

Ganesh Bhivsen Zende vs The State Of Maharashtra And Others on 25 February, 2025

Author: Vibha Kankanwadi

Bench: Vibha Kankanwadi

2025:BHC-AUG:5417-DB

12-wp-61-2025-J.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.61 OF 2025

Ganesh Bhivsen Zende
Age: 34 years, Occu.: N/A.
Residing at Chikhali,
Taluka Shrigonda, Ahilyanagar. .. Petitioner

Versus

1. The State of Maharashtra
Through Additional Chief
Secretary, Home Department,
Mantralaya, Mumbai-400032.
2. District Magistrate, Ahilyanagar,
Collector Office,
Ahilyanagar.
3. The Superintendent
Nashik Central Jail, Nashik. .. Respondents

...
Mr. Harshawardhan Suryawanshi a/w Mr. Omkar Shendkar, a/w
Mr. Aniket Singh, Advocate for the petitioner.
Mrs. P. R. Bharaswadkar, APP for the respondents/State.
...

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

DATE : 25 FEBRUARY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Harshawardhan Suryawanshi for the petitioner and learned APP Mrs. P. R. Bharaswadkar for 12-wp-61-2025-J.odt 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 28.10.2024 bearing No.DC/DESK-9C1/1336/2024 passed by respondent No.2 as well as the approval order dated 07.11.2024 and the confirmation order dated 18.12.2024 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, four offences were considered i.e. (i) Crime No.116 of 2024 registered with Belwandi Police Station, District Ahilyanagar for the offences punishable under Sections 323, 504, 506 of Indian Penal Code, under Sections 3(2)(v-a), 3(1)(r), 3(1)(s) of the 12-wp-61-2025-J.odt Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act") (ii) Crime No.191 of 2024 registered with Belwandi Police Station, District Ahilyanagar for the offences punishable under Sections 324, 323, 504, 506 of Indian Penal Code, (iii) Crime No.228 of 2024 registered with Belwandi Police Station, District Ahilyanagar for the offences punishable under Sections 353, 332, 324, 427, 504, 506 read with Section 34 of Indian Penal Code and (iv) Crime No.239 of 2024 registered with Belwandi Police Station, District Ahilyanagar for the offences punishable under Sections 119(1), 115(2), 352, 351(2)(3) of Bhartiya Nyaya Sanhita. Learned Advocate for the petitioner submits that in all four offences were considered for passing the detention order, however, none of the offences were against the public order. Further, as regards the confidential statements of witnesses 'A' and 'B' are concerned, it cannot be said that it would have created public order situation. The material before the detaining authority was not sufficient to arrive at the subjective satisfaction. Further, it appears that even the other criminal proceedings against the petitioner were also considered while branding him as dangerous person, which is against the law. Therefore, the impugned order is illegal.

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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. Siddharam

Salimath, District Magistrate, Ahilyanagar and submits that taking into consideration the criminal activities carried out against different persons by the petitioner, it can be seen that his criminal activity graph was mounting and it was affecting the public at large. In fact, he was externed for three months by order dated 11.02.2022 from District Ahilyanagar, still his activities were not curtailed and, therefore, in order to curtail his criminal activities, the detaining authority has no option, but to pass the detention order.

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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 12-wp-61-2025-J.odt 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 chronology of the events are that statements of witnesses 'A' and 'B' appears to have been recorded on 14.08.2024. Then the proposal was submitted on 12.09.2024 by the sponsoring authority and it was sent to Sub Divisional Police Officer. Before that on 12.09.2024 itself, those confidential statements were got verified by the higher authority. Then the Sub Divisional Police Officer had forwarded the proposal on 14.09.2024 to Superintendent of Police, Ahilyanagar.

Superintendent of Police, Ahilyanagar forwarded the same to District Magistrate, Ahilyanagar on 10.10.2024. Then the detention order came to be passed on 28.10.2024 and served on 30.10.2024. Approval order was passed on 07.11.2024 by the State. The matter was placed before the Advisory Board on 02.12.2024. Even the opportunity was given to the petitioner to appear before the Advisory Board and he was heard on 06.12.2024. Thereafter, the opinion was given by the Advisory Board 12-wp-61-2025-J.odt and confirmation order was passed regarding the detention of the petitioner on 18.12.2024. Thus, there is absolutely no delay. The representation was filed by the petitioner on 19.12.2024 and it appears that it has been rejected on 21.02.2025. Though there is no delay, that does not mean that the order is perfectly correct. The main point for consideration is whether there was subjective satisfaction of the District Magistrate to arrive at the conclusion. The first offence that was considered was Crime No.116 of 2024 under Sections 323, 504, 506 of Indian Penal Code and all these are non cognizable offences, however, it was along with Sections 3(2)(v-a), 3(1)(r) and 3(1)(s) of the Atrocities Act. Certainly, an offence under the Atrocities Act under those Sections is an individual act and does not amount to affecting the public order. Even the facts of the case are like that. The next offence that is considered is Crime No.191 of 2024 under Sections 324, 323, 504, 506 of Indian Penal Code. The beating of the informant appears to be by stick and kicks blows. The documents in respect of the said offence do not show what was the dimension of the stick. It is only stated in the spot panchanama that it was 74 cms long stick. The injury that would have been suffered would only be the simple injury 12-wp-61-2025-J.odt which is stated to be on back and hand i.e. also not on vital part and, therefore, question still arises as to whether offence still have been made out under Section 324 of Indian Penal Code. The third offence that has been considered is Crime No.228 of 2024 under Sections 353, 332, 334, 427, 504, 506 read with Section 34 of Indian Penal Code. The place where the offence is stated to have taken place is the office of M.S.E.D.C.L. office. Though in other parlance the office can be said to be the other place, yet from the record it does not show that large number of people are present in the office at the relevant time. Therefore, that act has not affected public order. The last offence that is considered is Crime No.239 of 2024 under Sections 119(1), 115(2), 352, 351(2) (3) of Bhartiya Nyaya Sanhita. It appears that the informant was near bus stand when the incident took place, however, what offence has been stated to be committed is the criminal intimidation, intentional insult, simple assault. Therefore, even there also the public was not affected. Another fact that has not been taken into consideration is that in all these offences the petitioner was released on bail. The reasons stated in the bail orders have not been considered at all. As regards in camera statements of witnesses 'A' and 'B', though they say that public 12-wp-61-2025-J.odt was present and nobody came forward to help them, yet it can be seen that public was not involved in a way that action of the petitioner was not against the public. It is not the case of both the witnesses that the petitioner was demanding money from all the persons, who were present at the said place, but they have stated that petitioner demanded the amount to them only by using force and threat. When other persons were also available from whom he could have taken the money, how only those witnesses would have chosen by the petitioner is a question. The statements of such witnesses, who do not resort to the legal mode and later on come with an explanation that due to fear they had not lodged the report, will have to be taken with caution. Therefore, whatever the material was before the detaining authority was not sufficient to arrive at the subjective satisfaction. Such order cannot be allowed to sustain.

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 12-wp-61-2025-J.odt 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 is allowed.

II) The detention order dated 28.10.2024 bearing No.DC/DESK-9C1/1336/2024 passed by respondent No.2 as well as the approval order dated 07.11.2024 and the confirmation order dated 18.12.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner - Ganesh Bhivsen Zende 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