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

CRIMINAL WRIT PETITION NO. 1931 OF 2024

Nikhil S/o Ganesh Ranjwan
Age : 20 years, Occ : Education,
R/o Behind Finix Hospital, Jalna Road,
Shahunagar, Beed, Tq. & Dist. Beed.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through Dy. Secretary
Home Department, Mantralaya,
Mumbai-32

2. The State of Maharashtra
Through District Magistrate,
Beed.

3. The State of Maharashtra
Through Superintendent of Central Jail,
Aurangabad.

4. The Assistant Police Inspector,
Shivajinagar Police Station,
Tq. & Dist. Beed.

..RESPONDENTS

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Advocates for the petitioner : Mr. A.R. Hange & Mr. R.G. Hange
APP for Respondent- State : Mr. A.D. Wange

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

DATED : 14th JANUARY, 2025.

JUDGMENT (PER ROHIT W. JOSHI, J.) :

. Rule. Rule made returnable forthwith. Heard finally with

the consent of the learned Advocates for the respective parties.

2. The present petition is filed under Article 226 of the Constitution of India in order to challenge the order of preventive detention dated 05.02.2024 passed by the District Magistrate, Beed under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders/ Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (Hereinafter referred to as “MPDA” for the purpose of brevity) and the subsequent order dated 07.11.2024 passed by Respondent No.1 confirming the said order dated 05.02.2024.

3. Respondent No.4 had submitted a proposal for passing order of preventive detention against the Petitioner. The said proposal submitted by Respondent No.4 was forwarded by the Superintendent of Police, Beed to Respondent No.2 on 12.01.2024. The Superintendent of Police had verified in-camera confidential statements recorded on 26.12.2023 and 28.12.2023 before forwarding the proposal. Based on the proposal, Respondent No.2 passed order of preventive detention against Petitioner on 05.02.2024. Simultaneously on the same day, the order of committal also came to be passed by Respondent No.2. The

grounds for detention were also prepared on 05.02.2024. The order of preventive detention dated 05.02.2024 was approved by Respondent No.1 on 14.02.2024 in terms of Section 3(3) of the MPDA.

4. The order of preventive detention dated 05.02.2024 could not be served upon the Petitioner. The Petitioner was served with the said order on 15.09.2024 i.e. after a period of 7 months and 10 days. The Petitioner is lodged in Harsul Jail, Aurangabad pursuant to the order of preventive detention dated 05.02.2024 passed against him. The Petitioner made a representation to the Advisory Board on 15.09.2024. The matter was referred to the Advisory Board under Section 10 of the MPDA on 03.10.2024. The Advisory Board afforded opportunity of hearing to the Petitioner and there were positive opinion for continuation of preventive detention on 23.10.2024. Based on the said opinion, Respondent No.1 has passed order dated 07.11.2024 confirming the order of preventive detention.

5. The Petitioner, who is aggrieved by the said order, has challenged the same in the present petition invoking extra ordinary jurisdiction under Article 226 of the Constitution of India.

6. Shri Rajendra Hange, learned counsel for the Petitioner

draws our attention to the grounds of detention. He states that perusal of the grounds for detention recorded by Respondent No.2 will demonstrate that two FIRs registered on 31.10.2023, vide Crime No.341/2023 and Crime No.250/2023 have been taken into consideration by Respondent No.2. He states that these FIRs have been registered during the course of agitation for Maratha Reservation. He has taken us through the FIRs in both the matters. Perusal thereof will demonstrate that the FIRs are registered against around 600 to 700 people and around 50 persons have been identified in both the offences. The names of said 50 persons approximately are mentioned in both the FIRs. The other two FIRs are registered on 20.08.2019 and 29.06.2023. The learned counsel submits that although these two FIRs have not been taken into consideration, the first FIR registered in the year 2019 is far remote. As regards, second FIR registered on 29.06.2023, he states that the same is not very serious in nature, in as much as, the highest offence in the said FIR is pertaining to Section 324 of the IPC. As regards two FIRs on the basis of which subjective satisfaction is arrived at by Respondent No.2, he states that it is completely unjust and illegal to place a person under preventive detention for participating in a political protest. He states that the Petitioner has been singled out while placing him under preventive detention, in as much as, such action has not been taken against other

persons, who had participated in the protest. He, therefore, submits that the subjective satisfaction is guided by completely extraneous consideration, which vitiates the order of preventive detention. He also draws our attention to the fact that the order of preventive detention dated 05.02.2024 was served on the petitioner on 15.09.2024 after a period of 7 months and 10 days and argues that the live link between the incident and order of preventive detention is completely broken by enormous delay in serving the order and implementing the same. As regards two in-camera confidential statements, he criticizes the same saying that the allegations are almost identical, and therefore, the same do not inspire confidence. He also states that the said statements are not sufficient to remotely suggest that the alleged acts of the petitioner are detrimental to public order. He states that the allegations made at the best raise inference of the petitioner indulging in acts adversely affecting law and order, which cannot be a ground to place the petitioner under preventive detention. He sums up the submissions stating that action on the part of Respondent Nos.1 and 2 is absolutely high handed and illegal, resulting in breach of right to life and personal liberty which is guaranteed under Article 21 of the Constitution of India. He also argues that since the provisions of law i.e. MPDA have not been properly followed in true spirit, the guarantee of equality before law and equal protection of law enshrined under Article 14 of

the Constitution of India is also breached.

7. As against the above submissions, Mr.A.D. Wange, learned APP submits that the petitioner is habitual offender. He has become a nuisance to the general safety and security of the public at large, necessitating the action of preventive detention against him. He draws our attention to the CCTV footage panchnama dated 03.11.2023 relating to F.I.R. No.250/2023, which shows that the petitioner was indulging in stone pelting during the course of agitation. He has also drawn attention to the CCTV footage panchnama in relation to Crime No.577/2023 showing aggressive posturing of the petitioner holding saffron flag. He states that the case of the petitioner, therefore, cannot be equated with other persons, who participated in the protest. As regards the delay, learned APP states that the petitioner was absconding, and therefore, could not be served with the order of preventive detention. He further states that the petitioner cannot draw advantage on account of delay in serving the order of preventive detention upon him since he was absconding.

8. We have heard the respective submissions as aforesaid and perused the record of the case, particularly the grounds of detention dated 05.02.2024. Perusal of the grounds of detention will demonstrate

that in all four FIRs have been referred therein. The first FIR is registered on 20th August, 2019, which is very remote in point of time. The second offence is registered on 29.06.2023 in which the highest offence is punishable under Section 324 of the IPC i.e. causing simple hurt with weapon. The said two FIRs have not been considered by Respondent No.2 as foundation for placing the petitioner under preventive detention. As per Respondent No.2, the need to place the petitioner under preventive detention was felt on the basis of the subsequent two FIRs registered against him on 31.10.2023. As regards the FIRs registered on 31.10.2023, undisputedly the said FIRs are registered in relation to protest in support of demand for Maratha Reservation. It appears that the petitioner was part of a political rally which took ugly violent turn. Perusal of the two FIRs will demonstrate that around 600 to 700 people were a part of the said political rally. Around 50 people could be identified and have been actually named in the FIRs. It is surprising that on the basis of such FIRs, Respondent No.2 has arrived at subjective satisfaction to take drastic action against the petitioner of placing him under preventive detention. There can be absolutely no justification for curtailing liberty of an individual merely on the ground of participation in a political rally, although the same may have taken ugly violent turn. Respondent No.2 has not recorded that the petitioner was the person, who had organized the said rally or

that he was the person, who instigated violence during the rally. It is true that the CCTV footage records that the petitioner was seen pelting stone on a shop during the course of violence, the panchnama shows such acts were committed by other persons as well. It is quite possible that when the protest took violent turn some wrong was committed by the petitioner at the heat of moment. However, that by itself, cannot be a ground to curtail his liberty by placing him under preventive detention. Two FIRs have been registered under Sections 307, 308 and other provisions of the IPC as also Sections 4 and 5 of the Explosive Substances Act, 1908 and Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984. The petitioner was not found with any explosive substance or any dangerous weapon. He was merely seen pelting stone. On that basis, he could not have been singled out for curtailing his liberty by an order of preventive detention. Although, we cannot sit in appeal in order to determine the sufficiency of material on the basis of which the subjective satisfaction is arrived at by the competent detaining authority, we can certainly in exercise of our writ jurisdiction determine whether the material on the basis of which subjective satisfaction was arrived at is relevant or irrelevant. We find that the said material is absolutely irrelevant and extraneous for the purposes of arriving at subjective satisfaction.

9. We also find favour with the submission of the learned counsel for the petitioner that the petitioner could not have been singled out. Perusal of the reply filed by Respondent No.2 does not demonstrate that similar action was taken against other persons, who were found to be indulging in similar activities during the course of said protest.

10. Two FIRs are registered on 31.10.2023. The incidents had occurred in political rally held on 30.10.2023. The order of preventive detention is served on the petitioner on 15.09.2024, though it is passed on 05.02.2024. The inordinate gap between the date of passing of the order and date on which the same is served on the petitioner and is implemented by placing him in prison completely breaks the live link between the alleged acts on the basis of which the subjective satisfaction is recorded. The explanation offered by Respondents is that the petitioner was absconding, and therefore, the order could not be served on him and for the same reason, he could not be placed under preventive detention immediately after passing of the order. Section 7 of the MPDA provides for procedure to be adopted in case where the detenue is absconding. From the order of confirmation dated 07.11.2024 and also from the affidavit-in-reply filed by Respondent No.2, it does not appear that the Respondents have taken recourse to

the procedure contemplated by Section 7 of the MPDA. The learned APP confirmed that recourse to Section 7 of the MPDA was not taken. In such circumstances, we are unable to accept the explanation offered by the Respondents that the order could not be served and implemented immediately since the petitioner was absconding. We find favour with the submission advanced by the learned counsel for the petitioner that inordinate delay of 7 months and 10 days in between the date of order and date of service and implementation of the same completely disrupts the live link. The said reason by itself is good enough for quashing order of preventive detention.

11. We also find that there is an inordinate delay in the matter of processing the proposal. Respondent No.4 has recorded in-camera confidential statements on 26.12.2023 and 28.12.2023. Based on the said statements, he has forwarded the proposal to the Superintendent of Police, Beed on 02.01.2024. The Superintendent of Police has thereafter forwarded the proposal to Respondent No.2 after a period of 10 days i.e. on 12.01.2024. The order of preventive detention is passed thereafter on 05.02.2024 i.e. after a gap of 23 days. Thus, from the date of first step of initiation of the proposal till the date of passing of order a period of over one month has lapsed. There is no plausible explanation for this delay of one month. This by itself is enough to

demonstrate that there was no immediate pressing need for placing the petitioner under preventive detention.

12. We have also perused two confidential in-camera statements. The allegations in both the statements certainly have resemblance. Apart from this, the said statements taken on their face value do not demonstrate that the petitioner is a threat to public order. At the best, it may be inferred that he is criminal who creates law and order situation intermediately. The statements also cannot be pressed into service to curtail liberty of the petitioner by placing him under preventive detention.

13. In view of the reasons aforesaid, we are of the considered opinion that the action of preventive detention has resulted in violation of the fundamental right vested with the petitioner under Article 21 of the Constitution of India, in as much as, he has been deprived of right to life and personal liberty without following due process of law and further the action is also not strictly in accordance with procedure established by law. As a consequence of aforesaid, the guarantee of equality before law and equal protection of laws, which is also fundamental right under Article 14 of the Constitution of India is also breached. The order of preventive detention dated 05.02.2024 as also

confirmation order dated 07.11.2024 are liable to be quashed and set aside. Hence the following order :-

ORDER

I) The Writ Petition stands allowed.

II) The detention order dated 05.02.2024 bearing No.2024/RB-Desk-1/Pol-1/MPDA-03 passed by respondent No.2 as well as the approval order dated 14.02.2024 and the confirmation order dated 07.11.2024 passed by respondent No.1 stand quashed and set aside.

III) Petitioner - Nikhil S/o Ganesh Ranjwan 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

sga/