



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

**CRIMINAL WRIT PETITION NO.2068 OF 2024**

Akshay @ Chingya Vishwanath More  
Age: 22 years, Occu.: Labourer,  
R/o. Bhanwarwadi, Patoda Shivar,  
Tq. Jamkhed, Dist. Ahmednagar.

**.. Petitioner**

***Versus***

1. The State of Maharashtra  
Through the Section Officer to  
Government of Maharashtra in  
Home Department (Special),  
Mantralaya, Fort, Mumbai-32.
2. The District Magistrate,  
Ahmednagar.
3. The Superintendent,  
Nashik Central Prison,  
Nashik.

**.. Respondents**

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Mr. S. R. Shirsat, Advocate for the petitioner.  
Mrs. P. R. Bharaswadkar, APP for the respondents/State.

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

**DATE : 30 JANUARY 2025**

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

. Heard learned Advocate Mr. S. R. Shirsat for the petitioner  
and learned APP Mrs. P. R. Bharaswadkar 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 28.08.2024 bearing No.DC/Desk-9C1/989/2024 passed by respondent No.2 as well as the approval order dated 06.09.2024 and the confirmation order dated 23.10.2024, 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, only one offence is considered i.e. Crime No.101 of 2024 registered with Jamkhed Police Station, District Ahmednagar for the offences punishable under Sections 307, 504 read with Section 34 of Indian Penal Code and under Section 3 punishable under Section 35 of the Indian Arms Act. Learned Advocate for the petitioner submits that the impugned order would show that the detaining authority had considered Crime No.101 of 2024

and in connection with said offence, the petitioner came to be released on bail by order dated 29.07.2024, however, the said order was not considered. That incident even if taken as it is would show that the public was not involved. Similarly, in respect of in-camera witnesses 'A' and 'B', it was the individual act, which was complained of. Further, there is delay in 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 relies on the affidavit-in-reply of Mr. Siddharam Salimath, District Magistrate, Ahmednagar to consider as to what were the circumstances on

which the subjective satisfaction was arrived at. There is absolutely no delay in passing the order as the proposal which was forwarded by the Superintendent of Police was received by the detaining authority on 14.08.2024 and the impugned order came to be passed on 28.08.2024. The petitioner is involved in serious offences against body and property and, therefore, he has been put in the category of dangerous person as per the M.P.D.A. Act. The activities of the petitioner could not have been curtailed except upon his detention. There is no illegality in the impugned order.

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 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 Crime No.101 of 2024 lodged with Jamkhed Polcie Station, District Ahmednagar. Perusal of the FIR would show

that the informant was proceeding along with his labours in his Scorpio at 1.00 a.m. on 03.03.2024. When they reached in the Chowk at village Patoda around 1.10 a.m., he saw his tractor containing sugarcane. Therefore, he got down from Scorpio and went near the tractor. He had noticed that one vehicle was chasing him right from Bhavarwadi. He noticed that two persons got down from the said vehicle. One of them was the petitioner. Petitioner started abusing him and then the informant asked him as to why he is abusing, at that time, the unknown person with the petitioner uttered that the informant should be shot. Thereupon, the petitioner took out pistol from his waist and fired three rounds. The informant tried to dodge and in that process one bullet hit his right leg. Thereupon, the petitioner had manhandled the informant and fled away. Here, we have intentionally taken the contents of the FIR into consideration to see as to whether public order was involved. But here it is to be noted that except the labours he was carrying in his Scorpio there appears to be no other public involved, as the incident is stated to have taken place at 1.10 a.m., though in the chowk. From the FIR the clear *mens rea* cannot be gathered, but it appears to be totally personal as the informant was knowing the

petitioner.

8. As regards the in-camera statements, if we consider those statements, it can be seen that both the statements came to be recorded on 16.04.2024 when the petitioner was in jail in Crime No.101 of 2024. Witness 'A' says that in the last week of February 2024, around 7.30 p.m., when he was proceeding from Jamkhed to Patoda on motorcycle, the petitioner and his companion were coming from behind on their motorcycle. This witness was intercepted and then petitioner asked him to give money. The said person asked as to why he should give money. Thereupon, the petitioner by showing him pistol abused and demanded the amount and then forcible snatched amount of Rs.1,850/-. It is to be noted from his statement that he is not giving the exact location and whether public had gathered at the said place. Statement of witness 'B' is also on the same line except that amount of Rs.2,700/- were forcibly taken at the gun point. Here also public was not involved. Thus, it is to be noted that the detaining authority has not considered the bail order of a competent Court, as it was given prior to the order of the detention and then public was not involved. Therefore, it cannot be said that the material before the detaining authority was

sufficient to arrive at the subjective satisfaction. Though the order has been approved by the Advisory Board, we are of the opinion that the points which we have considered were not considered by the Advisory Board.

9. 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.

10. 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 28.08.2024 bearing No.DC/Desk-9C1/989/2024 passed by respondent No.2 as well as the approval order dated 06.09.2024 and the

confirmation order dated 23.10.2024, are hereby quashed and set aside.

**III)** Petitioner - Akshay @ Chingya Vishwanath More 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