

Atish Ravindra Kharat vs The District Magistrate Jalgaon And ... on 4 December, 2024

Author: Vibha Kankanwadi

Bench: Vibha Kankanwadi

2024:BHC-AUG:30436-DB

wp-1805-2024-J.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1805 OF 2024

Atish Ravindra Kharat

Age: 27 years, Occu.: Labour,
R/o. Samatanagar, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

.. Petitioner

Versus

1. District Magistrate, Jalgaon,
District Jalgaon.

2. The State of Maharashtra,
Through the Additional Chief
Secretary, Govt. of Maharashtra,
Home Department Mantralaya,
Mumbai-32.

3. The Jail Superintendent,
Central Prison, Thane,
Dist. Thane.

.. Respondents

Mr. Rohit P. Patwardhan, Advocate for the petitioner.
Mr. V. K. Kotecha, APP for the respondents/State.

...

CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

DATE : 04 DECEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Rohit P. Patwardhan for the petitioner and learned APP Mr. V. K. Kotecha 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 detention order dated 18.07.2024 bearing No. Dandapra/CAVI/MPDA/30/2024 passed by respondent No.1 as well as the approval order dated 29.07.2024 and the confirmation order dated 23.09.2024 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, six offences were considered i.e. (i) Crime No.377 of 2020 registered with Bhusawal City Police Station, District Jalgaon for the offences punishable under Sections 307, 395, 120-B, 143, 147, 148, 149, 323, 504 of Indian Penal Code, under Section 3 punishable under Section 25 and 27 of the Indian Arms Act and under Section 37(1)(3) of the Mumbai Police Act, 1951, (ii) Crime No.52 of 2022 registered with Bhusawal City Police Station, wp-1805-2024-J.odt District Jalgaon for the offences punishable under Sections 307, 452, 341, 323, 504, 506 of Indian Penal Code, Section 142 of Mumbai Police Act, 1951, (iii) Crime No.179 of 2022 registered with Bhusawal City Police Station, District Jalgaon for the offence punishable under Section 3 punishable under Section 25 of the Indian Arms Act and under Section 142 of the Maharashtra Police Act, (iv) Crime No.81 of 2023 registered with Bhusawal Bazar Peth Police Station, District Jalgaon for the offences punishable under Sections 400, 401, 341, 324, 323, 504, 506 read with Section 34 of Indian Penal Code, Section 3 punishable under Section 25, Section 6, 7 and 8 of the Arms Act, under Section 135, 37(1)(3) of Mumbai Police Act, (v) Crime No.118 of 2023 registered with Bhusawal City Police Station, District Jalgaon for the offences punishable under Section 4 punishable under Section 25 of the Indian Arms Act, Section 135, 37(1)(3) of the Mumbai Police Act and (vi) Crime No.72 of 2024 registered with Bhusawal City Police Station, District Jalgaon for the offences punishable under Sections 385, 386, 387 of Indian Penal Code. Learned Advocate for the petitioner submits that the detaining authority has absolutely not considered that the earlier detention order dated 31.07.2023 was quashed and set aside by wp-1805-2024-J.odt this Court in Writ Petition No.1794 of 2023 on 07.03.2024. Though the note of the said decision has been taken, yet the present detaining authority considered all those cases which were already considered in the earlier order. Therefore, there is absolutely no subjective satisfaction and application of mind that can be seen from the impugned order. Only one offence could then be considered i.e. Crime No.72 of 2024, which came to be registered on 11.04.2024. The prosecution story in the said offence would show that at the most law and order situation would have been created. Same is the case as regards statements of in-camera witnesses 'A' and 'B'.

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 wp-1805-2024-J.odt 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 and his additional affidavit dated 21.09.2024. He supports the detention order passed by him and tries to demonstrate as to how he had arrived 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];

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- (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. At the outset it is to be noted that there was no subjective satisfaction and no application of mind as well as there are lack of reasons in the order by the detaining authority. When the fact was brought to the notice of the detaining authority that the earlier detention order dated 31.07.2023 was quashed and set aside by this Court on 07.03.2024, then the respondent No.2 ought

to have seen the earlier order dated wp-1805-2024-J.odt 31.07.2023 and which offences were considered by him for detaining the petitioner. The said order dated 07.03.2024 has been made available to this Court and it can be seen that out of the six offences those were considered by the present authority, five offences were already considered in the said order dated 31.07.2023. Still the present detaining authority had considered those five offences also which were already considered and, therefore, we observe that this is a classic case of non application mind by the detaining authority. When those five cases were already considered, then the present detaining authority ought to have considered only the last offence i.e. Crime No.72 of 2024 registered with Bhusawal City Police Station, District Jalgaon for the offences punishable under Sections 385, 386, 387 of Indian Penal Code, which was still under investigation on the date of detention order. Further, in the said offence the petitioner came to be arrested on 12.04.2024. He was released on bail in the said offence. As regards the statements of in-camera witnesses 'A' and 'B' are concerned, at the most law and order situation would have been created.

8. Thus, taking into consideration the above observations and the decisions of the Hon'ble Apex Court, at the most, the wp-1805-2024-J.odt 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.

9. 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 18.07.2024 bearing No. Dandapra/KAVI/MPDA/30/2024 passed by respondent No.1 as well as the approval order dated 29.07.2024 and the confirmation order dated 23.09.2024 passed by respondent No.2, are hereby quashed and set aside. III) Petitioner - Atish Ravindra Kharat shall be released forthwith, if not required in any other offence. IV) Rule is made absolute in the above terms.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm