



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 2039 OF 2024

Rameshwar @ Papya s/o Suryakant Bajgude
Age 21 years, Occ. Labour,
R/o. Ganesh Nagar, Adarsh Colony,
Latur, Tq. and district Latur

...Petitioner

versus

1. The State of Maharashtra
Section Officer (Special)
Home Department,
Government of Maharashtra
Mantralaya, Mumbai - 32
2. The District Magistrate and Collector,
District Latur
3. The Superintendent of Police,
District Latur
4. The Deputy Superintendent of Police
District Latur
5. Police Inspector,
Vivekanand Chowk Police Station
District Latur

...Respondents

...
Mr. Y.G. Birajdar h/f Mr. N.S. Shinde, advocate for the petitioner
Mr. A.R. Kale, APP for Respondents
.....

**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.
DATED : 4th FEBRUARY, 2025**

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

1. **Rule.** Rule made returnable forthwith. By consent of learned

advocates for the parties, the petition is heard finally at admission stage.

2. By invoking the powers of this Court under Article 226 of the Constitution of India, the petitioner challenges the order of detention, dated 07.11.2024, passed by District Magistrate, Latur (Exhibit B).

3. Learned advocate for the petitioner has pointed out to us the impugned order and the material in support of it, relied upon by the respondent authority, while passing the impugned order. Learned advocate for the petitioner pointed out the grounds of objections raised in the writ petition that mandatory procedure is not followed as per sub-section (2) of Section 3 of 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 for the sake of brevity referred to as the "MPDA Act"). The authorities did not consider that the petitioner was not arrested in any crime and he was served with the notice under Section 41 of Cr.P.C.. thus, he is not a dangerous person. The detaining authority believed the in-camera statements, without subjective satisfaction. The delay caused for processing the said action was also not considered by the authority while passing the impugned order.

4. The learned APP for the respondents strongly opposed the petition and submitted that the authority has rightly concluded that the petitioner is a dangerous person. Respondent No.2 District Magistrate, Latur forwarded the comprehensive report to the police regarding illegal activities of the petitioner, which are prejudicial to the maintenance of the public order, and therefore, the preventive action against the petitioner is justified. Accordingly, a proposal was drawn up as per the MPDA Act.

5. The learned A.P.P. further submits that respondent No.5 sent requisition to respondent No.2 and thereafter respondent No.2 came to the conclusion, on the basis of that requisition, that the powers under Section 3 of the MPDA Act are required to be exercised against the petitioner, as he is a dangerous person. Learned A.P.P. lastly prayed for dismissal of the writ petition.

6. The following cases registered against the petitioner were taken into consideration:-

Sr No	Police Station	Cr. No.	Section	Offence Lodged date	Arrest date	Bail date	Court Case Number	Current Stage
01.	Shivaji Nagar Police Station, Latur.	334/2020	324, 323, 504, 506 R.W. 34 of I.P.C	12/10/2020	Gave notice U/s. 41 (1) (a) of Cr.P.C.	Gave notice U/s. 41 (1) (a) of Cr.P.C.	R.C.C. No. 1645/2021 date 08/10/21	Pending before Court

02.	Shivaji Nagar Police Station, Latur.	337/2020	452, 427, 504, 506 R.W. 34 of I.P.C.	13/10/2024	Gave notice U/s. 41 (1) (a) of Cr.P.C. on Dt. 18/11/2020	Gave notice U/s. 41 (1) (a) of Cr.P.C. on Dt. 18/11/2020	R.C.C. No. 360/2021 Date 22/03/21	Pending before Court
03.	Shivaji Nagar Police Station, Latur.	414/2020	324, 504, 506 of I.P.C.	29/11/20	Gave notice U/s. 41 (1) (a) of Cr.P.C. on	Gave notice U/s. 41 (1) (a) of Cr.P.C. on	R.C.C. No. 186/2021 Date 08/02/21	Pending before Court
04.	Shivaji Nagar Police Station, Latur.	271/2020	336, 323, 427, 504, R.W. 34 of I.P.C.	10/07/2021	Gave notice U/s. 41 (1) (a) of Cr.P.C. on 12/07/2021	Gave notice U/s. 41 (1) (a) of Cr.P.C. on Dt. 12/07/2021	S.C.C.No. 456/2022 03/03/22	Pending before Court
05.	Shivaji Nagar Police Station, Latur.	478/2022	122 (K), of M.P. Act, 1951	24/11/2022	Gave notice U/s. 41 (1) (a) of Cr.P.C.	Gave notice U/s. 41 (1) (a) of Cr.P.C.	S.T.C. No. 348/2022 Date 03/03/22	Matter closed. by conviction of Rs. 500/-
06.	Shivaji Nagar Police Station, Latur.	58/2023	122 (K), of M.P. Act, 1951	11/02/2022	Gave notice U/s. 41 (1) (a) of Cr.P.C. on Dt. 10/12/23	Gave notice U/s. 41 (1) (a) of Cr.P.C. on Dt. 10/12/23	R.C.C. No. 1078/2023 Date 18/06/23	Pending before Court
07.	Shivaji Nagar Police Station, Latur.	89/2024	379 of I.P.C.	20/02/2024	---	---	---	Under Investigation
08.	Vivekanand Chowk Police Station, Latur.	639/2024	4, 25 of Arms Act 1959	14/10/2024	Gave notice U/s. 41 (1) (a) of Cr.P.C. on Dt. 14/10/24	Gave notice U/s. 41 (1) (a) of Cr.P.C. On Dt. 14/10/24	---	Under Investigation
09.	Vivekanand Chowk Police Station, Latur.	NCR 1076/24	352, 351 (2)(3) of BNS	30/10/2024	---	---	---	Under Investigation

7. We have perused the impugned order, the materiel relied upon by the authorities and the grounds of objections raised in the petition.

8. In the in-camera statement of witness "A", dated 29.10.2024, he states that in order to extort money, the petitioner threatened him on the point of a sharp weapon. On 13.10.2024, around 10.30 p.m. when this witness, after closing his shop, was proceeding on his motorcycle to his house, at Chhatrapati Chowk, the petitioner and his friend stopped him and forcibly took an amount of Rs.500/- from his pocket for the purpose of drinking liquor. The petitioner also threatened to kill this witness if he discloses that incident to anybody. He did not go to the police for lodging the report because of fear and terror of the petitioner. He behaves in the same manner with other people in the society. He also threatens and harasses the person, who raises voice against him. He harasses the women and girls. He has created terror at Khadgaon road, Latur and Ausa Road, Latur as well as in surrounding areas.

9. Witness "B" has stated in his confidential statement that the petitioner is habitual in extorting money. The petitioner used to threaten the people by sharp weapon to extort money. He harasses the women and girls by abusing them in the filthy language. This

witness has also stated a specific incident that on 17.09.2024, at about 9.45 p.m. after closing the hotel, when he was proceeding to his house, the petitioner with his friend came on a motor cycle, which was without number plate. The petitioner stopped him. The petitioner was having sickle in his hand and by showing it to this witness, he took out an amount of Rs.700/- from his pocket. The petitioner also threatened him that if he lodges a report against him, he will kill him. The people in the surrounding area are living under fear due to terror of the petitioner.

10. The alleged two incidents stated by these two witnesses are of individual nature. From a bare reading of the statements, it cannot be held that because of alleged acts of the petitioner, there was a threat to the public order. The detaining authority did not consider this aspect in its proper perspective and without subjective satisfaction, came to the conclusion that the acts of the petitioner, as stated by these two witnesses, are dangerous to public at large and affect the public order. In this context, it would be beneficial for us to rely upon the decision of the Hon'ble Supreme Court in the case of **Arjun vs. The State of Maharashtra and others, reported in MANU/SC/1330/2024**, wherein in para 17, the Hon'ble Supreme Court, held as under:-

“17. In any case the statements which were stereotype even if taken on its face value would show that the threat given to the said witnesses is between the appellant and the said witnesses. The statements also do not show that the said witnesses were threatened by the appellant in the presence of the villagers which would create a perception in the mind of the villagers that the appellant herein is a threat to the public order.”

11. As far as the delay caused in the process of preventive action against the petitioner is concerned, the confidential statements of witnesses are recorded on 29.10.2024. The proposal was submitted on 30.10.2024. The proposal was forwarded by the Superintendent of Police, Latur on 05.11.2024. The detention order was passed on 7.11.2024. The grounds of detention were served on the petitioner on 08.11.2024. The report was sent to the Government on 07.11.2024. The approval order was passed by the State Government on 14.11.2024. The matter was referred to the Advisory Board after three weeks from the date of actual detention. It was placed before the authority and after hearing the petitioner - detenu, after seven weeks, the Advisory Board has confirmed the impugned order. This shows the unreasonable delay of seven weeks is caused for processing the proposal, however, the same is not explained. It is unreasonable delay which affects the liberty of the individual as contemplated in Article 21 r.w. Article 22(2) of the Constitution of India. From the unreasonable delay caused in proceeding against the

petitioner, cannot be held that the petitioner was dangerous person.

12. If the facts of the case and the reasons stated above, are considered together alongwith the law laid down in ***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. Thus, it cannot be held that the petitioner is responsible for disturbing the public order and normal laws are not sufficient to prevent him. There is no factual and legal ground to detain the petitioner for likelihood of causing of disturbance of public order. The Advisory Board has approved the detention of the petitioner, however it has failed to consider that the alleged in camera statements are not sufficient to hold that alleged acts were causing public order.

13. The petitioner was never arrested but released on bail in the crimes shown in chart, which were relied upon in the matter. No attempt was made to cancel his bail, as he is dangerous person or for likelihood of causing issue of public order. Mere filing of number of cases against the petitioner is not sufficient to detain him. There was no such relevant materiel and legal ground to proceed against

the petitioner for passing the order of detention, showing that his acts are prejudicial to the maintenance of public order and therefore, his liberty deserves to be curtailed.

14. The fundamental right and liberty of the petitioner is certainly affected. Therefore, we are of the view that the impugned order is illegal and not sustainable, as held by the Hon'ble Supreme Court in the case of ***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 and it should be guided by reasonableness and fairness; and also in the case of ***Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751)***, the Hon'ble Supreme Court held that satisfaction of detaining authority shall not be based on stray incidents. Therefore, the impugned order requires interference.

15. Mere completion of formalities mechanically is not sufficient to detain the petitioner without subjective satisfaction. We hold that there is no substance in the grounds of detention to invoke Section 3 of the MPDA Act against the petitioner. The reasons assigned in the impugned order are not satisfactory and not sustainable. Thus, the

impugned order deserves to be set aside. The petitioner deserves to be released forthwith, if not required in any other crime. Hence, the following order :-

O R D E R

- I) The writ petition stands allowed in terms of prayer clauses (A) and (B).
- II) The detention order dated 7th November, 2024 passed by the learned district Magistrate and Collector, Latur, is quashed and set aside.
- III) Petitioner - Rameshwar @ Papya s/o Suryakant Bajgude shall be released forthwith, if not required in any other offence.
- IV) Rule is made absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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