

Javed Sharfoddin Mulla vs The District Magistrate And Others on 10 February, 2025

Author: Vibha Kankanwadi

Bench: Vibha Kankanwadi

2025:BHC-AUG:4737-DB

wp-2069-2024-J.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.2069 OF 2024

Javed Sharfoddin Mulla

Age: 40 years,

R/o. Aurad Shahajani,

Tal. Nilanga, Dist. Latur

.. Petitioner

Versus

1. The District Magistrate,
Latur.
2. The State of Maharashtra
Through the Secretary,
Home Department (Special),
Mantralaya, Mumbai.
3. The Superintendent
Chhatrapati Sambhajanagar
Central Prison, Chhatrapati
Sambhajanagar.

.. Respondents

...
Ms. Jayshri Tripathi, Advocate h/f Mr. Rupesh A. Jaiswal, Advocate for
the petitioner.

Mr. N. R. Dayama, APP for the respondents/State.

...

CORAM : SMT. VIBHA KANKANWADI &
MANJUSHA DESHPANDE, JJ.

DATE : 10 FEBRUARY 2025

. Heard learned Advocate Ms. Jayshri Tripathi holding for learned Advocate Mr. Rupesh A. Jaiswal for the petitioner and learned APP Mr. N. R. Dayama for the respondents - State.

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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 order dated 31.10.2024 bearing No.2024/MAG/MPDA/Desk-2/Kavi-463 passed by respondent No.1 as well as the approval order dated 08.11.2024 and the confirmation order dated 18.12.2024 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. She 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.324 of 2024 registered with Aurad Shahajani Police Station, District Latur for the offences punishable under Sections 132, 303(2), 352, 351(2) (3)(5) of Bhartiya Nyaya Sanhita, 2023 and under Sections 48 (7), 48(8) of Maharashtra Land Revenue Code, 1966. Learned Advocate for the petitioner submits that the detaining authority has considered the offence vide Crime No.324 of 2024 and two wp-2069-2024-J.odt statements of in-camera witnesses. If we consider the statements of witnesses 'A' and 'B', it would show that no incident had taken place against them, but only on the basis of whatever information they had, they say that the activities of the petitioner are detrimental to public. Such statements ought not to have been allowed for consideration. Further, the detention order has been passed on 31.10.2024 and copies of only few documents have been supplied on 01.11.2024 to the petitioner. The copy of the in-camera statements supplied to the petitioner do not show that the detaining authority had verified those statements. In respect of the offence, though the presence of the petitioner has been shown at the spot, yet at the time of passing detention order the detaining authority ought to have considered as to whether the petitioner was released on bail by the competent Court or not. The representations by the petitioner have been belatedly decided thereby the orders have been passed in violation of the constitutional rights of the petitioner. Therefore, the material which was before the detaining authority was not sufficient to arrive at a subjective satisfaction. Therefore, the impugned order is illegal and cannot be allowed to be sustained.

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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 Ms. Varsha Thakur-Ghughe, which states about as to how she had arrived at the subjective satisfaction. Though in the past, preventive action was taken against the present petitioner, it appears to have been futile as he continued to commit theft of the sand and caused damage to the environment and the government property.

6. Before considering the case, we would like to take note of the legal position as is emerging in the following decisions :-

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- (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 subjective satisfaction and whether the procedure as contemplated has been complied with or not. In Nenavath Bujji wp-2069-2024-J.odt (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 is a classic example of non application of mind. First of all, as regards the statements of in-camera witnesses 'A' and 'B' are concerned, it can be seen that those persons as if they were giving character certificate to the petitioner. In fact, witness 'A's identity has been indirectly disclosed wherein he says that he had lodged the N.C. complaint against the petitioner and the number of N.C. complaint has also been given. The police officer, who had recorded the said statement, has not taken care so that there should not be a problem to the said witness. Neither the verifying authority nor the detaining authority appears to

have considered this. The reason behind keeping the identity of such person concealed ought to have been considered by them. Further, there is absolutely no verification of both the statements by the detaining authority and we have confirmed this from the original. Such unverified statements ought not to have been relied upon by the detaining authority or at least now we cannot consider it to be a piece of evidence on the basis of which the detaining authority wp-2069-2024-J.odt could have passed the detention order. The detaining authority should bear in mind that when such orders under the detention laws are passed, then it curtails the constitutional rights of a citizen and therefore, every seriousness should be exercised before passing such order.

8. The only one offence which was considered was Crime No.324 of 2024 which was registered at the behest of the police constable. It appears that the incident took place at 10.00 a.m. on 23.09.2024. Informant and his team were on Bandobast when they intercepted a tractor trolley. The trolley had one brass of sand. Now, it is said that where they had intercepted the tractor trolley, the petitioner was present. It is not stated that the petitioner accompanied the tractor trolley. Then for what purpose the petitioner was present there would be a question. Inquiry was made by this police officer with the tractor driver, but then he says that the petitioner had took out the pin and separated the tractor from the trolley. A third person was called and asked to take away the trolley. It is surprising that when three police persons other than the informant were present at the spot, still they could not overpower the petitioner and when all these activities were going on i.e. making inquiry, calling third person wp-2069-2024-J.odt asking him to take away the trolley, which was separated from the head of the tractor, none of the police persons had tried to take him in custody. Anyway, even if we take the facts as it is, yet the public was not involved. Already the State has taken action. The petitioner has been prosecuted and certainly, he was released on bail by the competent Court. The bail order was not placed before the detaining authority. Therefore, we agree to the statement made by the learned Advocate for the petitioner that the material before the detaining authority was not sufficient to arrive at a subjective satisfaction.

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 offence 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 :-

wp-2069-2024-J.odt ORDER I) The Writ Petition stands allowed. II) The detention order dated 31.10.2024 bearing No.2024/MAG/MPDA/Desk-2/Kavi-463 passed by respondent No.1 as well as the approval order dated 08.11.2024 and the confirmation order dated 18.12.2024 passed by respondent No.2, are hereby quashed and set aside. III) Petitioner - Javed Sharfoddin Mulla shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

[MANJUSHA DESHPANDE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm