



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.2062 OF 2024

Shaikh Maheebub @ Gorya s/o Shaikh Babu
Age: 22 years, Occu.: Labour,
R/o. Near Gram Panchayat,
Wajegaon, Nanded.

.. Petitioner

Versus

1. The District Magistrate,
Nanded.
2. Superintendent of Police,
Nanded.
3. The State of Maharashtra
(Through the Secretary Home
Department (Spl.) Mantralaya,
Mumbai
4. The Superintendent Aurangabad
Central Prison, Aurangabad.

.. Respondents

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Mr. A. K. Bhosale, Advocate for the petitioner.
Mr. N. R. Dayama, APP for the respondents/State.

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

DATE : 08 MAY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. A. K. Bhosale for the petitioner and
learned APP Mr. N. R. Dayama 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 26.08.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-48 passed by respondent No.1 as well as the approval order dated 05.09.2024 and the confirmation order dated 11.10.2024 passed by respondent No.3, 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.164 of 2024 registered with Nanded Rural Police Station, District Nanded for the offences punishable under Section 397 read with Section 34 of Indian Penal Code and Crime No.491 of 2024 registered with Nanded Rural Police Station, District Nanded for the offences punishable under Sections 3, 7 punishable under Section 25 of the Arms Act. Learned Advocate for the petitioner submits that though the chart in paragraph No.3 is of eight offences, only two offences out of them as well as the in-camera-statements of two

witnesses have been considered for passing the detention order. In both the matters, the petitioner has been released on bail. Though the note of bail order has been taken, however, the reasons given in the bail order by the competent Courts have not been taken into consideration. Even if the facts in the matter are taken as it is, they would have at the most created law and order situation and not the public order. He further submits that perusal of the statement of in-camera witness 'A' would show that though in the upper part, the name of the present petitioner has been taken, yet in the last paragraph, name of another person has been stated as the person who has created terror in the vicinity. The said statement is stated to have been verified by the Deputy Superintendent of Police, Nanded, Rural Division and also by the District Magistrate, but still this fact has not been noticed by them. Even if the statements of in-camera witnesses 'A' and 'B' are taken as it is, they would also have created law and order situation and not the public order. The impugned order is, therefore, illegal and cannot be allowed to sustain.

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 on the affidavit-in-reply of Mr. Abhijit Raut, the District Magistrate, Nanded i.e. detaining authority, who has stated as to how he had arrived at the subjective satisfaction and what was the material before him at the time of passing the impugned order. Learned APP submits that the petitioner is involved in offences against body and almost all the cases except one are still going on. The one case which was initially registered i.e. Crime No.104 of 2020 appears to have been settled. The contents of the FIR in both the matters would show that the criminal activity of the petitioner had not stopped even after taking preventive action against him under Section 107 of the Code of Criminal Procedure on 25.09.2023. Final bond was taken from him for Rs.10,000/-. There is no illegality or error committed by the learned District Magistrate in holding the petitioner as a dangerous person. The terror can be spelt from the statements of confidential witnesses.

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) ***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];***
- (iii) ***Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, [1995 (3) SCC 237];***
- (iv) ***Pushkar Mukherjee and Ors. Vs. The State of West Bengal, [AIR 1970 SC 852];***
- (v) ***Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751) and;***
- (vi) ***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. Though it appears that the petitioner is involved in eight criminal cases, seven cases are still pending and one

has been settled. However, only two cases and two in-camera statements have been considered by the learned District Magistrate to pass the impugned order. The first offence that is considered is Crime No.164 of 2024 registered with Nanded Rural Police Station, District Nanded for the offences punishable under Section 397 read with Section 34 of Indian Penal Code, which came to be registered on 04.03.2024 and it is still under investigation. Perusal of the FIR in the matter would show that the FIR was against unknown person. The record shows that the supplementary statements of the informant and the witnesses were placed before the learned District Magistrate. As per the FIR, amount of Rs.90,000/- and a mobile was extorted from the informant. There is discovery panchanama and it is stated that on the statement of the present petitioner, the motorcycle and amount of Rs.90,000/- with other articles have been seized. However, the documents before the learned District Magistrate were not in the form of identification parade of the petitioner by the informant and, therefore, the connection between the petitioner and the crime should have been the important aspect that ought to have been considered by the learned District Magistrate. Further, the petitioner was released on bail by learned Additional Sessions Judge, Court No.3, Nanded on 24.04.2024. When even the conditions were put that the applicant should attend the police station on every Sunday and Friday and cooperate with the investigating officer till

filing of the charge-sheet and the charge-sheet was not filed even till the date the impugned order was passed, the District Magistrate ought to have considered the terms and conditions attached to the bail order.

8. Perusal of the second offence i.e. Crime No.491 of 2024 would show that the petitioner was found possessing a pistol. That fact was revealed when secret information was received at the police station and the informant along with the other police officers went for patrolling and arrested the petitioner around 13:45 hours on 17.06.2024. It is stated that in his personal search, a country made pistol was found to his waist and two cartridges were found in the pocket of his pant. The FIR, the panchanama and the statements of witnesses which were the part of the record do not show that the place of keeping pistol was visible to the public at large. If it would have been seen by the people, then only there was question of terror in the mind of people. Here, we are not considering the other merits of the case, but only the angle of the allegation that the activity of the petitioner was dangerous to the public. If the said pistol was in a sealed state attached to his waist, then people would not have gathered about it and, therefore, from the facts of the said case, there could not have been a subjective satisfaction for the District Magistrate to arrive at the conclusion. Further, the petitioner has been released on bail in respect of that offence on 21.08.2024, however, the bail order has not been considered by the detaining authority. We

would like to rely on the decision in ***Joyi Kitty Joseph Vs. Union of India and Ors., [Criminal Appeal No.____ of 2025 (arising out of Special Leave Petition (Crl.) No.16893 of 2024) decided by the Hon'ble Supreme Court on 06.03.2025]***, wherein reliance has been placed on the decision in ***Ameena Begum v. State of Telangana and others, [(2023) 9 SCC 587]*** and it has been observed that preventive detention is impermissible when the ordinary law of the land is sufficient to deal with the situation was *per incuriam* to the Constitution Bench decision in ***Haradhan Saha vs. State of W.B. [(1975) 3 SCC 198]***, in the limited judicial review available to constitutional courts in preventive detention matters. However, in ***Ameena Begum (Supra)***, the Hon'ble Supreme Court explained the true distinction between a threat to "law and order" and acts "prejudicial to public order" and it is stated that it cannot be determined merely by the nature or quality of the act complained of, but in the proper degree and extent of its impact on the society. Further, it is observed that "When bail was granted by the jurisdictional Court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention ordered. The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the

Magistrate while granting bail for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging in further like activities.”

9. In respect of in-camera statements of witnesses ‘A’ and ‘B’, first of all, those facts would have at the most raised law and order situation and not the public order. Another fact to be noted is that in statement of witness ‘A’, the name of another person i.e. Shaikh Jubair Shaikh Khadir has been mentioned as the person who has created terror and nobody came forward to help the said witness. The name of the present petitioner is different, still Deputy Superintendent of Police, Nanded Division and the District Magistrate could not find the error at the time of verification. This also shows non application of mind by the District Magistrate.

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 26.08.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-48 passed by respondent No.1 as well as the approval order dated 05.09.2024 and the confirmation order dated 11.10.2024 passed by respondent No.3, are hereby quashed and set aside.
- III) Petitioner - Shaikh Maheeb @ Gorya s/o Shaikh Babu 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