

Sagar Sunil Gaikwad @ Ashtekar vs The State Of Maharashtra And Others on 3 March, 2025

Author: Vibha Kankanwadi

Bench: Vibha Kankanwadi

2025:BHC-AUG:6980-DB

WP-53-2025-J.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.53 OF 2025

Sagar s/o Sunil Gaikwad @ Ashtekar
Age: 28 years, Occu.: Education,
R/o. Driver Colony, Old Ausa Road,
Latur, Dist. Latur

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate,
Latur, District Latur.
3. The Sub-Divisional Police Officer,
Sub-Division Latur Rural,
District Latur.
4. The Assistant Police Inspector,
Shivaji Nagar Police Station,
Latur.
5. The Superintendent of Jail,
Central Prison, Aurangabad.

.. Respondents

...
Mr. V. S. Valse, Advocate for the petitioner.
Mrs. P. R. Bharaswadkar, APP for the respondents/State.
...

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

DATE : 03 MARCH 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. V. S. Valse for the petitioner and learned APP Mrs. P. R. Bharaswadkar for the respondents - State.

WP-53-2025-J.odt

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 21.11.2024 bearing No.2024/MAG/MPDA/Desk-2/WS-480 passed by respondent No.2 as well as the approval order dated 29.11.2024 and the confirmation order dated 10.01.2025 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, only one offence was considered i.e. Crime No.357 of 2024 registered with Shivaji Nagar Police Station, District Latur for the offences punishable under Sections 309(6), 3(5) of the Bhartiya Nyaya Sanhita. Learned Advocate appearing for the petitioner submits that the impugned order would show that the material that was placed before the detaining authority was not sufficient to arrive at subjective satisfaction. The petitioner is involved in WP-53-2025-J.odt seven criminal cases, however, for passing detention order, the last offence has been considered i.e. Crime No.357 of 2024 registered with Shivajinagar Police Station, District Latur on 01.09.2024 for the offence punishable under Sections 309(6), 3(5) of Bhartiya Nyaya Sanhita. The facts of the case would show that the incident had taken place inside the shop of the informant and, therefore, question of public order was not involved. At the most, law and order situation would have been created, for which the applicant was arrested and later on, he has been released on bail. The bail order has not been considered at all while passing detention order. No such step of cancelling the bail has been taken before taking the extreme act of detention. The in-camera statements of witnesses 'A' and 'B' would also show that at the most law and order situation would have been created and not the public order. The impugned order is not based on various decisions of the Hon'ble Supreme Court and, therefore, deserves to be set aside.

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, WP-53-2025-J.odt 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 Ms.

Varsha Thakur - Ghuge, District Magistrate, Latur wherein she has tried to give all those facts which were before her for arriving at the subjective satisfaction. The confidential statements were recorded on 28.10.2024 and 26.10.2024 respectively. Then the proposal was forwarded to Sub Divisional Police Officer on 30.10.2024. Thereafter, they were verified by Sub Divisional Police Officer on 04.11.2024 and the said proposal was then forwarded to Superintendent of Police. Superintendent of Police forwarded the same to District Magistrate on 07.11.2024 and the detention order has been passed on 21.11.2024. Therefore, there is no delay or the procedural lacuna. The contents of the FIR vide Crime No.357 of 2024 would show that the lady aged 42 years runs a provision store. She was along with WP-53-2025-J.odt her cousin mother-in-law and around 8.45 p.m., the present applicant along with Pankaj Parikh went to the shop. Pankaj Parikh had then shown the knife and threatened the informant. It was also kept near the stomach of the cousin mother-in-law. After causing hurt to the informant, they had taken away amount of Rs.3,000/- from the cash counter. Thus, the extortion activities were undertaken by the present petitioner. Though preventive action was taken against him in the past, he has not curtailed his activities. From the statements of in-camera witnesses also it can be seen that they had not come forward to lodge the FIR because of the terror of the petitioner. 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) 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 WP-53-2025-J.odt (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. Here, we are concerned with what was the material before the detaining

authority when the impugned order came to be passed. As aforesaid, the order is based on one FIR i.e. criminal case and two in-camera statements. The story of the WP-53-2025-J.odt prosecution in Crime No.357 of 2024 has been already narrated, however, minute perusal of the same would show that though name of the present petitioner has been taken as the person who had come along with co-accused Pankaj Parikh, yet it is stated that Pankaj Parikh has taken out the knife, showed it and threatened informant and then he had touched the edge of the knife to the stomach of the mother-in-law of the informant and had asked them to take out money. He had kicked informant and took away cash amount of Rs.3,000/- forcibly and both the accused left. Thus, from the FIR it can be seen that the active role has been given to Pankaj Parikh and not to the present petitioner. The charge-sheet was also filed and from the statement of the mother-in-law, who was with the informant, it can be seen that she had also assigned main role to Pankaj Parikh. It appears that she was not even knowing the names of both the accused persons, but came to know about them from informant. Informant's cousin father-in-law's statement has also been recorded. It is on the same line and he says that he had witnessed the incident, as he came to the spot when voices were raised. All of them have stated that the incident had taken place inside the shop. Public appears to have not been involved at all WP-53-2025-J.odt as none amongst public have been named as witness, nor their statements have been recorded, nor it is stated that when the amount was taken and both the accused were about to flee away, voice was raised for help and still nobody came to help. We are taking note of all these facts just to arrive at the conclusion as to whether the facts involved public order or not and the conclusion is that the public order was not disturbed. Only law and order situation was created and, therefore, the ratio laid down in *Nenavath Bujji* (Supra) will help the petitioner. Another fact is that the District Magistrate has not taken into consideration bail order that was passed by the competent Court on 10.09.2024, when the detention order was passed on 21.11.2024.

8. As regards the statements of in-camera witnesses 'A' and 'B' are concerned, a specific ground has been taken by the petitioner that the statements are stereotyped and two different persons cannot give exact same version. Learned Advocate appearing for the petitioner submitted that the copy of the statements of in-camera witnesses were not given to the petitioner. Thereupon, the learned APP tried to submit the photocopy of the documents wherein endorsement at the end was shown that petitioner has received the copy, however, it is to be noted that if that was the WP-53-2025-J.odt correct position, then why it was so not mentioned in the list of annexures, would be a question. Further, we have seen the original as well as the copy which was allegedly given to the petitioner. Interestingly, at one place, the detaining authority wants to say that due to the fear or terror of the petitioner, the said witness had not lodged any FIR and the statement contended that his name should be kept secret, yet the overleaf of the statement to which the signature and thumb impression of the witness with his name was kept as it is. That means, the police authority are themselves disclosing the identity of the said witness. Therefore, we find that there is substance in the say of the petitioner that though the signature of the petitioner might have been taken, yet actually the copy was not handed over to the petitioner. Those statements would at the most raise law and order situation. Two persons cannot say substantially in respect of two different incidents. Though the Advisory Board has approved the order, yet for the reasons stated, we are of the opinion that there was no material before the detaining authority to categorize the petitioner as a dangerous person.

9. Thus, taking into consideration the above observations and the decisions of the Hon'ble Apex Court, at the most, the WP-53-2025-J.odt statements as well as the offence allegedly committed would reveal that the petitioner had created law and order situation and not disturbance to the public order.

10. 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 21.11.2024 bearing No.2024/MAG/MPDA/Desk-2/WS-480 passed by respondent No.2 as well as the approval order dated 29.11.2024 and the confirmation order dated 10.01.2025 passed by respondent No.1, are hereby quashed and set aside. III) Petitioner - Sagar Sunil Gaikwad @ Ashtekar 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