IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 183 OF 2024

PETITIONER : Yogesh Udaram Gokhe, Aged about 50 years, Occu.: Citizenship : Indian, Occupation : Agriculturist, R/o Gadeval Mohalla, Ward No.7, Khapa, Tah. Saoner, Dist. Nagpur.

-**Versus**-

RESPONDENTS :

1. The State of Maharashtra, through its Principal Secretary, Ministry of Home Affairs, Mantralaya, Mumbai – 400032.

2. The State of Maharashtra, through the District Magistrate, Nagpur having its office at Civil Lines, Nagpur – 440001.

Mr.N. R. Jadhav, Advocate for the petitioner.
Mr. S.S.Doifode, APP for the respondents.

CORAM: SMT. VIBHA KANKANWADI &
MRS.VRUSHALI V. JOSHI, JJ.

CLOSED ON : 14TH JUNE, 2024
PRONOUNCED ON : 3RD JULY, 2024

J U D G M E N T (Per : Smt. Vibha Kankanwadi, J.)

Heard learned Advocate Mr.Jadhav for the petitioner and learned APP Mr.Doifode for the respondents.

2. **Rule**. Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the parties.

3. The petition challenges the detention order passed by respondent No.2 against him bearing No.ADM/Home/Desk14(1) MPDA/WS 59/24, dated 05/02/2024 and its approval dated 14/02/2024 passed by respondent No.1 by invoking the powers of this Court under Article 226 of the Constitution of India.

4. The learned Advocate of the petitioner has taken us through the impugned orders and the material, which was before the Authorities at the time of passing the impugned orders. He submits that though several cases were registered against the petitioner, but most of them are pending before the concerned Court and one is under investigation. The petitioner is an active politician of opposition party and therefore, the impugned orders have been passed. The order passed by respondent No.2 shows that he had considered Crime No.506 of 2023 under section 379 of the Indian Penal Code read with section 48(8) of the Maharashtra Land Revenue Code, registered on 10/12/2023, which is still under investigation. For considering the detention order to be passed at that time, the alleged past history has also been considered and the confidential in-camera statements of

witnesses A and B. But, the entire record would show that the alleged activity of the petitioner was not amounting to disturbing the public peace or would have amounted to law and order situation. He further points out that the statement of witness A alleged to have been recorded on 13/01/2024 by Police Sub-Inspector, Khapa Police Station and the verification is alleged to have been done on 22/01/2024 by Deputy Superintendent of Police, Saoner. It is only made as seen by the Detaining Authority, who is the Superintendent of Police, Nagpur (Gramin), Nagpur. The statement of witness B has been recorded on 15/01/2024 by the same PSI, verified by same Deputy Superintendent of Police, Saoner on 22/01/2024 and seen by the Superintendent of Police, Nagpur (Rural), Nagpur. The detention order is passed on 05/02/2024. The delay is unexplained. There was no subjective satisfaction that has been recorded by the Detaining Authority while passing the said orders. The confirmation of such order ought not to have been done by the State. As the orders are illegal, they deserve to be set aside.

5. The learned Advocate for the petitioner relies upon the decision in *Amol Alias Guddu s/o Sevakar Khorgade v. The Commissioner of Police, Nagpur and others*, decided by the Division Bench of this Court on 14/03/2023, wherein after taking a note of

various decisions of this Court, it was held that subjective satisfaction was one of the considerations while passing the detention order. The past history cannot be of the indefinite period. In this case also the petitioner was posed as a sand smuggler and then it has been stated by this Court that the detention order would show that the petitioner is the sand smuggler and not a dangerous person as defined under the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (for short 'MPD Act'). He further relies on the decision in **Nevanath Bujji etc. v. State of Telangana and others**, decided by Three Judge Bench of the Hon'ble Supreme Court of India, reported in **2024 SCC OnLine SC 367**, wherein the Detention Law has been summarized and has been said to be draconian measure. It was observed that the essential concept of preventive detention is that the detention of a person is not to punish him by something he has done, but to prevent him from doing it. The basis of detention is the satisfaction of the executives about the likelihood of the detenue acting in a manner similar to his past acts, which is likely to affect adversely the maintenance of public order and thereby prevent him, by an order of detention from doing the same. Here, the Detaining

Authority cannot presume that the petitioner would behave or act in similar way in future. The learned Advocate for the petitioner, therefore, prays for the quashing of the detention order and its approval by the respondents.

6. *Per contra*, the learned APP has strongly supports the action taken against the petitioner. He submits that the petitioner is habitual to commit theft of sand by carrying out illegal mining. Crime Nos.15 of 2019 and 335 of 2022 are similar offence. They are pending before the concerned Courts. Preventive action was also taken against the petitioner under section 110 of the Code of Criminal Procedure, wherein he had executed a final bond of Rs.50,000/- for a good behaviour for one year and under section 56(1)(b) of MPA. The petitioner came to be externed by order dated 09/12/2022 from Nagpur City for a period of six months. Still his activities have not been stopped. The facts in Crime No.506 of 2023, which is still under investigation would show that the petitioner had illegally excavated the sand near river and stored it at three places illegally. The statements of confidential witnesses would show that the petitioner had threatened witness A when the petitioner was under impression that witness A is supplying the information about the illegal activities of the petitioner to the Police. Threat to kill the witness has been

given and from the words those were uttered, it can be seen that the petitioner has no intention to curb the activities of illegal mining/excavation of sand. The statement of witness B would disclose that in fact he was just watching the dispute that was going on between the petitioner and others and the petitioner, who was under the influence of liquor, was abusing all the people and asked them to leave the spot. In that process, he had come near the witness, threatening him to kill and asked him to go away from the spot. Both the incidents had taken place in public and it has been verified by the Detaining Authority that the public at large is under fear of the petitioner. Nobody is willing to come forward to lodge complaint against the petitioner, thereby the law and order situation had arisen, so also it amounted to disturbance of the public peace and the possibility of repeated crimes cannot be ruled out. He submitted that there is absolutely no lacuna in the procedure that was undertaken by the Detaining Authority as well as the Confirming Authority. The entire report and the order was placed before the Advisory Board and the Advisory Board had given the opinion/approval to the detention of the petitioner by assigning reasons.

7. The learned APP relied on **State of Tamil Nadu, through Secretary to Government, Public (Law and Order-F) and another v.**

Nabila and another; (2015) 12 SCC 127, wherein it was held that –

> "Indisputably, the object of law of preventive detention is not punitive, but only preventive. In case of preventive detention no offence is required to be proved nor is any charge formulated. The justification of such detention is suspicion and reasonability and there is no criminal conviction which can only be warranted by legal evidence. However, the detaining authority must keep in mind while passing the order of detention the civil and constitutional right granted to every citizen by Article 21 of the Constitution of India inasmuch as no person shall be deprived of life and liberty except in accordance with the procedure established by law. The laws of preventive detention are to be strictly construed and the procedure provided must be meticulously complied with."

Further reliance has been placed on **Bhushan s/o Vijay Rane v. State of Maharashtra; 2017 (4) Mh.L.J. (Cri.) 751**, wherein it has been held that –

> "Delay by itself it not ipso facto fatal, however, if there is some delay in issuing the order of detention, two issues have to be kept in mind; the first is whether the delay has been satisfactorily explained and the second issue is whether the live-link between the prejudicial activities of the detenu and issuance of the order of detention has snapped. The time when the order is made or the live link between the prejudicial activity and the purpose of detention is snapped depends on the facts and circumstances of each case. Even in a case of undue or long delay between the prejudicial activity and the passing of detention order, if the same is satisfactorily explained and a tenable and reasonable explanation is offered, the order of detention is not vitiated."

In this case, the statements of in-camera witnesses were recorded by the Police Authorities and then the truthfulness and genuineness of the same was verified by the Sub-Divisional Officer, who was the Senior Police Officer in rank and post. On the said verification, the Detaining Authority was satisfied that the in-camera statements are true and genuine and has been considered as sufficient compliance.

8. The learned APP further relies on **Sadashiv s/o Shriram Jadhav v. The State of Maharashtra and Anr.; 2021 ALL MR (Cri) 4192**, wherein the Division Bench of this Court has insisted that –

> "The first Detaining Authority ofcourse has not stated in so many words that it verified the genuineness of the statements of confidential witnesses but it has also said that it carefully considered those statements and was satisfied that they clearly indicated that the petitioner was a habitual bootlegger and a person who had created terror in the mind of public in the area. These observations indicate that the first Detaining Authority had considered these statements only after their due verification or otherwise it would not have said that they indeed show that the petitioner had become a habitual bootlegger and had developed propensity of spreading terror and alarm in the mind of public in the area of his activity. Thus, the satisfaction so reached by the Detaining Authority cannot be said to be one without due verification of facts revealed by statements of confidential witnesses. Such satisfaction has been expressed in terms not on the lines expected by the petitioner, but that does not mean that, in every case, the words that may be used by the Authority must be in

> a particular form or be rhetorical or must use some stereo types. Ultimately, all that matters is reaching of subjective satisfaction based upon existence of material which is capable of verification and if it is found from the impugned order that such process of verification was indeed carried out, the words of the order impugned do not matter and thus, we do not think that any doubt could be expressed about the process conducted by the Detaining Authority in reaching his subjective satisfaction in the matter. A useful reference in this regard may be had to the decision of the Full Bench of this Court in the case of **Sumit s/o. Ramkrishna Maraskolhe vs. Deputy Commissioner of Police Zone-1, Nagpur and another** reported in **2019 SCC Online Bom 230 : [2019 ALL MR (Cri) 1961 (F.B.)].**"

On the same lines, he also relies on an order in *Rahul Jugaldas Tambe v. State of Maharashtra and others*, *Criminal Writ Petition No.765 of 2022*, decided by Division Bench of this Court on 22/12/2022 and **Harish Patil v. The State of Maharashtra and Ors.; 2016 ALL MR (Cri) 5144**.

9. From the detention order passed by respondent No.2, it is to be noted that three offences are registered against the petitioner. In two matters investigation is complete and the cases are pending before the concerned Courts. The third offence vide Crime No.506 of 2023 came to be registered on 10/12/2023 and it was under investigation on the date of the impugned order. The said offence was considered for passing the detention order along with the statements

of the confidential witnesses. The facts of Crime No.506 of 2023 would show that Talathi, Ramdongri had gone to Reti Ghat area for the purpose of inspection regarding illegal excavation and transportation on 08/12/2023. It was found during the enquiry that 49 brass of sand was illegally stored amounting to Rs.98,000/-. Nobody claimed title over the said sand storage. A report was submitted to Tahsildar, Saoner for registering offence against unknown individual, however, it is stated that PSI Khapa Police Station concluded that on the basis of GPS device installed on truck bearing MH-40 N-4441, which is registered in the name of the petitioner was on the spot of occurrence and thereby the said offence was registered against the petitioner. It is stated in the detention order that the investigation is still in progress. Whether this amounts to subjective satisfaction itself is a question. The Detaining Authority cannot assume that the said offence i.e. Crime No.506 of 2023 has been committed by the petitioner. Taking into consideration the background that has been stated in the detention order itself, initially, when it was against unknown person, it is then stated that only on the basis of the GPS device, the name of the petitioner has been involved in the said FIR. When investigation is still in progress, it cannot be taken as a circumstance requiring detention. The purpose of

detention has been explained in **Nevanath Bujji** (supra). After considering various judgments, the legal position has been summarized as follows -

> "43. We summarize our conclusions as under:-
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> (i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,
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> (ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,
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> (iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,
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> (iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,
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> (v) While making a detention order, the authority should

arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,

(vi) The satisfaction cannot be inferred by mere statement in the order that "it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order". Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,

(vii) Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,

(viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s)/grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and

(ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, *first* examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention. For passing a detention order based on

> subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority."

10. It is not in dispute that subjective satisfaction is one of the basic requirements for passing an order of detention. The subjective satisfaction can be arrived at on the basis of various facts involved in the matter. Each fact will have to be considered independently as well as its effect together with other evidence that has been brought on record. The other two criminal cases pending against the petitioner though can be taken as back ground or past conduct, they, per se, will not give live link. Therefore, we reiterate that when the Detaining Authority had considered Crime No.506 of 2023 for passing detention order, he ought to have considered that initially in the report of the Revenue Officer, who had revealed the offence, tried to register it against unknown person.

11. Turning towards the statements of confidential witnesses, we do not find that there is any procedural error in respect of verification of their statements. In **Bhushan Vijay Rane** (supra), this Court has considered that truthfulness and genuineness of the statements of in-camera witnesses as authentic when its verification by Sub-Divisional

Police Officer, who is higher in rank. Similarly, in **Sadashiv Jadhav** (supra), it was held that there is no specific formula laid down for jotting down the verification. The said verified statement is considered by the Detaining Authority on the next day of its verification. We do not find any substance in the point of delay, as the date of the offence, which was considered for the detention, the order was dated 10/12/2023. Statement of confidential witnesses were recorded on 13/01/2024 and 15/01/2024, came to be verified on 22/01/2024 and seen by the Detaining Authority on 23/01/2024 and the detention order came to be passed on 05/02/2024. There is hardly any gap, which can be termed as ‘delay’; giving benefit to the petitioner.

12. The second question that would arise as to whether the statements of the in-camera witnesses were to such an extent that it would create a problem of public order. To explain this concept, we may take help of the observations in **Nevanath** (supra) made in para-32.

> “32. The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression 'law and order' is wider in scope inasmuch as contravention of law always affects order, 'Public order' has a narrower ambit, and could be affected by only such contravention, which affects the community or the public at large. Public order is the even tempo of life of the community taking the

> country as a whole or even a specified locality. The distinction between the areas of 'law and order' and 'public order' is one of degree and extent of the reach, of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. In other words, the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. [See: *Union of India v. Amrit Lal Manchanda*, (2004) 3 SCC 75.]"

13. Taking into consideration those observations, at the most those statements would reveal that on that day, the petitioner created law and order situation. In fact, this would be in respect of statement of in-camera witness B. As regards in-camera statement A is concerned, he only says that the people standing nearby fled away when the witness was allegedly beaten by the petitioner. By no stretch of imagination, it can be said on the basis of in-camera statements of the witnesses that the petitioner had raised or could raise public order

situation and that is required to be curbed by detaining him. In **Nevanath** (supra), the Hon'ble Supreme Court has reiterated that illegal detentions cannot be allowed to sustain.

14. The learned APP has placed on record the opinion of the Advisory Board and submitted that even opportunity was given by the Board to the petitioner to appear through video conferencing. In this respect, again we may lay our hands on the decision of **Nevanath** (supra), wherein the role of the Advisory Board has been explained and the observations in respect of the same in paras-55 to 58 are important.

> "55. What can be discerned from a bare perusal of the abovementioned provisions is that the Advisory Board performs the most vital duty of independently reviewing the detention order, after considering all the materials placed before it, or any other material which it deems necessary. When reviewing the detention order along with the relevant materials, the Advisory Board must form an opinion as to the sufficiency of the cause for warranting detention. An order of detention passed under the Act, 1986 can only be confirmed if the Advisory Board is of the opinion that there exists sufficient cause for the detention of the detenu.
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> 56. The framers of the Constitution being in *seisin* of the draconian nature of an order of preventive detention and its adverse impact on individual liberty, have specifically put in place safeguards within Article 22 through the creation of an Advisory Board, to ensure that

> any order of preventive detention is only confirmed upon the evaluation and scrutiny of an independent authority which determines and finds that such an order for detention is necessary.
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> 57. The legislature in its wisdom has thought it fit, to entrust the Advisory Board and no one else, not even the Government, with the performance of this crucial and critical function which ultimately culminates into either the confirmation or revocation of a detention order. The Advisory Board setup under any preventive detention law in order to form its opinion is required to; (i) consider the material placed before it; (ii) to call for further information, if deemed necessary; (iii) to hear the detenu, if he desires to be heard and; (iv) to submit a report in writing as to whether there is sufficient cause for "such detention" or whether the detention is justified.
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> 58. An Advisory Board is not a mere rubber-stamping authority for an order of preventive detention. Whenever any order of detention is placed before it for review, it must play an active role in ascertaining whether the detention is justified under the law or not. Where it finds that such order of detention is against the spirit of the Act or in contravention of the law as laid down by the courts, it can definitely opine that the order of detention is not sustainable and should not shy away from expressing the same in its report."

15. Therefore, though the Advisory Board has approved the detention of the petitioner, yet for the aforesaid reason, we do not find that there was any material before the Detaining Authority to brand the petitioner as "dangerous person or bootlegger".

16. For the aforesaid reasons, the petition deserves to be allowed and it is accordingly allowed.

17. The detention order passed by respondent No.2 on 05/02/2024 bearing No. ADM/Home/Desk14(1)MPDA/WS 59/24 and the approval order dated 14/02/2024 passed by respondent No.1 is hereby quashed and set aside. The petitioner namely Yogesh Udaram Gokhe shall be released forthwith, if not required in any other offence.

18. Rule is made absolute in the above terms.

(MRS.VRUSHALI V. JOSHI, J) (SMT.VIBHA KANKANWADI, J)