

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4180 OF 2017

Aalam Yosuf Shaikh
Age 24 years, residing at Shaikh Bldg.
Near Varun Hotel, Kasarwadi
Pune.

.... Petitioner

- Versus -

1. The Commissioner of Police
Pune.

2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra
Home Department, Mantralaya
Mumbai)

3. The Superintendent
Nashik Road Central Prison
Nashik.

4. The Secretary
Advisory Board for MPDA
Constituted u/s. 9 of MPDA Act
C/o. Home Department (Spl)
Mantralaya, Mumbai.

.... Respondents

Mr. Udaynath N. Tripathi with Ms Jayshree Tripathi
for the Petitioner.

Mrs. M.H. Mhatre, Addl. Public Prosecutor, for the
Respondent-State.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : DECEMBER 15, 2017

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. By this petition under Article 226 of the Constitution of India, the petitioner/detenu challenges detention order dated 15-9-2017.

2. Mr. Tripathi, learned Advocate appearing for the petitioner, would submit that the petitioner has challenged the order of detention on several grounds. He would restrict his arguments to two grounds, the first of which is to be found at page 10, ground (i) of the petition.

3. Mr. Tripathi would submit that on a perusal of this ground and the explanation that is sought to be given by the respondents on affidavit, particularly at pages 64 & 65 of the paper-book, would denote that, firstly, the subjective satisfaction is based on an incident which occurred, on the own

showing of the Detaining Authority, in December, 2016. The crime was registered being C.R. No.440 of 2016 with Bhosari Police Station, Pune on 3-12-2016. The offences alleged were punishable under Sections 324, 363, 323, 504, 506 & 34 of the Indian Penal Code ("IPC" for short). The detenu was put under arrest on 10-2-2017. The allegation is that the detenu was produced before the Competent Court and it remanded him to police custody till 23-2-2017, but on 10-2-2017 itself an application for bail was made before that Court and on the same day the detenu was released on bail. The charge-sheet of the said offence's further investigation was filed on 16-8-2017. Hence, according to Mr. Tripathi, for an incident of December 2016, to pass an order of detention on 15-9-2017 would denote that the authorities were completely casual, lethargic and did not deem it fit and proper to pass an order of detention although the detenu is alleged to have unleashed a reign of terror and his criminal activities affected the even tempo of life. Thus, there is no sense of urgency much less any expediency in passing an order of detention. After inviting our attention to the

object and purpose of the statute like 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 (“the MPDA Act” for short), Mr. Tripathi would submit that compounded with all the above, the Detaining Authority says that the subjective satisfaction is based on certain incidents and which have occurred after December, 2016. In relation to that Mr. Tripathi would submit that the first incident is of March, 2017, the second is of May, 2017 and the third and the last one is of July, 2017. However, on the own showing of the Detaining Authority, in-camera statements have been recorded in relation to these incidents not promptly or immediately but on 12, 14 and 16-8-2017. The Detaining Authority has failed to explain as to why this delay has occurred in relation to recording these in-camera statements and when the incidents have occurred in March and May 2017. All the more, passing an order of detention based thereon, on 15-9-2017, vitiates the subjective satisfaction reached by the

Detaining Authority. Thus, the delay in recording these in-camera statements has not been satisfactorily explained. On the other hand, realising that an order of detention cannot solely be based on the incident or offence of December, 2016, belatedly in September, 2017 the Detaining Authority has ensured that three in-camera statements are recorded subsequently and that is to only book the detenu under the MPDA Act. Mr. Tripathi would submit that the order of detention must, therefore, be quashed and set aside on the ground of delay itself.

4. In support of his contentions, Mr. Tripathi would rely upon the Judgment of the Hon'ble Supreme Court in the matter of **Pradeep Nilkanth Paturkar v. S. Ramamurthi and others**, reported in AIR 1994 SC 656, and the Judgments of Division Bench of this Court in the matters of **Austin William Luis Pinto v. Commissioner of Police, Greater Mumbai & Others** {Criminal Writ Petition No.1724 of 2003}, dated 10-9-2004, **Parvez Faizulla Khan v. Shri A.N. Roy, Commissioner of Police, Greater Bombay & Others** {Criminal Writ Petition No.1018 of 2007}, dated 8-2-2008, and finally the Judgment in

Mrs. Mrunali Virendra Lonare v. Commissioner of Police & Others {Criminal Writ Petition No.245 of 2014}, dated 18-3-2014.

5. On the other hand, Mrs. Mhatre in meeting this ground would submit that in relation to the incident of December, 2016, the petitioner was enlarged on bail in February, 2017. Since he was enlarged on bail and the investigations were hampered by his presence in the locality, the charge-sheet could be filed only on 16-8-2017. The detenu was such a dangerous person that even after his enlargement on bail when serious incidents of extortion, intimidation and threats occurred in the locality in the month of March, May and July, 2017, the witnesses, though assured, were not coming forward to give their statements. The in-camera statements could be recorded only after repeated assurances of safety and security were given to these witnesses by senior police officials. Such was the reign of terror and unleashed by the detenu that these witnesses came forward to record their statements and they were promptly recorded in August, 2017. Thereafter, on

15-9-2017 the order of detention has been passed. Thus, the subjective satisfaction is not vitiated by enormous and unexplained delay. Once the delay has been properly explained, then, the detention order cannot be quashed and set aside on this ground. Mrs. Mhatre places heavy reliance on a Division Bench Judgment of this Court, delivered at Nagpur, in the case of **Amar alias Amarsingh Gulabsingh Rathod v. State of Maharashtra & Anr.** {Criminal Writ Petition No.94 of 2003}, dated 17-4-2003. She would submit that **Paturkar's** case (supra) has been duly considered and distinguished by assigning cogent reasons and particularly when there are repeated incidents which disturb the even tempo of life and disrupt public order and peace in the locality. For these reasons, she would submit that the order of detention be sustained and the writ petition should be dismissed.

6. For properly appreciating these contentions, we must, at the cost of repetition, emphasise that the order of detention in this case is passed under the MPDA Act. This is an act to provide for preventive detention of Slumlords,

Bootleggers, Drug-offenders, Dangerous Persons, Video Pirates, etc., for preventing their dangerous activities prejudicial to the maintenance of public order. The State was aware that public order was adversely affected every now and then by the dangerous activities of certain persons. These persons had by their criminal activities unleashed a reign of terror. The Act therefore defines the expression “acting in any manner prejudicial to the maintenance of public order” in Section 2 Clause (a). In the case of persons like the detenu in the present case (a dangerous person), when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order, then, he is said to have acted in a manner prejudicial to the maintenance of public order. There is an explanation but we are not concerned with the same for in Clause (b-1), inserted by Maharashtra Act 29 of 1996, the term “dangerous person” is defined. An order of detention can be made in exercise of the powers conferred by Section 3. The State Government has a discretion, if satisfied with respect to

any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained. The sub-section (2) of Section 3 enables the State, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, to make an order in writing, directing that during such period as may be specified in the order, the powers conferred by sub-section (1) need to be exercised. The consequences of the order of detention having been made are then enlisted in sub-section (3) of Section 3 and thereafter there is a procedure to execute the detention order.

7. Bearing in mind the object and purpose sought to be achieved by such an enactment and with a view to curb or prevent a dangerous person from acting in any manner prejudicial to the maintenance of public order, the law demands a certain degree of expediency and urgency being exhibited by the authorities.

8. In the present case, the petitioner is a detenu by himself. He contends that the order of detention is vitiated simply because the subjective satisfaction therein is based on C.R. No.440 of 2016.

9. On the own showing of the Detaining Authority, while recording the subjective satisfaction, it is stated that after the incident occurred on 2-12-2016 at around 9:00 hours and the complainant residing near a Stadium on Manikbaug, Nehrunagar, Pimpri, Pune came to the police station, an FIR was registered on 3-12-2016 and offences alleged under Sections 324, 363, etc., were mentioned therein. The petitioner was arrested on 10-2-2017. He was produced before the Judicial Magistrate, First Class, Pimpri, Pune on 10-2-2017. On that day itself he applied for bail. Though police custody remand was granted till 23-2-2017, the order of detention itself recites that the petitioner/detenu was enlarged on bail. The order of detention itself recites that investigations were concluded and the charge-sheet was filed on 16-8-2017 and that case is pending.

10. Then in para 5 of the order of detention it is stated that, after considering the seriousness of the offences described above, Police Inspector (Crime) of Bhosari Police Station, Pune, conducted a confidential inquiry into the petitioner's criminal activities and that inquiry revealed that he is a dangerous person, he has created a reign of terror amongst the residents of Kasarwadi where he stays as also residents of the adjoining areas. Since he is a dangerous person, nobody dares to complain against him openly fearing that they would be harmed and therefore there is a threat to their life and property. None comes forward even if summoned to give evidence against the petitioner in Court or before any open forum. Once his criminal activities were disclosed by some residents, the in-camera statements are recorded.

11. The first incident is stated to have taken place in the month of March but in the detention order there is no date much less any year mentioned of this first incident. According to the witness, the incident is that the petitioner illegally grabbed some property in Kasarwadi area by evicting tenants. He moves

along with five to six associates with arms such as pistol, sword, sattur, etc., and threatens small traders and businessmen and extorts money from them. The moment people see him, they shut their shops and doors due to his terror. The second incident is of the first week of May, 2017 and narrated in para 5.2, running page 21. The third incident is of July, 2017.

12. Surprisingly, in each of these three cases and which are stated to be very serious incidents prejudicially affecting the maintenance of public order, the common thread is the petitioner extorts monies from shop-keepers, businessmen and petty traders, he terrorises the residents of the area, people have to meet his illegal demands else the residents cannot go ahead with their normal day-to-day business activities. If that was the case, we would expect and which expectation is indeed reasonable that the authorities act with some promptitude. They would not waste their time ordinarily and allow more incidents to occur and after the first one occurring allowed to have occurred, as stated, now in March 2017, there appears to be no justification to wait and to give an assurance of safety and

security to the in-camera witness, until he came forward to record his statement in August, 2017. In the affidavit in reply itself it is stated that in relation to the incident which occurred first in March, 2017, the statement was recorded on 12-8-2017. The second in-camera statement referring to the incident of May, 2017 is recorded on 14-8-2017 and the third incident which occurred in July, 2017, the in-camera statement is recorded on 16-8-2017. We can understand that there was some delay but which can be said to be reasonable insofar as the incident of July, 2017 is concerned but we see no reason as to how if such a serious incident, as is narrated and referred by us occurred in March, 2017, the authorities waited till 12/14-8-2017 to record the in-camera statements. Thus, there is substance in the criticism of Mr. Tripathi that the Detaining Authority was aware that it is difficult to base its subjective satisfaction and pass a detention order only by relying upon C.R. No.440 of 2016, registered at Bhosari Police Station, Pune and in relation to an incident occurring on 2-12-2016. The order of detention was being passed in the month of September, 2017

and to be precise, on 15-9-2017. The delay in passing such an order and a gap of nearly nine months and more after the incident could not have been justified under ordinary and normal circumstances if the order of detention had been challenged in the Court. That is how Mr. Tripathi would submit that the in-camera statements were recorded but in recording them as well the authorities did not exhibit any urgency. They were indeed, as rightly criticised, casual and lethargic and allowed an allegedly dangerous person to continue indulging in criminal activities which were prejudicial to the maintenance of public order. The affidavit in reply, at running pages 64 & 65, in para 14, virtually gives no explanation other than a vague statement therein that the witnesses were not willing to come forward to make any complaint openly against the petitioner due to his reign of terror, about the delay from March to August and from May to August, 2017.

13. Thus, the only incident then remains after one rules out these in-camera statements is the statement recorded in relation to the crime committed within the jurisdiction of

Bhosari Police Station. There the petitioner was enlarged on bail way back in February, 2017. Therefore, some material had to be gathered to make an order of detention and that is how the authorities proceeded, is the justified and valid criticism of Mr. Tripathi.

14. Precisely, this practice has been deprecated in the case of Paturkar (supra). The Hon'ble Supreme Court found that there were five criminal cases, three of the year 1990 and the remaining two of January and February, 1991. It found that in respect of the five incidents referred to in the grounds of detention, as mentioned in para 7, witnesses "A" to "E" have been examined in the later part of March, 1991, that is long after the detenu had been enlarged on bail in all the five criminal cases. Pertinently, the order of detention in that case was passed under the same law on 26-7-1991. The Supreme Court, therefore, found that the detention order was passed five months and eight days from the date of registration of the last case and more than four months from submission of the proposal. The Supreme Court was disturbed by the fact that

statements of the in-camera witnesses were recorded only after the detenu became successful in getting bail. Thus, the delay in making the detention order after the detenu was allowed to be enlarged on bail. But even thereafter what disturbed the Supreme Court was that the authorities did not take steps in relation to the incidents until the detenu was enlarged on bail. Here as well we find that though there was a continuing reign of terror, threats of extortion of money repeatedly given, the residents living in constant fear and the even tempo of life being disturbed that the Detaining Authority did not deem it fit and proper to detain the petitioner until the petitioner's enlargement on bail. Even after enlargement on bail, we find that the attitude was no different but more casual. They allowed incidents after incidents to take place but did not instil any confidence in the persons affected so as to enable them to give their statements even in-camera. Hence, the delay in making the detention order in the present case vitiates the subjective satisfaction reached therein. We do not multiply the decisions for we find that the facts in the present case are similar to that of **Austin William's**

(supra). There as well this Court found after the first incident which had occurred, there was enlargement on bail. A confidential inquiry was started by the police after enlargement of the detenu therein on bail. The statements of the witnesses were recorded in July, 2003. The incidents had taken place in April, 2003. The proposal was submitted on 26-7-2003 and the detention order was passed on 30-9-2003. Thus the criticism that in-camera statements were merely recorded to fill-in the gap, as in the instant case between December, 2016 to August, 2017, was accepted. That is how Paturkar's case (supra) was relied upon.

15. Equally in the third case which has been cited, namely, **Mrunali Virendra Lonare** (supra) as also **Parvez Faizulla Khan** (supra), on similar facts this Court found that gap of eight months between the date of passing of detention order and the date of incidents is enormous delay and which remains unexplained. That would vitiate the subjective satisfaction and this conclusion is reached in **Mrunali Virendra Lonare** (supra).

16. In Parvez Faizulla Khan (supra), something as the grounds of detention were served which referred to C.R. No.172 of 2006 in which the detenu therein was arrested on 27-9-2006 but enlarged on bail on 20-12-2006. He could not avail of bail till 9-1-2007. There is an order of detention passed in that case on 1-3-2007. Thus, when the person could not avail of bail, the authorities generated and managed two statements of unknown witnesses and based on that they made the order of detention and sought to justify it by urging that the delay is not enormous or unexplained. Even in Parvez Faizulla Khan (supra) the order of detention was set aside on the ground of delay. Thus, repeated warnings from the Judgments delivered by the Supreme Court and this Court have had no effect on the Detaining Authorities. It is because of their lethargic and casual attitude that criminal activities are not being curbed despite stringent provisions and enactment like the MPDA Act. If the orders of detention are going to be passed in such a cavalier manner, without bothering to record subjective satisfaction on cogent and relevant materials and without taking prompt

measures, we have no doubt in our mind that the object and purpose of the law is defeated and we are sorry so to say, by the Detaining Authorities themselves.

17. In passing of this Judgment and Order we should be fair in making a reference to the Judgment relied upon by Mrs. Mhatre in **Amarsingh Gulabsingh Rathod** (supra). In that case, the Division Bench found that there was no delay much less inordinate, resulting in laches. It found that in-camera statements were recorded. When the in-camera statements were recorded in relation to incidents which occurred after the detenu was enlarged on bail, the Division Bench found, on facts, that the detenu continued to indulge in prejudicial activities and in relation to which in-camera statements were recorded on 21-8-2002. Thereafter, a complaint was received from the residents of Parvati Nagar. The authorities, therefore, sent a proposal to the Detaining Authority on 25-9-2002 and the Detaining Authority not only based its subjective satisfaction on the criminal case in which the detenu was enlarged on bail but also on the in-camera statements and the complaint received

from the residents of Parvati Nagar, all of which form part of the proposal. That is why the argument on delay was rejected. On facts, every Judgment including in Paturkar (supra) was distinguished accordingly. We do not see how this Judgment can be of any assistance to the respondents.

18. As a result of the above discussion, it is not necessary to consider the challenge to the detention order in question on other grounds though urged by Mr. Tripathi. On the first ground itself we find that the detenu is entitled to the relief. That is how we allow this writ petition. We quash and set aside the order of detention, dated 15-9-2017. We direct that the detenu be released forthwith if not required in any other case. Rule is accordingly made absolute.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)