



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.1909 OF 2024**

Dhiraj s/o Rajendra Pawde  
Age: 25 years, Occu.: Private Service,  
R/o. Rahane Mala, Sangamner,  
Tq. Sangamner, Dist. Ahmednagar

**.. Petitioner**

***Versus***

1. The State of Maharashtra,  
Through Principal Secretary,  
Home Department, Mantralaya,  
Mumbai.
2. The District Magistrate,  
Ahmednagar, Tq. And Dist. Ahmednagar.
3. The Superintendent  
Nashik Central Prison,  
Nashik.

**.. Respondents**

...

Mr. S. C. Bhosle, Advocate for the petitioner.  
Mr. A. D. Wange, APP for respondents/State.

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

**DATE : 21 FEBRUARY 2025**

**JUDGMENT (Per Smt. Vibha Kankanwadi, J.)**

. Heard learned Advocate Mr. S. C. Bhosle for the petitioner  
and learned APP Mr. A. D. Wange 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 05.07.2024 bearing No.DC/Desk-9C1/816/2024 passed by respondent No.2 as well as the approval order dated 12.07.2024 and the confirmation order dated 19.08.2024 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, one offence was considered i.e. Crime No.18 of 2024 registered with Sangamner City Police Station, District Ahmednagar for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code. The detaining authority has relied on the aforesaid offence i.e. Crime No.118 of 2024 in which the petitioner was not arrested at all. He was served with notice under Section 41(A)(1) of the Code of Criminal Procedure. When the offence that has been committed is not serious requiring the arrest of the petitioner, then how that matter can be taken as a

piece of evidence for detaining him. Statements of in-camera witnesses would also show that as regards witness 'A' is concerned, two incidents allegedly had taken place against him, one on 18.02.2024 at 3.00 p.m. and another at 7.00 p.m. on 23.02.2024. In respect of second incident, he has stated that the present petitioner had stabbed him in stomach and also caused injury to his ear, still he has preferred not to lodge FIR. Whether the detaining authority had considered the medical evidence to confirm the trust in the statement of witness 'A' is not reflected. Interestingly, as regards witness 'B' is concerned, the first incident is taken place at 10.00 a.m. on 18.02.2024 itself similar to that of witness 'A' and another incident is stated to be on 22.02.2024 at 7.30 p.m. Here, he says that on the second occasion, he was shown with a knife. Though both the witnesses are saying that people had gathered at the said place, but they did not come forward to help them. That cannot be taken as an act of disturbing the public order. Perusal of the impugned order would also show that the detaining authority had taken into consideration the earlier offences also when it is stated that the petitioner is involved in the offences of attempt to commit dacoity, house breaking, causing hurt by dangerous weapons with

unlawful assembly, commit robbery with unlawful assembly, attempt to murder with dangerous weapons. Thus, when the past incidents were also considered, then it can be certainly said that there was no nexus or live link between those incidents and the impugned order. It appears that around 25.06.2023 proceedings under Section 55 of the Maharashtra Police Act for externment was undertaken, but it was dropped by the Deporting Authority or the Superintendent of Police, Ahmednagar. It appears that the cause behind dropping that proceeding has not been properly considered and, therefore, the material which was before the detaining authority was not sufficient to arrive at the subjective satisfaction for passing the impugned order.

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 is relying upon the affidavit-in-reply of Mr. Siddharam Salimath, District Magistrate, Ahmednagar, to demonstrate as to what was the material before him to arrive at a subjective satisfaction. Though the District Magistrate has stated that in the past there were such offences against the petitioner, in fact, he had taken only one offence and two in-camera statements for consideration.

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) *Ameena 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 say that the only offence which was considered by the detaining authority for passing detention order was Crime No.18 of 2024 registered with Sangamner City Police Station, District Ahmednagar for the offence punishable under Sections 323, 324, 504, 506 read with Section 34 of Indian Penal Code, in which he was not even arrested. The offence is still under investigation. That means,

even the investigating officer has not come to the conclusion that there is sufficient evidence against the petitioner and, therefore, charge-sheet is required to be filed against him or not. When the words are used that the petitioner is a history-sheeter and has criminal record would implicate that the earlier offences are also considered. Unless there is live link between those offences and the impugned order, those offences cannot be considered at all. As regards statements of witnesses 'A' and 'B' are concerned, interestingly in spite of two incidents, those two witnesses had preferred not to lodge any report against the petitioner. Witness 'A' rather says that he was stabbed in the stomach, but his statement is silent as to where he had taken the treatment and the District Magistrate had not even tried to get the medical papers checked in order to consider the element of truth in the statement. If witness 'A' was stabbed, then definitely he would have taken treatment at the hospital and then the question arises as to why the said hospital, who is supposed to take the history in respect of such injuries, had not treated the said case as Medico Legal Case. If the MLC would have been registered, then the concerned Police Station would have started acting. With all these lacunas, the said statement cannot be said to be helpful

while passing the detention order. As regards witness 'B' is concerned, again two incidents had taken place, but on none of the occasions, he had ever gone to the police station to lodge the FIR. Another important point here is that the statements of both the witnesses were recorded on 23.04.2024. Proposal was forwarded by Assistant Police Inspector on the same day, that means the sponsoring authority made the communication on 23.04.2024 itself. Then the confidential statements were verified on 25.04.2024. Here, we would like to say that in some matters we have noted that after the confidential statements are recorded, they are verified first and then they are sent back to the sponsoring authority, who would then submit the proposal. Here, it is other way after the confidential statements were recorded, they were got verified and then the proposal has been submitted. However, the Superintendent of Police has forwarded the proposal to District Magistrate on 02.07.2024. Why the Superintendent of Police was sitting over the proposal for a period of almost more than two months has not been clarified. No affidavit-in-reply explaining the delay by Superintendent of Police, Ahmednagar has been filed. Therefore, the delay from the date of sending proposal is not at all properly explained and, therefore,

such order cannot be allowed to sustain. Perusal of the contents of the FIR i.e. Crime No.18 of 2024 and both the in-camera statements would show that question of public order was not involved. At the most there was problem of law and order that was created because of the behaviour of the petitioner.

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 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.

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 05.07.2024 bearing No.DC/Desk-9C1/816/2024 passed by respondent No.2 as well as the approval order dated 12.07.2024 and the confirmation

order dated 19.08.2024 passed by respondent No.1, are hereby quashed and set aside.

**III)** Petitioner – Dhiraj s/o Rajendra Pawde 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