



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.326 OF 2025

Ajay s/o Raju Dahatonde
Age: 23 years, Occu.: Labour,
R/o. Shivajinagar, Wadgaon Kolhati,
Tq. And Dist. Chhatrapati Sambhajinagar,
(Aurangabad)

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Commissioner of Police,
Office of the Commissioner of Police,
Mill Corner, Chhatrapati Sambhajinagar,
Tq. And Dist. Chhatrapati Sambhajinagar.
3. The Superintendent, Central Prison,
Chhatrapati Sambhajinagar.

.. Respondents

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Ms. Asha N. Gore, Advocate for the petitioner (Appointed Through Legal Aid).
Mr. V. K. Kotecha, APP for respondents/State.

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

DATE : 12 JUNE 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Ms. Asha N. Gore 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 22.10.2024 bearing No.2024/CB/MPDA/DET-11/CR-78 passed by respondent No.2 as well as the approval order dated 30.10.2024 and the confirmation order dated 17.12.2024 passed by respondent No.1, 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.822 of 2024 registered with MIDC Waluj Police Station, District Chhatrapati Sambhajinagar for the offences punishable under Sections 4 punishable under Section 25 of the Arms Act and under Section 135 of the Maharashtra Police Act, 1951 and Crime No.842 of 2024 registered with MIDC Waluj Police Station, District Chhatrapati Sambhajinagar for the offences punishable under Sections 118(2), 352, 109 Bhartiya Nyaya Sanhita, 2023. Learned Advocate for the petitioner submits that the two offences i.e. Crime No.822 of 2024 dated 12.09.2024 and Crime No.842 of 2024 dated 18.09.2024 as well as the

in-camera statements of witnesses 'A' and 'B' have been considered for passing the detention order. As regards Crime No.822 of 2024 is concerned, it is stated that one Koyta has been recovered from the present petitioner, however, the story in the FIR is unbelievable. As regards Crime No.842 of 2024, the offence is individual in nature. At the most law and order, situation would have been created. Further, the statements of in-camera witnesses would show that law and order situation would have been created and not the public 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 relies on the affidavit-in-reply of Mr. Pravin Pawar, the District Magistrate, Chhatrapati Sambhajinagar/detaining authority. He supports the detention order passed by him and tries to

demonstrate as to how he had arrived at the subjective satisfaction. He further states that his order has been approved by the State Government and also by the Advisory Board. Thereafter, the confirmation has been given. He further submits that though the petitioner was detained for one year vide detention order dated 21.07.2023 bearing No.2023/MPDA/DET-10/CB-112 and the preventive action under Section 110 (e) (g) of the Code of Criminal Procedure was taken, still he has not deterred his criminal activities and, therefore, the State Government had no option, but to detain the petitioner under the detention law.

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. At the outset it is to be noted that the contents of the FIR vide Crime No.822 of 2024 would show that when the informant was on patrolling duty with other police officers, information was received that two persons were roaming in the area of Wadgaon Kolhati on a black colour vehicle carrying Koyta in their hand. Thereafter, the informant along with police staff rushed to the spot. At that time, on seeing police, petitioner and his associate ran away leaving motorcycle and Koyta. This story would show that general public was not involved. In the aforesaid offence, it appears that Section 4 punishable under Section 25 of the Arms Act as well as Section 135 of Maharashtra Police Act have been invoked. The case is still under investigation. The

impugned detention order does not show that the Central Government Notification was considered by the detaining authority. The said Notification by Central Government is not made part of the papers, which were given to the petitioner, nor the said Notification has been placed before this Court, which is the prerequisite for Section 4 of the Arms Act. Perusal of the FIR vide Crime No.842 of 2024 registered with MIDC Waluj Police Station for the offences punishable under Sections 118(2), 352, 109 of Bhartiya Nyaya Sanhita, 2023 would show that the incident was personal in nature and would not have created public order situation. It appears that preventive action under Section 110 (e)(g) of the Code of Criminal Procedure was taken and final bond of Rs.20,000/- was taken from the petitioner. Whether the said action was taken to the logical end or not has not been mentioned. As regards the statements of in-camera witnesses 'A' and 'B' are concerned, the incident in both the cases are also on the same line i.e. extraction of money. It would be, therefore, a matter of law and order situation.

8. 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.

9. For the aforesaid reasons, the petition deserves to be allowed. Hence, following order is passed :-

ORDER

- I) The Writ Petition stands allowed.
- II) The detention order dated 22.10.2024 bearing No.2024/CB/MPDA/DET-11/CR-78 passed by respondent No.2 as well as the approval order dated 30.10.2024 and the confirmation order dated 17.12.2024 passed by respondent No.1, are hereby quashed and set aside.
- III) Petitioner – Ajay s/o Raju Dahatonde 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