



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1918 OF 2024

Sunil @ Sallya s/o Laxman Patil
Age: 38 years, Occu.: Labour,
Amalner Road, Parola,
Taluka Parola, Dist. Jalgaon

.. Petitioner

Versus

1. The State of Maharashtra
Through the Chief Secretary (Special),
Home Department, Mantralaya,
Mumbai – 400 032.
2. The District Magistrate,
Jalgaon, District Jalgaon.
3. The Jail Superintendent
Central Prison, Nagpur.
4. Sunil H. Pawar,
Police Inspector,
Parola Police Station, Parola,
Tq. Parola, District Jalgaon.

.. Respondents

...

Mr. H. F. Pawar, Advocate for the petitioner.
Mrs. R. P. Gour, APP for the respondents/State.

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

DATE : 28 JANUARY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. H. F. Pawar for the petitioner
and learned APP Mrs. R. P. Gour 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 27.09.2024 bearing No.Dandapra/KAVI/M.P.D.A./35/2024 passed by respondent No.2 as well as the approval order dated 07.10.2024 and the confirmation order dated 07.11.2024 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, five offences were considered i.e. **(i)** Crime No.28 of 2017 registered with Ramanand Nagar Police Station, District Jalgaon for the offences punishable under Sections 454, 457, 380 of Indian Penal Code, **(ii)** Crime No.189 of 2022 registered with Parola Police Station, District Jalgaon for the offences punishable under Sections 399 of Indian Penal Code, under Section 135, 37(1)(3) of the Mumbai Police Act, 1951, **(iii)** Crime No.273 of

2022 registered with Parola Police Station, District Jalgaon for the offences punishable under Section 224, 178 of Indian Penal Code, **(iv)** Crime No.481 of 2022 registered with Parola Police Station, District Jalgaon for the offences punishable under Sections 392, 341, 385, 109, 504, 506 read with Section 34 of Indian Penal Code and **(v)** Crime No.200 of 2024 registered with Parola Police Station, District Jalgaon for the offences punishable under Sections 307, 386, 452, 354, 324, 323, 504, 506 read with Section 34 of Indian Penal Code and under Section 3 punishable under Section 25 of the Indian Arms Act. It has been vehemently submitted on behalf of the petitioner that the sponsoring authority and the detaining authority had not considered where the petitioner was in between and the detaining authority went on to consider the offences from 2017 for passing the detention order. The glaring fact is that the petitioner had faced trial for the offence punishable under Sections 302, 397, 452 etc. of Indian Penal Code registered with Salabatpura Police Station of Surat, Gujarat in Sessions Case No.256 of 2010. He was held guilty by the concerned Court and sentenced to imprisonment for life by judgment and order dated 24.10.2019. In the meantime though the petitioner was on bail and stated to have committed

other offences, yet for passing a detention order on 27.09.2024 there ought to have been a live link. Certainly, what happened to the petitioner after he was held guilty and sentenced in the Surat case on 24.10.2019 should have been considered by the detaining authority. The present petitioner has preferred appeal challenging the said judgment and order before the Hon'ble High Court of Gujarat at Ahmedabad bearing Criminal Appeal No.153 of 2020 and the Division Bench of the said Court by order dated 05.04.2023 had passed the order of suspension of sentence and releasing the applicant on bail pending appeal. Thereafter, the offence vide Crime No.200 of 2024 appears to have been registered with Parola Police Station, wherein he came to be arrested on 30.06.2024 and his bail application i.e. Miscellaneous Criminal Application No.234 of 2024 was rejected on 26.08.2024. The maximum punishment that can be awarded in the said offence which is under Section 307 of Indian Penal Code is imprisonment for life. There was no documents with the detaining authority to show that the bail application has been filed by the present petitioner before this Court. Thus, when he was already in the judicial custody in the said matter, there was absolutely no necessity to pass the detention order. It appears

that the detention order is passed only on the apprehension that if the detenu i.e. the petitioner is released in the said offence of Crime No.200 of 2024, then he would commit some other offence. Such orders cannot be allowed to sustain. The prosecution or the police agency are definitely having other legal recourse to resist the bail application that might be filed by the present petitioner. When there was absolutely no necessity to take recourse to a draconian provision, such detention order needs to be quashed and 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. Ayush Prasad, the District Magistrate, Jalgaon, who passed the impugned order. In his affidavit-in-reply he has stated as to what was the material before him at the time of passing the impugned order. He admits that his apprehension was true and correct that if the petitioner is released from jail, then he will commit various criminal activities which will jeopardize public order in Parola city. In the affidavit-in-reply, the learned District Magistrate supports his order and submits that there was no nexus between the criminal history of the petitioner and the order. He denies that the order passed by him is violative of fundamental rights of the detenu. He has stated that perusal of the order of detention would reveal that record of all crimes registered against the detenu have been minutely perused and considered while passing the impugned order only after due subjective satisfaction. The subjective satisfaction arrived at after considering the last offence and the two in-camera statements of the witnesses. The offence bearing Crime No.481 of 2022 registered with Parola City Police Station has been committed by the petitioner when he was behind the bar. He had made a telephone call to instigate the co-accused. That means from the jail also his activities were not curtailed and, therefore, he has

been declared as dangerous person and, therefore, detained.

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, it is to be noted that the affidavit-in-reply is lengthy than the impugned order and now many such facts have been considered in detail to demonstrate as to what was the material which was available to arrive at subjective satisfaction. We are constrained to look to the impugned order and the reasons would start from paragraph No.5. It reveals that he considered the offences from 07.03.2017 i.e. Crime No.78 of 2017 those were filed against the petitioner. An offence which had taken place on 07.03.2017 will not provide the live link for passing a detention order on 27.09.2024. Another important aspect is that the learned District Magistrate had considered the judgment and order passed in Sessions Case No.256 of 2010 by the learned Additional Sessions Judge, Surat in respect of Crime No.168 of 2010. The date of conviction is 24.10.2019. Prior to that, the learned Additional Sessions Judge, Amalner by judgment and order dated 19.07.2014 had held the

petitioner guilty of committing offence under Section 307 of Indian Penal Code and had sentenced the petitioner to undergo rigorous imprisonment for five years. Further, he had considered Crime No.273 of 2022 registered with Parola City Police Station, District Jalgaon for the offence punishable under Sections 224, 178 of Indian Penal Code, which was lodged at the behest of Mr. Patel, Superintendent of Police, Central Prison, Surat city, Gujarat State, which was in respect of late surrender of the petitioner. Thus, when the detaining authority had taken note of the fact that the petitioner is convicted and then appears to have been released on leave, may be parole or furlough leave and then surrendered late, then he ought to have gone through the fact as to whether on the date of detention order, the petitioner was released on bail by suspension of sentence or whether when offence vide Crime No.200 of 2024 was allegedly committed by him on 30.06.2024, he was on furlough leave or parole leave. Unless that fact is brought to his notice, ordinarily the petitioner would have been then in the jail. It appears that the bail during the pendency of the appeal has been granted by Hon'ble High Court of Gujarat at Ahmedabad on 05.04.2023. It further reveals that when offence vide Crime No.200 of 2024 was allegedly

committed, he had preferred bail application and it came to be rejected on 26.08.2024. Here, the chronology of events would show that statements of in-camera witnesses were recorded on 30.07.2024. Those statements were got verified by Sub Divisional Police Officer on 17.08.2024 and then the proposal was submitted to Superintendent of Police, Jalgaon on 11.09.2024 which was then forwarded by Superintendent of Police on 12.09.2024. That means when the proposal was submitted and forwarded by the police authorities, they knew about the rejection of bail application of the petitioner by the competent Court on 26.08.2024. Now, detention orders cannot be passed in anticipation that in future the bail application of such applicant would be allowed and therefore, it is preferred to detain him. At the cost of repetition we would say that the detention order cannot be passed in anticipation. We are surprised to note about the opinion of the detaining authority supporting his apprehension. Another fact to be noted from the order which was passed in respect of rejection of the bail application that the investigating officer or the prosecution had not put the fact regarding the contention of the prosecution that during the pendency of the appeal before the Hon'ble High Court of Gujarat

at Ahmedabad, the offence has been committed by the petitioner in Maharashtra. The sponsoring authority ought to have collected the evidence or facts against the petitioner and then they would have come to know about the orders passed on 05.04.2023, which is, in fact, available on the website and one of the condition that has been imposed by the Hon'ble High Court of Gujarat at Ahmedabad while releasing the petitioner on bail is that he shall not involve himself in any criminal activity while on bail or attempt to contact any prosecution witnesses. The petitioner has been directed to attend the police station (Salabatpura Police Station) on the 1st day of every month between 11.00 a.m. to 2.00 p.m. till the appeal is finally disposed of. When these conditions were imposed, then the proper legal recourse would be to bring it to the notice of the concerned Court and then the police could have gone for the cancellation of bail before the Hon'ble High Court of Gujarat at Ahmedabad. No such step has been taken, nor the fact was informed to the Gujarat Police by the sponsoring authority, but directly forwarded the proposal for the petitioner's detention. When normal legal recourse is available, then the competent authority should not take recourse to the detention laws which are even as per the observations of the Hon'ble

Supreme Court as a draconian provision and affects the fundamental rights of a person. Therefore, we hold that there was no subjective satisfaction arrived at by the competent authority before passing the impugned order.

8. As regards the in-camera statements of witness 'A' is concerned, the said person has given reference of the facts in Crime No.200 of 2024 and then states that in the last week of March 2024 the petitioner had given cut by motorcycle when the witness was standing in Shani Mandir Chowk. The witness had then asked the petitioner as to why he has done so then the petitioner by bringing the motorcycle back near to the said witness abused him and threatened him to kill. General public was not involved in the said incident. Witness 'B' also gives the same story regarding Crime No.200 of 2024. This part is copy paste. He says that in the first week of March 2024 when he was in front of Balaji Park, the petitioner came alleging that the witness gives information regarding the petitioner to police and upon the said allegations, he was threatened to kill. Again the next part is copy paste. Here also general public was not involved.

9. It is also stated that as regards Crime No.481 of 2022 is concerned, the impugned order states that the charge-sheet has

been filed on 02.08.2024 and it has been given number as R.C.C. No.107 of 2024. The certified copy produced by the petitioner would show that in respect of Crime No.481 of 2022, charge-sheet has not been filed. Thus, there was no verification of the said fact also. When the impugned order suffers from application of mind and subjective satisfaction, it cannot be allowed to sustain.

10. 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 offences 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.

11. 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 27.09.2024 bearing No.Dandapra/KAVI/M.P.D.A./35/2024 passed by respondent

No.2 as well as the approval order dated 07.10.2024 and the confirmation order dated 07.11.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Sunil @ Sallya s/o Laxman Patil 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