



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.2063 OF 2024

Madhav Ramdas Gaikwad
Age: 34 years, Occu.: Labour,
R/o. Dikshanagar, Sunilnagar,
Balirampur, 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

...

Mr. A. K. Bhosale, Advocate for the petitioner.
Mr. V. K. Kotecha, APP for respondents/State.

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

DATE : 09 JUNE 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. A. K. Bhosale for the petitioner and
learned APP Mr. V. K. Kotecha for 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 01.10.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-49 passed by respondent No.1 as well as the approval order dated 11.10.2024 and the confirmation order dated 04.12.2024 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, only one offence was considered i.e. Crime No.150 of 2024 registered with Nanded Rural Police Station, District Nanded for the offences punishable under Sections 307, 353, 143, 147, 148, 149 of Indian Penal Code, under Section 3, 4 punishable under Section 25 of the Arms Act and under Section 135 of the Maharashtra Police Act. Learned Advocate for the petitioner submits that the last offence i.e. Crime No.150 of 2024 and two in-camera statements of witnesses have been considered for passing the detention order, however, the detaining authority has not

considered the fact that the petitioner was released on bail on 24.05.2024 by the competent Court. Conditions were imposed while granting the bail. The offence in that case appears to have been committed on 24.02.2024 and the FIR was lodged on 25.02.2024. It is stated that one *Khanjar* has been recovered from the present petitioner, however, the story in the FIR is unbelievable. Further, the statements of in-camera witnesses were recorded on 17.07.2024 and the impugned detention order has been passed on 01.10.2024. There is considerable delay in passing the detention order. Therefore, the impugned order is 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 relied on the affidavit-in-reply of Mr. Abhijit Raut, District Magistrate, Nanded/detaining authority. He demonstrates

as to what was the material before him for consideration while passing the detention order. While considering the offence that was registered against the petitioner, the seriousness of the offence has been considered. The police officers on patrolling duty had found five persons with weapons and upon inquiry, it was told by them that they wanted to kill one Siddharth Salve of Dhanegaon, who is brother of Balu @ Ukaji Guna Salve, as a part of revenge for the murder of son of one Kesarbai Sarpe. It appears that the petitioner along with the other persons shared the common intention to kill. Further, the statements of two witnesses would show that the incident as against them had taken place in July 2024 and due to the fear or terror created by the petitioner, they were not willing to disclose their names and had not come to police to lodge the FIR. All these activities would show that the petitioner is a dangerous person and, therefore, there is no illegality or error committed in passing 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) ***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. At the outset, it is to be noted that the confidential statements of witnesses 'A' and 'B' were recorded on 17.07.2024. Then the sponsoring authority made the proposal on 20.07.2024 and forwarded it to Assistant Police Inspector. On the said day, the Assistant Police Inspector forwarded it to Superintendent of Police, Nanded. In the meantime, those confidential statements got

verified on 26.07.2024. Superintendent of Police, Nanded had then forwarded the said proposal to the learned District Magistrate on 30.07.2024 and the detention order has been passed on 01.10.2024. Thus, certainly, after the proposal was forwarded by Superintendent of Police, Nanded, there is a considerable delay in passing the detention order, which has not been explained by the District Magistrate. The second point that is required to be considered is that in paragraph No.3, the list of the offences in which the petitioner is involved has been given and it has a column, on which date the bail was granted. In respect of the offence vide Crime No.150 of 2024, the date of granting bail has been stated as 24.05.2024, however, in the part containing the brief facts for the reasons of passing the order, there is absolutely no reference to the said bail order and, there is no discussion as to why the conditions those were imposed while granting bail to the petitioner are not sufficient to take care of and curtail the criminal activities of the petitioner. Here, 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."

8. In order to come to a conclusion that a person is dangerous person within the meaning of Section 2(b-1) of M.P.D.A. Act, 1981, the detaining authority should consider the material that is placed before

him/her and come to the conclusion that the ordinary criminal laws would not be sufficient to curtail the criminal activities of such person. Only upon this conclusion, the detention order can be passed and not merely to please the sponsoring authority or temporarily solve the problem of the police by curtailing the activities and putting him in detention. Subjective satisfaction is a mental process and application of mind is one of its element. We are unable to see the said process in the impugned order. 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.

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 01.10.2024 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-49 passed by respondent No.1 as well as the approval order dated 11.10.2024 and the confirmation order dated 04.12.2024 passed by respondent No.3, are hereby quashed and set aside.
- III) Petitioner - Madhav Ramdas Gaikwad 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