IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1081 OF 2024

Rajesh @ Dadu Eknath Nikumbh (Dhobi)
Age: 21 years,
R/o. Old Pardhi Wada,
Subhash Chowk, Amalner,
District Jalgaon.
(Presently lodged in Central Prison,
Kolhapur.) ***.. 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,
Kolhapur Central Jail ***.. Respondents***

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Mr. R. R. Kazi, Advocate for the petitioner.
Mr. A. R. Kale, APP for the respondents – State.

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

DATE : 23 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. R. R. Kazi for the petitioner and learned APP A. R. Kale for 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 14.03.2024 bearing Outward No. Dandapra/KAVI/MPDA/08/2024 passed by respondent No.2 as well as the approval order dated 21.03.2024 and the confirmation order dated 08.05.2024 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, six offences were considered i.e. (i) Crime No.168 of 2021 registered with Amalner Police Station, District Jalgaon for the offences punishable under Sections 354, 323, 504, 506, 427 of Indian Penal Code, (ii) Crime No.467 of 2021 registered with Amalner Police Station, District Jalgaon for the offences punishable under Sections 392, 504, 506 of Indian Penal Code, (iii) Crime No.239 of 2022 registered with Amalner Police Station,

District Jalgaon for the offences punishable under Sections 394, 294 of Indian Penal Code, (iv) Crime No.294 of 2022 registered with Amalner Police Station, District Jalgaon for the offences punishable under Section 224 of the Indian Penal Code, (v) Crime No.566 of 2022 registered with Amalner Police Station, District Jalgaon for the offences punishable under Section 4 punishable under Section 25 of the Indian Arms Act, 1959 and under Section 135 of the Maharashtra Police Act, 1951 and (vi) Crime No.62 of 2024 registered with Amalner Police Station, District Jalgaon for the offences punishable under Section 394, 294, 506 of Indian Penal Code. Learned Advocate for the petitioner submits that the detaining authority has absolutely not considered that the petitioner had come out of the jail in January 2024. After the period of detention under MPDA was over, he was detained by virtue of order dated 05.01.2023 by District Magistrate, Jalgaon. 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.62 of 2024, which is stated to

have taken place on 18.02.2024. The statements of in-camera witness 'A' is recorded on 22.02.2024 i.e. within four days from the date of the registration of Crime No.62 of 2024. The petitioner was arrested in that case on 19.02.2024 at 14.49 hours and on the date the impugned order was passed, the bail application filed by the petitioner was rejected by the Court of law. There is absolutely no discussion as to why the ordinary law was not sufficient to deter the activities of the petitioner. The State Government has confirmed an illegal order and, therefore, not only the detention order deserves to be set aside, but also the approval and confirmation of the same deserves to be set aside. It has not been communicated to the petitioner as to when the order was placed before the Advisory Board by the State Government, but then the order that is passed by the State Government on 08.05.2024 is after a gap of 56 days from the order of detention. Even the order of confirmation is not served on the petitioner immediately. The order of confirmation was passed on 08.05.2024 whereas the copy of that order was made available to the petitioner on 12.06.2024. It can be seen from the said document that it was before the prison officer that it was served on 12.06.2024. Under such circumstance, the personal

liberty of the petitioner has been jeopardized.

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 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. It has been reiterated by the District Magistrate that the petitioner is a

dangerous person as his long standing criminal activities are causing serious hardship to the persons in the locality and unless he could have been detained, his criminal activities could not have been curbed. Even the Advisory Board has given the opinion in favour of the order. It is tried to be demonstrated that it is a wrong on the part of the petitioner to say that the order of confirmation of the State Government was not received by him. In fact, the order dated 21.03.2024 bears the signature of the applicant, however, the order dated 08.05.2024 does not. The confirmation order dated 08.05.2024 was received to the Central Prison, Kolhapur on 20.05.2024 by post and it is served on the same day on the petitioner. The Advisory Board had heard the petitioner on 18.04.2024 and submitted the report to the State Government within seven weeks from the date of detention. Therefore, there is no delay in submitting the report to the State Government.

6. 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) ***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 ***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.

8. After perusal of all the documents, we find this to be a classic case where there is absolutely no subjective satisfaction and no application of mind as well as lack of reasons in the order by the detaining authority. When the fact was brought to the notice of the detaining authority that the petitioner was detained in Central Prision, Nashik by virtue of his predecessor by order dated 05.01.2023, then he ought to have calculated when the petitioner would have been released. Certainly, the effect of the said order was till 04.01.2024. The respondent No.2 ought to have seen the earlier order dated 05.01.2023 and which offences were considered by his predecessor for detaining the petitioner. The said order dated 05.01.2023 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 05.01.2023. Learned Advocate for the petitioner has answered to our query that the petitioner had not made any kind of representation in respect of the said order dated 05.01.2023, nor he had filed writ petition challenging the said order. He has undergone the said order. Therefore, on the same set of facts or major part thereof, their could not have

been another detention order. 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 the petitioner had come out of jail on 04.01.2024, then the present detaining authority ought to have considered only the last offence i.e. Crime No.62 of 2024 registered with Amalner Police Station, which was registered on 18.02.2024 for the offence punishable under Sections 394, 294, 506 of Indian Penal Code. It was still under investigation on the date of detention order. Further, in the said offence the petitioner came to be arrested on 19.02.2024 and it is observed in paragraph No.11 of the impugned order that the petitioner was in magisterial custody and his bail application has been rejected. The detaining authority then expresses that possibility of petitioner coming out of the jail on bail in that matter cannot be ruled out and possibility of he committing offences in future also cannot be ruled out. We are of the opinion that detention order cannot be so based on predictions which are not based on any concrete evidence. Here, the previous history could not have been considered by the detaining authority.

9. Now turning to the in-camera statements, the first and the foremost fact to be noted is that perusal of both the statements would show that these witnesses were knowing even when the petitioner was detained earlier and when he has come out of the jail. Witness 'A' even says about those incidences which appear to have been occurred with other persons and it also includes the history of the petitioner since 2020. These in-camera statements are not supposed to give character certificate to any person. Witness 'B' says about the facts of Crime No.62 of 2024. Therefore, we wonder as to whether those statements are of really of those witnesses or they are just got prepared by the police with specific intention, because there is only four days gap between the last offence and the statements of these two witnesses. If we consider Crime No.62 of 2024, wherein it is stated that after showing knife the petitioner had extorted a liquor bottle and cash of Rs.1250/-, this would have created at the most law and order situation. Statement of witness 'A' says that the petitioner had taken two cigarettes from him thereupon the witness asked him to pay Rs.20/-, then the petitioner got annoyed and by showing knife he extracted amount of Rs.600/- from the pocket of shirt of the said witness and gave threat to kill him. He says that due to

the fear of the petitioner he had not lodged the report with the police regarding the said incident, which is stated to have taken place in the first week of February 2024. Interesting point to be noted is that he says that he is unable to give the date when in fact in the same month his statement has been recorded. Witness 'B' says that the petitioner had demanded him Hafta of Rs.2000/- per month which the witness said that he would be unable to pay and thereupon the petitioner by showing knife gave threats and then the petitioner extracted amount of Rs.1000/-. The said witness tried to say that after 14.02.2024, the petitioner used to go to Subhash Chowk daily between 8.00 to 10.00 p.m. and by showing knife to the petty shopkeepers used to demand money or used to take articles without paying amount for them. It is hard to believe that if such incident was going on till the petitioner was arrested on 19.02.2024, why all those petty shopkeepers from Subhash Chowk had not gone to the concerned police station. Now, it would be easy to give such kind of statement without naming the witness as well as those persons against whom the incident had alleged to have taken place. We deprecate such kind of practice and statements to be taken and to be relied.

10. Now, turning towards the order of confirmation served belatedly, we do not accept the explanation tried to be given by the detaining authority. He has tried to say that in fact the order dated 21.03.2024 bears the signature of the applicant. In fact, the document on record Exhibit-'B' page No.291-B would show that the copy of the order dated 21.03.2024 was given to the petitioner on 12.06.2024. There is no affidavit of the prison authorities, whose signature is there with date 12.06.2024. No doubt, the copy of the order on page No.291-A dated 08.05.2024 does not bear anybodies signature except Section Officer, Home Department. Order dated 21.03.2024 is the approval order and there is no document produced along with the affidavit of respondent No.2 to show that when even the confirmation order was served on the petitioner. In cases of detention matters, there cannot be delay in serving the copy of such orders on the detenu. Therefore, we are of the opinion that the order of detention passed in this matter is illegal and cannot be allowed to sustain for a minute. The approval and the confirmation of the same also cannot be allowed to sustain.

11. In fact nowadays the detaining authorities are passing orders without subjective satisfaction and without considering

the various decisions of the Hon'ble Supreme Court as well as this Court. Detaining authorities are not supposed to play with the life and liberty of a citizen enshrined under the Constitution of India. Unless there are strong grounds to arrive at a conclusion that the activities of a proposed/detnue are prejudicial to the public order (as considered in various decisions of the Hon'ble Supreme Court) every proposal forwarded by the sponsoring authority should not be culminated in detention order. In a given circumstance then such detention authority and the State Government would be made liable to pay compensation.

12. 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. As regards the role of Advisory Board is concerned, we may lay our hands on the decision in **Nevanath (Supra),** wherein the role of the Advisory Board has been explained and the observations in respect of the same in paragraph Nos.55 to 58 are important :-

> "55. What can be discerned from a bare perusal of the above-mentioned 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.

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.

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."

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.

13. 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 14.03.2024 bearing No. Outward No. Dandapra/KAVI/MPDA/08/2024 passed by

respondent No.2 as well as the approval order dated 21.03.2024 and the confirmation order dated 08.05.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Rajesh @ Dadu Eknath Nikumbh (Dhobi) 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