 of the Constitution of India in order to challenge the order of preventive detention dated 04.09.2024 issued by the respondent no.1/The District Magistrate, Dhule in exercise of powers under Section 3(1) of The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as 'the MPDA'). The power is delegated upon the respondent no.1 by the respondent no.2 under Section 3(2) of the MPDA. The

petitioner also challenges the order of confirmation of detention dated 07.10.2024 issued by respondent no.2, under Section 12(1) of the MPDA. The petitioner is detained on the ground that he is a “dangerous person” within the meaning of Section 2(b-1) of the MPDA.

4. The Police Inspector, Police Station Deopur, District Dhule had conducted discreet inquiry in relation to the petitioner. During the course of this inquiry, he has recorded in-camera confidential statement of two witnesses on 04.02.2024 and 05.03.2024. The statements recorded by the Police Inspector were verified by the Sub-Divisional Police Officer, Sakri on 07.03.2024. Thereafter, on 04.05.2024, the Police Inspector forwarded a Proposal for placing the petitioner under preventive detention to the office of Superintendent of Police, Dhule for sending it further to the respondent no.1/ District Magistrate. The said Proposal was forwarded by the Superintendent of Police to the District Magistrate on 27.05.2024. Based on the Proposal, the respondent no.1/District Magistrate passed the order of preventive detention on 04.09.2024. The confinement order was also issued, simultaneously, on 04.09.2024. Both these orders are served on the petitioner on 05.09.2024 with grounds of detention, dated 04.09.2024. Since then the petitioner is lodged in Central Prison, Nashik by way of preventive

detention.

5. The respondent no.1 has passed an approval order under Section 3(3) of the MPDA on 12.09.2024. On the same date, i.e. on 12.09.2024, the matter was referred to the Advisory Board. After hearing the petitioner, the Advisory Board has given positive recommendation for continuing preventive detention of the petitioner. This recommendation is made on 03.10.2024 after considering the representation of the petitioner. In view of the said recommendation, the respondent no.2 has passed order dated 23.10.2024 in exercise powers under Section 12(1) of the MPDA confirming the order of preventive detention.

6. Shri R.L. Jakhade, learned Counsel for the petitioner has challenged the action of preventive detention on the grounds that (i) there is an inordinate delay of around 7 months in processing the proposal for preventive detention as a consequence of which, the live link between the alleged wrongful acts of the petitioner and the order of preventive detention, is completely broken; and (ii) the wrongful activities alleged to have been committed by the petitioner can at best to be said to be creating a law and order problem and by no stretch of

imagination, a public order issue. He submits that the last offence, which has been taken into consideration by the Detaining Authority is allegedly committed on 09.04.2024, i.e. around 5 months prior to the passing of order of preventive detention. Referring to the First Information Report (FIR) in the said matter, he contends that the offence was relating to law and order and not a public order. The in-camera statements of unnamed witnesses are also challenged, stating that assuming the statements to be true and correct, each of the witnesses has referred to one concrete incident only. He then submits that the other allegations in the statements are general in nature lacking in all material particulars. He contends that the order of preventive detention is based on irrelevant material, and as such, it is liable to be quashed.

7. *Per contra*, Shri V.K. Kotecha, learned Assistant Public Prosecutor ('APP') would contend that the petitioner has become a nuisance to the society at large. He submits that unlawful activities of the petitioner have completely derailed normal tempo of life of public at large. The learned APP submits that the petitioner has no source of earning his livelihood other than his unlawful activities of threatening and extorting money from people and indulging in acts of violence

routinely. According to the learned APP, regular measures under penal law are inadequate to curtail activities of such dangerous persons and therefore, resort was required to be taken to the provisions of MPDA, which provide for preventive detention. As regards the delay, he submits that delay by itself cannot be a ground for setting aside the order of preventive detention, when the same is properly explained. He contends that the delay in the matter is properly explained, and therefore, that cannot be a ground for quashing the action of preventive detention.

8. Having heard the learned Counsel as aforesaid and upon perusal of record of the case with their able assistance, we find it difficult to agree with the contention of the learned APP that, delay in the matter is properly explained. The dates mentioned above will indicate that the first in-camera statement was recorded during the course of discreet inquiry on 04.02.2024. The second statement is recorded after a period of one month i.e. on 05.03.2024. The said statements have been verified on 07.03.2024. However, after 07.03.2024, there is a complete standstill for a period of around 2 months. The Proposal is then forwarded by the Police Inspector on 04.05.2024. Thereafter, after a period of 23 days, the Superintendent of

Police has forwarded the Proposal to the Detaining Authority i.e. respondent no.1 on 27.05.2024. The Detaining Authority has not acted on the Proposal, immediately. The matter remained pending with the Detaining Authority for 3 months and 8 days. All of a sudden, thereafter, the order of preventive detention is issued on 04.09.2024. We agree with the contention of the learned Counsel for the petitioner, that the inordinate gap of 7 months in the matter completely disrupts the live link between the wrongful activities and the preventive detention. Even if, we count the period from 27.05.2024, i.e. the date on which the Superintendent of Police forwarded the Proposal for preventive detention, we find that there is huge delay of 3 months and 8 days in issuing the order of preventive detention. There is no explanation whatsoever for the said inordinate delay of 3 months and 8 days. The order of preventive detention is liable to be quashed on this solitary ground.

9. A perusal of grounds of detention dated 04.09.2024, will indicate that the Detaining Authority has referred to 10 offences registered against the petitioner from 30.03.2018 to 09.04.2024. The Detaining Authority has also considered the preventive measures taken against the petitioner on five occasions from 29.06.2018 to 21.07.2023

under Section 110(e) and 110(g) of the Code of Criminal Procedure. Apart from these three externment orders issued on 08.04.2019, 11.08.2020 and 30.04.2024 are also taken into consideration. Although, the Detaining Authority has stated that only the last offence is taken into consideration perusal of the reasons indicates that all the offences, instances of preventive action and externment orders have been taken into consideration. The Detaining Authority was swayed by old and stale incidents of alleged criminal activities on the part of the petitioner while passing the order of preventive detention. This by itself is a ground good enough for setting aside the order of preventive detention.

10. Even if, we accept the contention of the learned APP that although he has referred to 10 offences in all, the Detaining Authority considered only the last offence for arriving at subjective satisfaction, as regards the last offence. The offence is registered on 09.04.2024 under Section 386 read with Section 34 of the Indian Penal Code. The allegation against the petitioner is that, he had extorted money from one Naresh Vinod Patil. The alleged incident of extortion had occurred on 11.02.2024 and the FIR is lodged on 09.04.2024, after a period of around 2 months. The contents of the FIR, even they are assumed to be

true and correct, do not indicate that the incident has caused any public order issues and at best, it can be said that the petitioner has indulged in a crime, which caused a law and order problem. It cannot be said by any stretch of imagination that, the said act of extortion of money from the informants in the said crime, created any public order issue. In this regard, we may refer to a recent judgment of the Hon'ble Supreme Court in the case of ***Nenavath Bujji etc Vs. State of Telangana*** reported in ***AIR 2024 SC 1610***, wherein it is held that the distinction between law and order and public order is one of degree and extent of the reach of the act in question in the society at large. An offence can be said to affect public order adversely only if it is of such nature as to disturb the normal tempo of life of members of community at large. If the offence affects a few individuals only then it will be a law and order issue and not public order issue. Even if the offences committed in public view it can not be said that it affects public order adversely, unless it directly affect the tempo of life of general public. The distinction between law and order and public order is succinctly explained. The Hon'ble Supreme Court has observed that unless the criminal activities unsettle even tempo of life of public at large or community in general, the act complained of cannot be said to be one which creates public order issue. It goes without saying that a person cannot be placed under

preventive detention only on the ground that he indulges in activities, which are detrimental to law and order, if such activities are not detrimental to public order.

11. As regards the two in-camera confidential statements, we find that both the witnesses narrated one concrete incident each. The incidents about which they have narrated also do not fall within the category of public order issue. The other allegations in the said statements are general in nature and wanting in material particulars. Thus, assuming the contents of the said statements to be true, the same cannot be pressed into service to place the petitioner under preventive detention.

12. The learned APP has vehemently submitted that this Court in exercise of its writ jurisdiction, may not sit in appeal over the decision of the Detaining Authority. He submits that the material on which subjective satisfaction is arrived at by the Detaining Authority cannot be revisited as an Appellate Authority by this Court. We agree with the submissions of learned APP that, adequacy of evidence or material is beyond our province while exercising writ jurisdiction under Article 226 of the Constitution of India. However, the relevance of

material can certainly be looked into.

13. We have taken the material on record on its face value and yet, we find that the same will not be relevant for curtailing liberty of a person by invoking laws relating to preventive detention. We are of the considered opinion that the subjective satisfaction of respondent no.1 is founded on irrelevant material, and therefore, the action of preventive detention deserves interference in exercise of our writ jurisdiction.

14. In view of the aforesaid reasons, we are inclined to quash the action of preventive detention, hence, we passed the following order :-

- I) The Writ Petition stands allowed.
- II) The detention order dated 04.09.2024 bearing No.Dandapra/KAVI/MPDA/02/2024 passed by respondent No.1 as well as the approval order dated 12.09.2024 and the confirmation order dated 23.10.2024 passed by respondent No.2 stand quashed and set aside.
- III) Petitioner – Naresh Kantilal Gavali (Yadav) shall be released forthwith, if not required in any other offence.

15. Rule is made absolute in the above terms.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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