

Detention Order Quashed for Lack of Justification

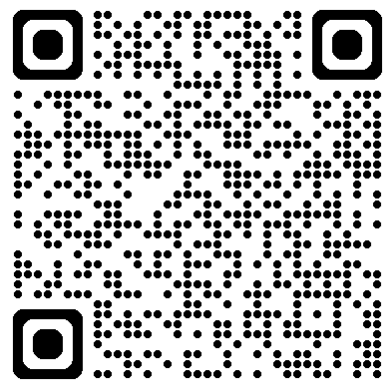
Case Name: Tanvir Shaikh Mukhtar v. State of Maharashtra

Citation: 2024:BHC-AUG:26051-DB

Act: Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (MPDA Act)

Case Brief & MCQs on this case is available in the eBook:

["Bombay High Court Cases in October 2024"](#)



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1204 OF 2024

Tanvir Shaikh Mukhtar
Age: 27 years,
R/o. Old Pardhi Wada,
Amalner, Dist. Jalgaon.
(Presently lodged in Central
Prison, Thane).

.. Petitioner

Versus

1. The State of Maharashtra
Through its Additional Secretary
Home Department (Special)
Mantralaya, Mumbai.
2. The District Magistrate, Jalgaon,
Detaining authority.
3. Superintendent of Central Prison,
Central Prison, Thane.

.. Respondents

...
Mr. R. R. Kazi, Advocate for the petitioner.
Mrs. R. P. Gour, APP for the respondents/State.
...

**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

DATE : 08 OCTOBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. R. R. Kazi for the petitioner and
learned APP Mrs. R. P. Gour 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 19.10.2023 bearing Outward No.Dandapra/KAVI/M.P.D.A./79/2023 passed by respondent No.2 as well as the approval order dated 27.10.2023 and the confirmation order dated 14.12.2023 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.95 of 2018 registered with Amalner Police Station, District Jalgaon for the offences punishable under Sections 302, 393, 397 read with Section 34 of Indian Penal Code, Section 3 punishable under Section 25 of the Indian Arms Act, 1959, Section 37(1)(3), 135 of the Maharashtra Police Act, 1951 and Section 3(1)(i), 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organised Crime Act, 1999

(hereinafter referred to as the “MCOC Act”), **(ii)** Crime No.238 of 2022 registered with Amalner Police Station, District Jalgaon for the offences punishable under Sections 452, 143, 147 of Indian Penal Code, **(iii)** Crime No.585 of 2022 registered with Amalner Police Station, District Jalgaon for the offences punishable under Sections 394, 452, 427, 504, 506 of Indian Penal Code and **(iv)** Crime No.214 of 2023 registered with Amalner Police Station, District Jalgaon for the offences punishable under Sections 307, 353, 332, 333, 336, 337, 153-A, 143, 147, 148, 149, 323, 504, 506 of Indian Penal Code, Section 4 punishable under Section 25 of the Indian Arms Act, 1959, Section 3 of the Prevention of Damage to Public Property Act, 1984, Section 135 of Maharashtra Police Act and Section 7 of the Criminal Amendment Act, 1932. Learned Advocate for the petitioner submits that as regards the first offence, which is also under the MCOC Act, it has been contended that he belongs to the crime syndicate. But if it is considered as to what was the case under Section 302 of Indian Penal Code, then it can be gathered from the facts that some unknown persons had opened firing on the deceased who was carrying the money bag after collection from his petrol and diesel sale. The petitioner has been released on

bail on 29.11.2019. There was absolutely no live link in respect of the said case and the date of the detention order i.e. 19.10.2023. The other three cases would show that the reason appears to be personal and at the most law and order situation would have been created and not the public order. The statement of in-camera witnesses 'A' and 'B' would also show that the public was not involved. There was no subjective satisfaction and unnecessarily stale cases have been considered. Crime No.585 of 2022 is stated to have been committed on 25.12.2022 wherein the petitioner came to be arrested on 26.12.2022. He was released on bail and then the last offence is stated to have been committed on 10.06.2023, but the petitioner came to be arrested on 01.09.2023 and was released on bail on 08.09.2023, yet the order of detention came to be passed on 19.10.2023. As the impugned order is illegal, it deserves to be set aside.

5. Learned Advocate for the petitioner, in support of his submissions, relies on the following decisions :-

i) Aameena Begum Vs. The State of Tamilnadu and Ors., [2023 LiveLaw (SC) 743];

ii) Gulnawaj alias Sheikhu Khan s/o Izaz Khan Vs. Commissioner of Police and another, [Criminal Writ

Petition No.306 of 2024 decided by this Court Bench at Nagpur on 24.07.2024];

iii) Yogesh Udaram Gokhe Vs. The State of Maharashtra and another, [Writ Petition No.183 of 2024 decided by this Court Bench at Nagpur on 03.07.2024];

iv) Alakshit s/o Rajesh Ambade Vs. The State of Maharashtra and another, [Criminal Writ Petition No.626 of 2022 decided by this Court Bench at Nagpur on 20.12.2022];

v) Kajal @ Rafiq Shaikh Rashid Vs. The State of Maharashtra and others, [Criminal Writ Petition No.1287 of 2023 decided by the coordinate Bench of this Court on 08.11.2023];

vi) Shaikh Manjoor Shaikh Khajamiya Vs. The State of Maharashtra and others, [Criminal Writ Petition No.1785 of 2022 decided by the coordinate Bench of this Court on 10.07.2023].

6. 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. He relies on the affidavit-in-reply of respondent No.2 Ayush Prasad, the District Magistrate, Jalgaon/detaining authority. He has stated as to how he had arrived at the subjective satisfaction that the petitioner needs to be declared as dangerous person and is required to be detained. People are afraid of the petitioner and are not coming forward for lodging the report. The opinion of the Advisory Board is in favour of detention of the petitioner.

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

(i) ***Nevanath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367],***

(ii) ***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];***

(iii) ***Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, [1995 (3) SCC 237];***

(iv) ***Pushkar Mukherjee and Ors. Vs. The State of West Bengal, [AIR 1970 SC 852];***

(v) **Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751)** and;

(vi) **Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, [(1981) 4 SCC 647].**

8. 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 **Nevanath (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. We fully agree with the submissions on behalf of the petitioner that there was no live link between the first offence considered for passing detention order i.e. Crime No.95 of 2018 registered on 04.05.2018. Merely because that offence is under Section 302 of Indian Penal Code and MCOC Act, it cannot be said that there is a gravity in the case. At no subsequent point of time i.e. after the offence under Section 394 or 307 of Indian Penal Code was registered against the petitioner, there is any attempt by the prosecution to cancel the bail granted to the petitioner under MCOCA case. The bail was granted to him on

21.11.2019 and still in the impugned order the petitioner has been shown as under trial. The simple fact which was required to be noted was that when he was arrested on 20.05.2018 in that offence and if he is under trial till the date the impugned order was passed by the detaining authority, how he would have committed the other offences in 2022 and 2023. This shows non application of mind and non consideration of the bail order in said MCOCA case passed by the learned Special Judge. The last offence i.e. Crime No.214 of 2023 was still under investigation so also as regards Crime No.238 of 2022 which was in fact only under Sections 452, 143, 147 of Indian Penal Code, charge-sheet was not filed on the date of detention order. As regards the other offences are concerned, at the most, it could have raised law and order situation and not the public order. As regards the in-camera statements they are copy paste to some extent and do not show that public was involved in the incident.

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 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.

10. 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 19.10.2023 bearing No. Dandapra/KAVI/M.P.D.A./79/2023 passed by respondent No.2 as well as the approval order dated 27.10.2023 and the confirmation order dated 14.12.2023 passed by respondent No.1, are hereby quashed and set aside.
- III)** Petitioner - Tanvir Shaikh Mukhtar shall be released forthwith, if not required in any other offence.
- IV)** Rule is made absolute in the above terms.

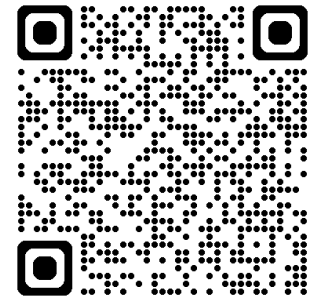
[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm

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