



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.648 OF 2025

Akshay @ Bhaiya s/o Ramesh Wahul
Age: 25 years,
R/o. Shivajinagar, Garkheda Parisar,
Chhatrapati Sambhajinagar.

.. Petitioner

Versus

1. Commissioner of Police,
Chhatrapati Sambhajinagar.
2. The State of Maharashtra
(Through the Secretary
Home Department (Spl.)
Mantralaya, Mumbai.
3. The Superintendent
Chhatrapati Sambhaji Nagar
Central Prison.

.. Respondents

...

Mr. Rupesh A. Jaiswal, Advocate for the petitioner.
Mrs. R. P. Gour, APP for respondents/State.

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

DATE : 10 JUNE 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

1. Heard learned Advocate Mr. Rupesh A. Jaiswal for the petitioner
and learned APP Mrs. R. P. Gour 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 09.04.2025 bearing No.2025/CB/MPDA/DET-01/CR-28 passed by respondent No.1 as well as the approval order dated 16.04.2025 and the confirmation order dated 22.05.2025 passed by respondent No.2, 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.553 of 2024 registered with Satara Police Station, District Chhatrapati Sambhajinagar for the offences punishable under Sections 352, 351(2), 351(3), 238 of Bhariya Nyaya Sanhita, 2023, under Section 4 punishable under Section 25 of the Arms Act, 1959 and Crime No.559 of 2024 registered with Satara Police Station, District Chhatrapati Sambhajinagar for the offences punishable under Sections 109(1), 118(1), 121(1), 352, 351(2)(3), 238 of Bhartiya Nyaya Sanhita, 2023, under Section 4 punishable under Section 25 of the Arms Act. Learned Advocate for the petitioner submits that two offences i.e. Crime No.553 of 2024 and Crime No.559 of 2024 registered with Satara Police Station, District Chhatrapati Sambhajinagar and two in-camera statements have been considered for passing the detention order.

Perusal of those FIRs would show that those were under the respective provisions of Bhartiya Nyaya Sanhita and Arms Act. In both the matters, the petitioner has been released on bail. In Crime No.559 of 2024, he was released on 19.03.2025 by the learned Additional Sessions Judge, Court No.7, Aurangabad. The conditions have been imposed and, therefore, it ought to have been seen by the detaining authority that the ordinary law would have been suffice to curtail the alleged criminal activities of the petitioner. The detaining authority has considered that the two writ petitions which were filed by the present petitioner came to be allowed and the earlier detention orders passed by the then detaining authorities have been quashed and set aside, yet the impugned order has been passed which appears to be to please the sponsoring authority. Perusal of the in-camera statements of witnesses 'A' and 'B' would show that the facts mentioned therein would have at the most created law and order situation and not the public order.

5. Per contra, the learned APP strongly supports the action taken against the petitioner. She 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 filed by Mr. Pravin Pawar, Commissioner of Police, Chhatrapati Sambhajinagar / detaining authority, who in his affidavit, has stated as to what was the material before him to arrive at the subjective satisfaction and as to how within the time, actions have been taken. It also says that the Advisory Board has approved the action and then the State Government has approved the detention order. Learned APP further submits that though this Court in earlier two petitions filed by the petitioner quashed and set aside the detention order and protected the petitioner, yet he had not curtailed his activities. Both the incidents in Crime No.553 of 2024 and Crime No.559 of 2024 had taken place against one person only i.e. the informant therein, but one incident had taken place on 27.11.2024, whereas the other incident had taken place on 02.12.2024. In respect of the second incident, even the police officer had sustained injury when the petitioner had tried to kill the informant with knife. After the petitioner managed to flee away, he had given a phone call on the mobile phone of the servant of the informant and he made it very clear that he had come to commit murder and had also given threat to commit murder as the police was involved. That means, his dangerous activities are not going

to curtail by the ordinary law and, therefore, the detaining authority had no choice, but to invoke the detention law. Therefore, no fault can be found 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) 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. In the beginning, we would like to take note of the Criminal Writ Petition No.893 of 2023 filed by the present petitioner to challenge the detention order that was passed against him on 08.04.2023. By judgment and order dated 11.08.2023, that petition was allowed. It appears that once again the petitioner faced the detention order dated 17.04.2024 and he challenged the same in Criminal Writ Petition No.1063 of 2024. By judgment and order dated 20.08.2024, this Court had allowed the said petition and had set aside that detention order also. Now, in the present order, as stated above, two offences have been considered i.e. Crime No.553 of 2024 and 559 of 2024. Surprisingly, the informant in both the FIRs is same. In Crime No.553 of 2024, the offences under Bhartiya Nyaya Sanhita are non cognizable and only cognizable offence was under the Arms Act i.e. offence under Section 4 punishable under Section 25 of the said Act. It was then stated in the FIR that the petitioner had used sword while committing the offence. Sword can be said to be an 'arm' as per the Indian Arms Act. However, in order to invoke Section 4 of the Arms Act, there has to be a notification by the Central Government or by the State

Government. In the impugned detention order passed by respondent No.2, there is absolutely no mention about the notification, date or the fact that he had gone into the fact that there is such notification that is in existence. Subjective satisfaction cannot be only on the basis of the Sections those have been invoked by the police. Secondly, as regards the offence vide Crime No.559 of 2024 is concerned, it is to be noted that by order dated 19.03.2025, the learned Additional Sessions Judge, Court No.7, Aurangabad had released the applicant on regular bail. Conditions were imposed and the detaining authority has only taken note of the date of the bail order. It is absolutely not mentioned that how the conditions or terms those have been imposed while releasing him on bail would not curtail the alleged criminal activity and in spite of the said bail order, the detention is necessary. 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. Another fact that is required to be noted is that the bail order has been passed on 19.03.2025 and the statement of in-camera witness 'A' has been recorded on 31.03.2025. That means, the sponsoring authority appears to have been working only to detain or see the opportunity to detain the petitioner. Within 12 days the preparation for the next

detention order has been started. The statement of in-camera witness 'B' has been recorded on 01.04.2025. Proposal has been submitted on 03.04.2025. Those statements of in-camera witnesses have been verified on 07.04.2025 and the detention order has been passed on 09.04.2025. The activities have thus been completed in a lightening speed. Perusal of in-camera witnesses 'A' and 'B' would show that both the incidents, they had told, have taken place in the last week of March 2025 and within 3 to 4 days it appears that their statements have been recorded and yet police had not given protection to them or courage to them so that they can lodge the FIR. As usual, it is stated that due to fear the witness has not reported the incident to police and he has revealed that incident to police with a request to keep his name anonymous. From one angle, this can be taken as a failure of the police machinery, who is unable to give courage to the people to come forward and lodge the report. In any way, if the story given by those witnesses is considered, then at the most law and order situation would have been created and not the public order. On the last occasion also, this Court in Criminal Writ Petition No.1063 of 2024 has observed that mere meticulous compliance of the time schedule in such detention matters will not make the impugned order legal and, therefore, though the further schedule has been adhered to as well as the fact that the Advisory Board has approved the impugned order, yet we come to the conclusion

that the material before the detaining authority was not sufficient to arrive at the subjective satisfaction. Such order deserves to be set aside.

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 09.04.2025 bearing No.2025/CB/MPDA/DET-01/CR-28 passed by respondent No.1 as well as the approval order dated 16.04.2025 and the confirmation order dated 22.05.2025 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner - Akshay @ Bhaiya s/o Ramesh Wahul 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