



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.2028 OF 2024

Shashikant s/o Sakharam Badgal
Age: 22 years,
R/o. Karmvernagar, Nanded.

.. Petitioner

Versus

1. District Magistrate,
Nanded.
2. The State of Maharashtra
Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department,
Mantralaya, Mumbai.
3. The Superintendent,
Chhatrapati Sambhajinagar.

.. Respondents

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Mr. R. A. Jaiswal along with Mr. S. G. Ghongade, Advocate for the
petitioner.
Mr. A. M. Phule, APP for the respondents/State.

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

DATE : 13 JANUARY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. R. A. Jaiswal for the petitioner
and learned APP Mr. A. M. Phule 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.2024/RB-1/Desk-2/T-4/MPDA/CR-41 passed by respondent No.1 as well as the approval order dated 15.07.2024 and the confirmation order dated 30.08.2024 passed by respondent No.2, 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, two offences were considered i.e. Crime No.44 of 2024 registered with Vimantal Police Station, District Nanded for the offences punishable under Sections 326, 323, 504 read with Section 34 of Indian Penal Code, under Section 4 punishable under Section 25 of the Indian Arms Act and Crime No.198 of 2024 registered with Vimantal Police Station, District Nanded for the offences punishable under Section 324, 506 of Indian Penal Code.

Learned Advocate appearing for the petitioner points out that there is delay of about four months in passing the order of detention, which has not been explained. It appears from the impugned order that two offences i.e. Crime No.44 of 2024 and Crime No.198 of 2024, which are still under investigation as well as two in-camera statements were considered. The contents of the FIR in both the cases would show that public was not involved and at the most law and order situation would have been created. The detaining authority had not even considered whether the petitioner was released on bail in the matters. As regards the statements of witnesses 'A' and 'B', they have stated that the incident against them had allegedly taken place in May 2021 and June 2022, that means more than two years prior to the incident which might have also been considered or the incidents were worth considering in Chapter Case No.1 of 2023 taken under Section 110 (e)(g) of the Code of Criminal Procedure, however, it appears that the said case was closed. In those statements also we could get that public was not involved and the story is almost same. Therefore, it can be certainly be said that the material before the detaining authority was not sufficient to take action of detention.

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, who has given the details similar to that of the impugned order regarding the material before him at the time of passing the detention order. Learned APP also submits that the order was initially approved by the State Government and then it was referred to Advisory Board. The Advisory Board had given opinion confirming the facts. In fact, the Advisory Board had even heard the petitioner. Thereafter, based upon the opinion of the Advisory Board, the State Government has confirmed the order of detention. In fact,

the petitioner is involved in all nine offences, seven of which are pending before the Court and present two offences are under investigation. The graph shows that in spite of taking legal recourse, petitioner has not curtailed his criminal activities. There was no other option, but to detain him so that the public at large can be saved from his criminal activities.

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 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 only two offences i.e. Crime No.44 of 2024 and Crime No.198 of 2024. Both are under investigation. The other seven offences or so called criminal activities could not have been considered by the detaining authority while passing the detention order. It appears that two proceedings under Section 110(e)(g) of the Code of Criminal Procedure were closed in the past and the proceeding under Section 110(a) of the Code of Criminal Procedure is stated to be pending or its exact status is not given. If we consider the contents of the FIR in the two offences which have been considered, it is to be noted that the public was not

involved. Whatever criminal activity is stated to have been done by the petitioner was against the concerned informant, for which the petitioner is facing the trial. The detaining authority has not considered as to whether bail has been granted to the petitioner in both the cases or not. As regards the in-camera statements 'A' and 'B', as aforesaid, they have stated about the incidents they had allegedly faced in May 2021 and June 2022. It is to be noted that there is similarity on the aspect that both the witnesses were saying that the petitioner was drinking liquor along with his brother or found drunk along with his brother and then the petitioner as well as his brother stated to have entered into the criminal act. The detaining authority has not even taken doubt as to how the police could have come to know about the name of these two witnesses and then recorded their statements. There is no entry in the entire file that any inquiry was made by the detaining authority in this respect. After a period of two years, how the police came to know that any such incident had taken place with these two witnesses is a mysterious fact. It would be certainly a duty of the detaining authority to get instructions in this respect also and to see whether these two witnesses are the got-up witnesses or not.

8. The chronology of events would show that the statements of in-camera witnesses were recorded on 09.03.2024. Then proposal was forwarded by the sponsoring authority on 10.03.2024, which was then forwarded to Assistant Commissioner of Police on 13.03.2024. Assistant Commissioner of Police verified the confidential statements on 03.04.2024 and forwarded the proposal to Deputy Commissioner of Police, who had then forwarded the same to the detaining authority on 07.04.2024, but the detention order has been passed on 05.07.2024. Thus, there is delay of three months in passing the detention order which has not been explained by the detaining authority in the affidavit-in-reply. We are constrained to observe that it is a high time that the detaining authority should consider the decisions by the Hon'ble Supreme Court as well as this Court before passing the detention order. Now, certainly from all the above facts it is clear that the public at large or public order was not in question in the present matter and still with the considerable delay, the order of detention has been passed and the petitioner has been detained since 06.07.2024. Any detention order amounts to curtailing of the liberty enshrined under the Constitution of India and, therefore, such action should be taken

with utmost care and within the fore-corners of law. Now, certainly the impugned order has a support from the opinion of the Advisory Board. We are constrained to observe that those aspects which we have considered were not considered by the Advisory Board. As regards the role of Advisory Board is concerned, we would like to rely on the decision in **Nenavath Bujji (Supra)**, wherein the role of the Advisory Board has been explained and the observations in respect of the same in paragraph Nos.55 to 58 are important :-

“55. What can be discerned from a bare perusal of the above-mentioned provisions is that the Advisory Board performs the most vital duty of independently reviewing the detention order, after considering all the materials placed before it, or any other material which it deems necessary. When reviewing the detention order along with the relevant materials, the Advisory Board must form an opinion as to the sufficiency of the cause for warranting detention. An order of detention passed under the Act, 1986 can only be confirmed if the Advisory Board is of the opinion that there exists sufficient cause for the detention of the detenu.

56. The framers of the Constitution being in *seisin* of the draconian nature of an order of preventive detention and its adverse impact on individual liberty, have specifically put in place

safeguards within Article 22 through the creation of an Advisory Board, to ensure that any order of preventive detention is only confirmed upon the evaluation and scrutiny of an independent authority which determines and finds that such an order for detention is necessary.

57. The legislature in its wisdom has thought it fit, to entrust the Advisory Board and no one else, not even the Government, with the performance of this crucial and critical function which ultimately culminates into either the confirmation or revocation of a detention order. The Advisory Board setup under any preventive detention law in order to form its opinion is required to; (i) consider the material placed before it; (ii) to call for further information, if deemed necessary; (iii) to hear the detenu, if he desires to be heard and; (iv) to submit a report in writing as to whether there is sufficient cause for “such detention” or whether the detention is justified.

58. An Advisory Board is not a mere rubber-stamping authority for an order of preventive detention. Whenever any order of detention is placed before it for review, it must play an active role in ascertaining whether the detention is justified under the law or not. Where it finds that such order of detention is against the spirit of the Act or in contravention of the law as laid down by the courts, it can definitely opine that the order of detention is not sustainable and should not shy away from expressing the same in its report.”

9. When an order is passed with considerable delay and also it cannot be said to be within the forecorners of law, when public order was not in question and the detaining authority has not taken into consideration all those aspects, which he has to, then the detention of such person may amount to illegal detention, for which then the State as well as the impugned authority would be liable to pay compensation. Hope that the State Government would take care henceforth and if training of the District Magistrates is necessary would conduct such training or in any other manner convey it to the District Magistrates or the authority empowered to pass order under M.P.D.A. that they should consider various decisions of the Hon'ble Supreme Court and this Court in and before passing any such order under M.P.D.A. At this stage, we refrain ourselves from taking action of calling upon the detaining authority as to why compensation should not be ordered, because whatever has been observed above would be taken care of.

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 is allowed.
- II)** The detention order dated 05.07.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-41 passed by respondent No.1 as well as the approval order dated 15.07.2024 and the confirmation order dated 30.08.2024 passed by respondent No.2, are hereby quashed and set aside.
- III)** Petitioner - Shashikant s/o Sakharam Badgal 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