

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.132 OF 2017

Lahu Shrirang Gatkhal,
Age : 40 years,
Occ. Suspended Police Personnel,
r/o. Nath Nagar, Jawahar Colony,
Aurangabad,
presently in Central Jail,
Harsul, Aurangabad

..Petitioner

Vs.

1. The State of Maharashtra,
Through the Secretary,
Home Department (Special),
2nd Floor, Main Building,
Mantralaya, Mumbai
2. The Section Officer
Home Department (Special),
2nd Floor, Main Building,
Mantralaya, Mumbai
3. The Commissioner of Police,
Aurangabad
4. The Police Inspector,
Osmanabad Police Station,
Aurangabad

..Respondents

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Mr.H.D.Deshmukh, Advocate for petitioner

Mr.S.B.Yawalkar, APP for respondents

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**CORAM : S.V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**
RESERVED ON : APRIL 05, 2017
PRONOUNCED ON : APRIL 18, 2017

JUDGMENT (*PER SANGITRAO S. PATIL, J.*) :

Rule, returnable forthwith. With the consent of the learned Counsel for the petitioner and the learned APP for the respondents, heard finally.

2. The petitioner has challenged the order dated 10.10.2016 passed by respondent no.3 – Commissioner of Police, Aurangabad under sub-section (1), Section 3 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 (“M.P.D.A. Act”, for short) for detention of the petitioner under the said Act as well as the order dated 17.10.2016 passed by respondent no.1

approving the order dated 10.10.2016 passed by respondent no.3 and further the order dated 28.11.2016 passed by respondent no.1 under sub-section (1) of Section 12 of the M.P.D.A. Act confirming the order of detention dated 10.10.2016 and directing the detention of the petitioner for a period of one year from the date of detention.

3. The learned Counsel for the petitioner mainly challenges the order of detention of the petitioner on the following grounds :-

(i) Non-communication of the grounds of order of detention to the petitioner within five days from the date of detention;

(ii) Insufficiency of material to detain the petitioner and non-application of mind by respondent no.3 while passing the order of detention;

(iii) Non mentioning of the period of detention in the order.

4. The learned Counsel for the petitioner submits that as per sub-section (1), Section 8 of the M.P.D.A. Act, when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government. He submits that in the present case, the compliance of this provision had not been made by respondent no.3 till 15.10.2016. The order of detention was served upon the petitioner on 15.10.2016. The petitioner could not make a representation to respondent no.1 against the order of detention dated 10.10.2016. Respondent no.3 approved the order dated 10.10.2016 on 17.10.2016 itself, whereby he was informed that his right to make representation to

respondent no.1 has been terminated. The learned Counsel submits that the petitioner has been denied a valuable right to make representation against the order of detention. Therefore, the impugned order of detention dated 10.10.2016 is liable to be vitiated. In support of this contention, he relied on the judgment in the case of **Sunil s/o. Sadashiv Ghate Vs. The State of Maharashtra and ors., 2000(4)Mh.L.J. 386**, wherein it has been held that in case the detaining authority fails to inform the detenu of his right to make a representation against the order of detention, it would vitiate the order.

5. As against this, the learned A.P.P. submits that the order of detention dated 10.10.2016 was served on the petitioner on the same day and the reasons for passing that order along with the copies of the documents relied on by respondent no.3 were served on the petitioner on 14.10.2016 i.e. within five days from the date

of passing the detention order. The petitioner was aware of his right to make representation against the order of detention. As such, according to the learned A.P.P., there is no breach of sub-section (1) of Section 8 of the M.P.D.A. Act and no prejudice has been caused to the petitioner.

6. We have perused the original record of the proceedings conducted by respondent no.3. The record shows that the petitioner has received the order of detention on 10.10.2016 itself. The petitioner has signed in token of receipt of the said order on 10.10.2016 itself. His statement also has been recorded by respondent no.3 on the same day, wherein he states that the intimation in respect of his detention should be given to his brother namely, Ankush Shrirang Gatkhal and he should be provided with the reasons and other documents (in Marathi script) in respect of his detention. A notice was addressed to the brother of the petitioner intimating him about detention

of the petitioner from 10.10.2016 onwards, however, it seems that the brother of the petitioner refused to accept that notice and accordingly, a panchnama came to be prepared to that effect by the Serving Officer, which is on record.

7. The letter dated 14.10.2016 was addressed by respondent no.3 to the Superintendent, Central Prison, Aurangabad, requesting him to serve upon the petitioner the note containing the reasons for detention as well as other documents. The Officer of the Prison, accordingly, served the said documents upon the petitioner on 14.10.2016 itself. The petitioner has signed all the papers (Sr. Nos.1 to 263) on 14.10.2016 itself in token of receipt thereof. With this documentary evidence, the bare words of the petitioner, that the order of detention was not served on him immediately when he was detained and the documents supporting the said detention order, were not

served upon him within five days from the date of detention, cannot be believed.

8. The notice of detention of the petitioner was attempted to be served upon the brother of the petitioner, but he refused to accept the same. Therefore, it cannot be said that the intimation about detention of the petitioner was not given to his near relative.

9. Respondent no.3 has complied with the provisions of sub-section (1), Section 8 of the M.P.D.A. Act. The petitioner, thus, was afforded earliest opportunity of making representation against the order of detention passed by respondent no.3.

10. The learned Counsel for the petitioner submits that six crimes are shown to have been registered against the petitioner as mentioned in the grounds of detention. There was a Chapter case

under Section 107 of the Code of Criminal Procedure filed against the petitioner in the year 2009. He submits that out of six criminal cases, one each pertains to the years 2009, 2012, 2013 and 2014 and two pertain to the year 2016. There were two more crimes bearing nos.9 of 2012 and 11 of 2012 on the basis of which, Sessions Case Nos.354 of 2014 and 353 of 2014, respectively, were instituted. The petitioner has been acquitted by the Court in these cases. He then submits that the petitioner has been acquitted by the Court in the Criminal Case arising out of Crime No.96 of 2013, while the proceedings of Crime No.99 of 2016 came to be quashed by the Hon'ble High Court. He submits that false cases have been filed against the petitioner, however, respondent no.3 did not apply his mind properly and passed the detention order against the petitioner without there being sufficient material to pass the same. He submits that since the petitioner has given statement

against some of the Assistant Commissioners of Police, he has been victimised.

11. On the other hand, the learned A.P.P. submits that the petitioner was serving as a Police Constable and was indulged in the criminal activities. He was indulged in illegal excavation and transportation of sand. He was creating terror amongst the persons, who used to come in his way of doing illegal activities. Nobody dares to speak against him. Because of the fear of the petitioner, the witnesses did not dare to depose against him before the Court. Therefore, in some cases, he has been acquitted. The learned A.P.P. submits that respondent no.3 considered the criminal antecedents of the petitioner, in-camera statements of the witnesses as well as the allegations made against him by the informants in the reports on the basis of which, criminal cases were instituted against the petitioner and after applying his mind to the facts of the cases

registered against the petitioner, rightly passed the order of detention.

12. As seen from the grounds of detention of the petitioner, the following cases were registered against him, when the order of detention was passed :-

Sr. No.	Police Station	C.R. No. and under Section	Present status of the case
1	Osmanpura	38/2009 u/s. 294, 509 of IPC	Pending Trial
2	Satara	12/2012 u/s. 143, 353, 323, 504 of IPC., 135 of B.P. Act	Pending Trial
3	Georai, Dist. Beed	96/2013 u/s. 143, 147, 148, 323, 504, 506 of IPC; 3, 4, 5, 7/25 of Arms Act	Pending Trial
4	Chikalthana, Aurangabad Rural	118/2014 u/s. 307, 353, 323, 504, 506 of IPC	Pending Trial
5	Chikalthana, Aurangabad Rural	99/2016 u/s. 307, 323, 506, 34 of IPC	Under Investigation
6	Osmanpura	175/2016 u/s. 307 of IPC	Under Investigation

Preventive Action

Sr. No.	Police Station	Chapter Case number and Section	Status
1	Osmanpura	192/2009, u/s. 107 of Cr.P.C.	Released on final bond of Rs.5,000/-

13. In paragraph 4(i) of the petition, there is reference of Crime No.9 of 2012 registered in Satara Police Station, Dist. Aurangabad for the offence punishable under Section 395 of Indian Penal Code ("I.P.C.", for short) and Crime No.11 of 2012 registered in Police Station, Begumpura, for the offences punishable under Section 363, 341, 342, 353, 332 and 395 of I.P.C., which were registered against the petitioner, on the basis of which Sessions Case Nos.354 of 2014 and 353 of 2014, respectively, were instituted against him. The petitioner has produced the judgments delivered in those cases by the learned Additional Sessions Judge, Aurangabad on 15.05.2015. The said judgments make it clear that the witnesses did not state

anything adverse against the petitioner and therefore, the petitioner came to be acquitted. The petitioner has further produced the judgment dated 08.12.2016 passed in Sessions Case No.85 of 2016 by the learned Additional Sessions Judge, Beed, arising out of Crime No.96 of 2013, wherein also, none of the prosecution witnesses deposed against the petitioner and therefore, he came to be acquitted. The copy of the order dated 21.12.2016 passed in Writ Petition No.1596 of 2016 by this Court has been produced by the petitioner, which shows that consequent upon amicable settlement between the petitioner and the informant, Crime No.I-99 of 2016 registered against the petitioner in Chikalthana Police Station, Aurangabad for the offences punishable under Sections 307, 323, 506 read with Section 34 of I.P.C. came to be quashed and set aside. Two cases arising out of Crime No.118 of 2014 and 175 of 2016 seem to be still pending against the petitioner.

14. The grounds mentioned in the judgments and orders, whereby the petitioner has been acquitted or the criminal proceeding has been quashed and set aside against him in Crime No.99 of 2016, support the contention of respondent no.3 that the witnesses do not dare to state anything against the petitioner. From this factual position, an inference can be drawn that either the prosecution witnesses were won-over or pressurised by the petitioner. It does not appear to be natural and probable that all the aggrieved persons, who lodged reports against the petitioner, would come before the Court simply to say that the reports were lodged because of some misunderstanding. In the circumstances, from the results of these cases, which are in favour of the petitioner, it cannot be said that respondent no.3 passed the order of detention without application of mind and without sufficient evidence, with a view to victimise the petitioner.

15. The contention of the learned Counsel for the petitioner that since the petitioner gave statement against some Assistant Commissioners of Police, against whom enquiry was being held for sexual harassment of a lady Police Constable, the petitioner has been victimised. We do not find any force in this contention. The copy of the representation dated 21.10.2016 made by the petitioner is on record. There is no whisper in the said representation about victimisation of the petitioner on the above mentioned ground. This ground seems to have been taken up by way of afterthought.

16. There are in-camera statements of two witnesses who have specifically stated as to how the petitioner behaved with them high-handedly creating fear in their minds. It is common knowledge that many persons go on suffering torture of a person having muscle power instead of lodging

reports to the Police Station, which sometimes may invite wrath of such a big-shot. Therefore, only because reports have not been lodged against such person, by the persons who know the language of silence only, it cannot be said that such person needs no action as has been taken against the petitioner. We have perused the record disclosing the criminal activities of the petitioner. We are satisfied that the said record is sufficient to invite action of detention of the petitioner under the provisions of sub-section (1), Section 3 of the M.P.D.A. Act.

17. The learned A.P.P. cited the judgments in the cases of **Magarpansingh Pimple Vs. State of Maharashtra, 2006(1) BCR(CRI)88** and **Adil Chaus s/o. Hamad Chaus Vs. The Commissioner of Police, Aurangabad and ors., 2012 All M.R.(Cri.) 1123**, wherein it has been held that if the detaining Officer is satisfied that with a view to preventing

any person from acting in any manner prejudicial to the maintenance of public order, it is necessary to detain him he may make an order directing that such person be detained. The order of detention based on subjective satisfaction of the detaining Officer cannot be interfered with in exercise of writ jurisdiction. The learned APP further cited the judgment of the Hon'ble Apex Court in the case of **Abdul Sathar Ibrahim Manik:Ibrahim Shareef M. Madhafushi Vs. Union of India, 1992(1)SCC 1**, wherein it has been observed that the detention cannot be invalidated on the ground that there were no antecedents. It being a question of satisfaction of the detaining authority on the basis of the material placed before him, even a solitary incident which has been detected may speak volumes about potentialities of the detenu and merely on the ground that there were no antecedents, the detention order cannot be quashed.

18. The learned Counsel for the petitioner submits that the period of detention has not been mentioned in the detention order dated 10.10.2016 and therefore, it is liable to be quashed.

19. The learned A.P.P. controverts this submission by relying on the decision in the case of **Amar alias Amarsingh Gulabsingh Rathod Vs. State of Maharashtra and anr., 2003 All M.R.(Cri.) 1671**, wherein it has been held in paragraph 11, that the order of detention is not vitiated on the ground of failure on the part of the detaining authority in specifying the period of detention in the order of detention.

20. Moreover, in the final order dated 28.11.2016 passed by respondent no.1, there is specific mention that the detention of the petitioner would be for a period of one year from the date of his detention i.e. 10.10.2016. Therefore, the detention order passed by respondent

no.3 would not stand vitiated on the ground that there is no mention of specific period of detention.

21. The learned Counsel for the petitioner submits that as per Section 13 of the M.P.D.A. Act, the maximum period for which any person may be detained in pursuance of any detention order made under this Act, which has been confirmed under Section 12, shall be 6 months from the date of detention. This submission cannot be accepted. Earlier, the period of detention was 6 months, however, the words "12 months" were substituted for the words "6 months" by the Maharashtra Act No.24 of 1988. Thus, the maximum period would be 12 months and not 6 months.

22. Considering the above facts and circumstances of the case, we do not find any substance in the Writ Petition. The impugned order of detention as well as the orders of approval and

confirmation thereof, need no interference. The Writ Petition is liable to be dismissed and accordingly, dismissed. The Rule is discharged.

Sd/-

[SANGITRAO S. PATIL, J.]

kbp

Sd/-

[S.V. GANGAPURWALA, J.]