

Ayush Prasad vs Vishal Dashrath Choudhari And Another on 29 January, 2025

Author: Vibha Kankanwadi

Bench: Vibha Kankanwadi

2025:BHC-AUG:3984-DB

wp-1937-2024.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1937 OF 2024

Vishal Dashrath Choudhari
Age: 27 years, Occu.: Agri.,
R/o. Bhoiwada, Amalner,
Tq. Amalner, District Jalgaon. .. Petitioner

Versus

1. District Magistrate
Jalgaon, District Jalgaon.
2. The State of Maharashtra
Through the Secretary Home Department
(Special), Mantralaya, Mumbai.
3. The Superintendent,
Kalamba, Central Prison,
Kolhapur. .. Respondents

...
WITH

CRIMINAL APPLICATION NO.544 OF 2025

...
Mr. Rupesh A. Jaiswal, Advocate h/f Mr. S. T. Mahajan, Advocate for
the petitioner.
Mr. A. B. Girase, Public Prosecutor for the respondents/State.
...

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

DATE : 29 JANUARY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Rupesh A. Jaiswal holding for learned Advocate Mr. S. T. Mahajan for the petitioner and learned wp-1937-2024.odt Public Prosecutor Mr. A. B. Girase 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 27.09.2024 bearing No.Dandapra/KAVI/M.P.D.A./36/2024 passed by respondent No.1 as well as the approval order dated 08.10.2024 and the confirmation order dated 07.11.2024 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, five offences were considered i.e. (i) Crime No.40 of 2016 registered with Amalner Police Station, District Jalgaon for the offences punishable under Sections 143, 147, 149, 341, 353, 337, 117, 114, 188, 323, 504, 506 of Indian Penal Code, under Section 135 of Bombay Police Act, (ii) Crime No.479 of 2022 wp-1937-2024.odt registered with Amalner Police Station, District Jalgaon for the offences punishable under Sections 143, 147, 149, 337, 427, of Indian Penal Code, (iii) Crime No.106 of 2023 registered with Amalner Police Station, District Jalgaon for the offences punishable under Sections 353, 143, 147, 148, 149, 337, 332, 427 of Indian Penal Code, under Section 3(2) of Protection of Public Property from Damages Act, 1884, Section 7 of Criminal Law Amendment Act, 1932, Section 135 of Mumbai Police Act, 1951, (iv) Crime No.149 of 2023 registered with Amalner Police Station, District Jalgaon for the offences punishable under Sections 394 read with Section 34 of Indian Penal Code, and

(v) Crime No.377 of 2024 registered with Amalner Police Station, District Jalgaon for the offences punishable under Sections 326(g), 325, 351(2) of Bhartiya Nyaya Sanhita, 2023. Learned Advocate for the petitioner vehemently submitted that the material placed before the detaining authority by the sponsoring authority was not worth taking subjective satisfaction or taking cognizance for passing a detention order. The impugned detention order would show that the detaining authority has considered the offences right from 2016 for concluding that the petitioner is a dangerous person. The offence that has been committed within wp-1937-2024.odt six months was Crime No.377 of 2024, but even the fact of the said case would show that the petitioner was released on bail by the competent Court. The action was personal in nature and may be due to grave and sudden provocation. As regards the in- camera statements are concerned, they appear to be the copy paste statements and public was not involved in the entire facts.

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. Ayush Prasad, the District Magistrate, Jalgaon/detaining authority. He supports the detention order passed by him and tries to demonstrate as to how he had arrived wp-1937-2024.odt 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.

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].

wp-1937-2024.odt

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. The impugned order would show that the detaining authority has considered the offences against the petitioner from 2016. Crime No.40 of 2016 was registered against the petitioner on 20.02.2016. Thereafter, he has directly jumped to Crime No.479 of 2022, which came to be registered on 09.10.2022, then he has considered Crime No.106 of 2023 and Crime No.149 of 2023. Perusal of the contents of the FIR would show that there were other persons involved in the offences

also. The question then arises as to whether same treatment has been given to all the other persons, who were involved. Only petitioner's behaviour or act cannot be considered against the public at large. There was of course no live link at the time of passing the impugned order. The last offence that is considered wp-1937-2024.odt is Crime No.377 of 2024 and perusal of the FIR would show that the informant was near the statute of Chhatrapati Shivaji Maharaj around 11.30 p.m. on 30.07.2024. He had then taken objection for the clothes on the person of the petitioner as it is stated that he was wearing a too short half pant. He told the petitioner that since ladies are moving, he should not sleep on the wooden planks near the statute in such attire. The petitioner got annoyed, took out petrol from the motor vehicle and after pouring it on the wooden planks, he set the wooden planks to fire. Now, with this story how Section 326(g) of Bharatiya Nyaya Sanhita, 2023 would attract is a question, but in that matter the concerned Court has released the petitioner on bail. Perusal of the bail order dated 13.08.2024 passed by the learned Additional Sessions Judge, Amalner would show that the investigating officer had not asked for the police custody of the petitioner and directly judicial custody was asked. Therefore, the conclusion has been drawn that further detention is not necessary. Another aspect to be noted is that while resisting the bail application, a statement was made that the proceedings under M.P.D.A. was initiated against the petitioner. That means it appears that the proceedings under the M.P.D.A. were predetermined against the wp-1937-2024.odt petitioner from the side of sponsoring authority. The position of law is other way round. If the criminal activities of a person can be restricted under the ordinary law, then the drastic step like detention cannot be taken. Merely because the M.P.D.A. proposal has been filed, the investigating officer will not resist the bail application, is not the rule. As regards the in-camera statements of witnesses 'A' and 'B' are concerned, they are copy paste to some extent and do not show that public was involved in the incidents.

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. Therefore, the petition deserves to be allowed.

9. Learned APP has filed the application i.e. Criminal Application No.544 of 2025 on behalf of the learned District wp-1937-2024.odt Magistrate for recall of the order passed by this Court on 15.01.2025. When the affidavit was not filed even after granting a month's time, this Court granted time subject to deposit of cost of Rs.5,000/- to be paid from the pocket of respondent No.1 i.e. the District Magistrate. Learned APP places the orders on record stating that the District Magistrate went on leave from 13.01.2025 to 17.01.2025 by obtaining prior permission and, therefore, could not file the affidavit and it appears that the said District Magistrate was transferred under the orders of Government of dated 02.01.2025. Mr. Ankush Pinate took over the charge of District Magistrate, Jalgaon on 04.01.2025.

10. Here, it is to be noted that by order dated 12.12.2024, we had directed the authority to file affidavit-in-reply on or before 10.01.2025. The fact about such order dated 12.12.2024 was communicated by Public Prosecutor's office on 14.12.2024. It appears that the said fact went

unattended. Anyway, now the affidavit is filed and matter has been argued. Therefore, we recall our order dated 15.01.2025 and the amount of cost deposited, if any, be returned to the District Magistrate concerned. Accordingly, Criminal Application No.544 of 2025 stands allowed and disposed of.

wp-1937-2024.odt

11. For the aforesaid reasons, following order is passed :-

ORDER I) The Writ Petition stands allowed. II) The detention order dated 27.09.2024 bearing No.Dandapra/KAVI/M.P.D.A./36/2024 passed by respondent No.1 as well as the approval order dated 08.10.2024 and the confirmation order dated 07.11.2024 passed by respondent No.2, are hereby quashed and set aside. III) Petitioner - Vishal Dashrath Chaudhari 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