



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.45 OF 2025

Gabbu S/o Kisan Gujariwal
Aged about 28 years, Occ. Labor
R/o Sajanpuri, Khamgaon
Tah. & Dist. Khamgaon.

Petitioner

-Versus-

1. State of Maharashtra
Through Section Officer
Home Department (Special)
2nd Floor Main Building Mantralaya,
Madam Cama Road, Mumbai –
400032.
2. District Magistrate
Dist, Buldana.
3. Sub-Divisional Police Officer
Khamgaon, Dist. Buldana.
4. Police Station Officer
Police Station Shivaji Nagar,
Khamgaon, District Buldhana
5. Superintendent, District Prison,
Dist. Akola.

Respondents

Mr.Amol Mohan Jaltare, counsel for the Petitioner.
Mr. A.J. Gohokar, A.P.P. for respondent Nos. R-1 to 5.

**CORAM : NITIN W. SAMBRE AND
MRS. VRUSHALI V. JOSHI, JJ.
DATE : 02/04/2025**

ORAL JUDGMENT (Per: Vrushali V. Joshi, J.)

- 1) Heard.
- 2) **Rule.** Rule made returnable forthwith. The Criminal Writ Petition is heard finally with the consent of the learned counsel appearing for the parties.
- 3) The petitioner aggrieved by the order dated 21.06.2024 passed by the District Magistrate, Buldhana (Respondent no.2) under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981, (hereinafter referred to as "MPDA Act") and subsequent confirmation of the same by Respondent no.1 on 07.08.2024 has preferred the instant criminal writ petition against the impugned order.
- 4) The first crime which has been taken up for consideration in passing the detention order is Crime No. 41/2024 registered under Sections 326, 341, 143, 147, 148, 427, 504 of the Indian Penal Code r/w 3(1) (r) (s), 3(2) (va) of the SC/ST Atrocities Act at Police Station, Shivajinagar, Khamgaon. On the F.I.R of one Kailas Tayade, it is stated that the present petitioner along with twenty six others stopped the complainant, who was handing over

his cow to one Sheikh Akram for care, dubious of slaughtering, abused based on caste and beat him.

- 5) The second offence is registered against the complainant and his companion in Crime no.41/2024, alleged of commission of the crime under Sections 34 of IPC r/w 11(1)(a), 11(1)(d), 11(1)(e), 11(1)(f), 11(1)(h), 11(1)(i) of the Animal Cruelty Act and Sections 5(A)(1), 5(A)(2), 5B, 9 of the Maharashtra Animal Preservation Act under the charges of carrying one red coloured cow whose legs were tied and she was kept in a white coloured gunny bag having insufficient space.
- 6) Since the second crime is not related to the petitioner, it has not been taken into consideration for passing the detention order. The report which came to be sent by the Police Inspector, Police Station Khamgaon, Buldhana, under the MPDA Act for the proposed detention of the petitioner does not bear date.
- 7) In Crime no. 89/2024 the offence u/s 4, 25 of the Arms Act r/w Section 188 of the IPC and Section 135 of the Maharashtra Police Act is registered, it is alleged that the detenu was absconding in C.R. 41/2024. Upon receiving secret information, when police authorities reached his house, the petitioner ran away by dropping a sword from his hand and

thereafter he was not traced, while the weapon came to be seized.

8) Adv. Jaltare has pressed onto certain grounds which are as under:

(a) The respondents have miserably failed to appreciate the fact that in C.R. no. 41/2024, the petitioner with an intent to prevent the complainant party and save the cows from being sent to the slaughter house, has been solely targeted as he is an active member of the Rashtriya Gau Seva Sangha.

(b) That the facts in C.R. no. 42/2024 have not been dealt with by the Respondent no.4 while forwarding the proposal to the authorities justifying the need of detention.

(c) In-camera statements of both the witnesses refer to incident in Crime no. 41/2024, i.e., assault and beating to one person of Scheduled Caste and one of another caste and damage to their vehicle. The police authorities were very well aware of the fact that the said incident was in respect of saving a cow being sent to slaughter house.

9) The counsel for the petitioner submitted that, in-camera statements of witnesses "A" and "B" are identical and do not bear

remark and endorsement of verification by the competent authority.

10) Learned A.P.P. opposed the submissions of the petititioner and relied on the affidavit-in-reply filed on behalf of the petitioner.

11) He argued that the proposal submitted by Respondent no.4 includes various Sections under which the petitioner has been charged and respective criminal cases are pending before the competent Courts. No cogent material or evidence has been put forth by the petitioner. The District Magistrate, Buldhana, has also relied upon meaningful statements of two secret witnesses to come to the conclusion that, looking at the graph of crimes of the present petitioner, his violent attitude and criminal habits, repeated commission of crimes in the surrounding areas, creating disturbance and danger needs consideration under the provisions of the Act of 1981.

12) Heard both the learned counsel.

13) On perusal of the detention order passed by the detaining authority, it appears that the order has been passed in a very casual manner. The requirement of consideration of

recent crimes within six months is not followed by the detaining authority while passing the detention order. The entire criminal history is considered for passing the detention order. Since 2015, all the crimes have been taken into consideration labelling the petitioner as a 'dangerous person'. If we peruse the entire list of offences and presume that last two offences are considered for passing the detention order, which are committed in the year 2024 i.e, Crime No. 41 of 2024 and Crime No.89 of 2024. It appears from the record that Crime no.41 of 2024 is registered as the petitioner along with 21 persons tried to release the cow, which was being taken to the slaughter house by the complainant, therefore, the petitioner along with other persons restrained the complainant and the crime was registered against all 21 persons. The petitioner has stated in this petition that the complaint was also lodged by the petitioner against the complainant and the said counter complaint is not considered by the detaining authority. It was against the complainant for cruelty towards animals.

14) The other offence which we can consider is crime No.89 of 2024. In the said offence, the crime is registered for the offence punishable under sections 4 and 25 of the Arms Act and Section 188 of the Indian Penal Code and Section 135 of the Prohibition Act. On receiving information that the petitioner came to his house as he was absconding in Crime No.41 of 2024, the police went to his house. The petitioner was not present but the police have seized the sword from his house and the crime came to be registered. *Prima facie*, it appears that it was not taken from possession of the petitioner and therefore, the offence under sections 4 and 25 of the Arms Act will not be attracted.

15) As all the offences since 2015 are considered while passing the detention order. Such extraneous material is not permissible in the eyes of law to form basis or consider for passing the impugned order.

16) The petitioner has placed reliance on the decision of *Khaja Bilal Ahmed Vs.State of Telangana and ors. reported*

in 2019 DGLS (SC)1677 in support of his argument, that bail order and First Information Reports of stale offences have been taken into account which influenced the mind of the authority. In para 15 it has been observed as under:-

15. In the present case, the order of detention states that the fourteen cases were referred to demonstrate the “antecedent criminal history and conduct of the appellant”. The order of detention records that a “rowdy sheet” is being maintained at PS Rain Bazar of Hyderabad City and the appellant “could not mend his criminal way of life” and continued to indulge in similar offences after being released on bail. In the counter affidavit filed before the High Court, the detaining authority recorded that these cases were “referred by way of his criminal background... (and) are not relied upon”. The detaining authority stated that the cases which were registered against the appellant between 2009 and 2016 “are not at all considered for passing the detention order” and were “referred by way of his criminal background only”. This averment is plainly contradictory. The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority

must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.”

- 17) The material which was expected to be produced before the detaining authority is not produced such as the First Information Report, which was registered against the complainant based on the complaint lodged by the petitioner. As such said material is not considered by the detaining authority. On perusal of confidential witnesses, it reveals that the statements of the witnesses which are considered for

passing of the detention order are not even verified or seen by the detaining authority. In both the statements the witnesses have stated about the general nature of the petitioner and the incident of 09/02/2024. No subjective satisfaction is recorded about the truthfulness of the statements. Extraneous material, stale offences are considered. If the latest offences are considered, there is no subjective satisfaction regarding the disturbance of the public order.

18) In view of the above mentioned observations, the impugned order passed by the detaining authority is hereby quashed and set aside. Hence, we pass the following order.

19) The Writ Petition is allowed in terms of its prayer clauses (i) and (ii). The petitioner be set at liberty forthwith, if not required in any other crime.

20) Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J)

(NITIN W. SAMBRE, J)