

Sharayu

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 2160 OF 2017

Aaba Radhakishan Sarode

...Petitioner

Versus

**1. The State of Maharashtra,
(Through the Secretary to the Govt.
of Maharashtra (Preventive
Detention, Home Department
(Special), Mahtralaya,
Mumbai – 400 032.**

**2. The Commissioner of Police,
Pune City, Pune.**

**3. The Superintendent of Jail,
Mumbai Central Prison, Mumbai.**

...Respondents

Mr. Ganesh Bhujbal, i/b Mr. Vishal L. Kalekar, for the Petitioner.

Mr. J.P. Yagnik, APP for the Respondents.

**CORAM : ABHAY S. OKA & AND
RIYAZ I. CHAGLA, JJ.**

DATE : 13 September 2017

ORAL JUDGMENT : [Per Abhay S. Oka, J.]

1. By this Petition under Article 226 of the Constitution

of India, the Petitioner has taken an exception to the order dated 19 February 2017 passed by the Commissioner of Police in exercise of the powers under 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 (for short "***the said Act***"). By the said order, he has been ordered to be preventively detained.

2. The learned Counsel appearing for the Petitioner pointed out the grounds of detention. The Detaining Authority has relied upon two in-camera statements of the witnesses and three offences registered at Swargate Police Station, which are mentioned at Sr.No. 5 to 7 in paragraph 3 of the grounds of detention. He submitted that firstly, the Petitioner was arrested at 23.54 hrs. on 7 January 2017 in connection with C.R. No. 8 of 2017 registered at Swargate Police Station on 7 January 2017. While he was in custody, on 8 January 2017, C.R.No. 10 of 2017 has been registered at Swargate Police Station on the

basis of which, he has been shown as arrested on 10 January 2017 at 17.45 hrs. He pointed out that on 9 January 2017, he was shown as arrested in connection with C.R.No. 10 of 2017 registered with Swargate Police Station on 26 August 2016. He submitted that there is no live link between the incident dated 26 August 2016 and the object of passing the order of preventive detention. He submitted that C.R.No. 10 of 2017 has been registered, when the Petitioner was already in custody in connection with C.R.No. 8 of 2017. Inviting our attention to in-camera statements of the two witnesses 'A' and 'B', he urged that there was a delay of two days in recording the said statements. He submitted that the subjective satisfaction of the Detaining Authority stands vitiated.

3. We have given careful consideration to the submissions. We may make it clear that in our jurisdiction under Section 226 of the Constitution of India, we cannot go into the merits of the allegations made against the Petitioner, but we are examining the decision making process in the context of the

rights of the Petitioner under Articles 21 and 22 of the Constitution of India. We have carefully perused the grounds of detention. C.R.No. 8 of 2017 has been registered against the Petitioner at Swargate Police Station on 7 January 2017 on 23.54 hrs. The offences alleged are punishable under Sections 392, 504 and 506(2) of the Indian Penal Code read with Section 4/25 of the Arms Act, 1959 as well as 37(1)/135 of the Maharashtra Police Act, 1951. The incident in the subject matter of this offence has already taken place on 20.30 hrs. The instance of the subject matter of C.R.No. 10 of 2017 has allegedly taken place at about 20.45 on 7 January 2017. The offences alleged are under Sections 353 and 427 of the Indian Penal Code read with Section 142 of Maharashtra Police Act, 1951. In connection with this offence, the Petitioner was shown arrested on 10 January 2017 at 17.45 hrs., as he was already in custody in connection with C.R.No. 8 of 2017. Meanwhile, on the basis of C.R.No. 289 of 2016 registered with Swargate Police Station for the offence punishable under Sections 143, 147, 148, 149, 427 and 324 of Indian Penal Code read with Section

37/135 of the Maharashtra Police Act, 1951, he was shown arrested on 9 January 2017 at 7.30 p.m. We are therefore, find no merit, as far as first contention raised by the learned Counsel appearing for the Petitioner is concerned.

4. In-camera statements of witnesses A and B have been recorded within two days of the dates of incidents mentioned therein. The said delay by itself is not fatal. Moreover, in the grounds of detention, reliance is placed on the fact that an order of externment dated 29 April 2016 was made against the Petitioner on 29 April 2016 for a period of two years. Third offence registered at Swargate Police Station, Pune appears to have been allegedly committed during the period when the order of externment was in force.

5. On the basis of the aforesaid material, the Detaining Authority has recorded that the Petitioner is a dangerous person within the meaning of Clause b(1) of Section 2 of the said Act.

6. After having perused the grounds of detention and the relied upon documents which are placed on record, we find that there was a material on record on the basis of which the subjective satisfaction has been recorded by the Detaining Authority. The in-camera statements have been based on incidents of 31 December 2016 and 2 January 2017. The incidents subject matter of C.R. Nos. 8 and 10 of 2017 are of 7 January 2017. Considering the nature of allegations and propensity of the Petitioner, it cannot be said that the live link between the incidents and the need of passing an order of detention was already snapped when the impugned order was made on 19 February 2017.

7. Accordingly, we find no merit in the Petition and the same is rejected.

8. Rule is discharged with no order as to costs.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]