

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5284 OF 2017

Rashid Shaukat Husain Sayyed @ Jagga
Adult, Indian Inhabitant of Mumbai
Residing at Plot No.14/F/6, Road No.3,
Shivaji Nagar, Govandi, Mumbai-400 043.

.... Petitioner

- Versus -

1. The State of Maharashtra

2. The Secretary,
Hon'ble Advisory Board,
C/o Desk Officer, Desk-10,
Home Department (Special),
Mantralaya, Mumbai-400 032.

3. The Commissioner of Police
for Gr. Mumbai, having office
Opp: Arthur Crawford Market,
Mumbai-400 001.

4. The Senior Inspector of Police,
Shivaji Nagar Police Station,
Govandi, Mumbai.

5. The Superintendent,
Nasik Central Prison, Nasik,
Maharashtra.

.... Respondents

Mr. U.N. Tripathi with Mr. S.K. Ali & Mr. A.A. Siddiquie
i/by A.A. Siddiquie & Associates for the Petitioner.

Ms M.H. Mhatre, Addl. Public Prosecutor, for the
Respondents.

**CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : MARCH 01, 2018

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

1. By this petition under Article 226 of the Constitution of India, the petitioner is challenging an order of detention issued by respondent No.3 under 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). The order of detention is dated 12-9-2017.

2. In the order of detention the Detaining Authority records the subjective satisfaction by observing that the activities of the detenu and highlighted in paras 2, 3 and 4 of the detention order would indicate that he was involved in criminal cases. The criminal cases are set out in a Table. After that, it is stated that in order to curtail the criminal activities, some

preventive actions were taken, including an order of detention dated 22-9-2014.

3. It is stated that since the detenu was released on bail in C.R. No.202 of 2014, that detention order could not be executed and with great difficulty the detenu was traced out, the order of detention was executed and he was taken in custody.

4. In paragraph 5, the order of detention refers to the recent incidents and that is a case of threatening people and spreading terror within the jurisdiction of Shivaji Nagar Police Station. The externment proceedings also had no impact. There was a wedding ceremony and where the detenu came at the venue, drunk and was abusive. Pertinently, all this resulted in the registration of a non-cognizable case at the Shivaji Nagar Police Station on 26-4-2017.

5. Then, on 10-5-2017, an incident took place, where an offence was registered, punishable under Sections 307, 452 and other provisions of the Indian Penal Code r/w Sections 4 & 25 of the Indian Arms Act. That was registered at Shivaji Nagar

Police Station vide C.R. No.186 of 2017. The detenu was proceeded against in this case as well and on arrest, he was produced before the Court of the Metropolitan Magistrate, Kurla. The detenu was remanded to police custody till 5-6-2017 and on that date he was remanded to magisterial custody till 19-6-2017. An application for bail was filed, but as the detenu was remanded to judicial custody and which was extended till 7-8-2017, now, the charge-sheet has been filed on 7-8-2017.

6. However, after this incident is narrated, the order of detention refers to two in-camera statements and which in-camera statements narrate the incidents of April and May, 2017. The first in-camera statement of Witness "A" was recorded on 6-7-2017, which refers to the incident of the second week of May, 2017. The second in-camera statement of Witness "B" was recorded on 9-7-2017.

7. Based on the above, the Detaining Authority records a satisfaction that the detenu is a dangerous person within the

meaning of the said expression and defined in the MPDA Act. He has unleashed a reign of terror, he is a perpetual danger to the society at large in several localities adjoining to and within the jurisdiction of Shivaji Nagar Police Station. The Detaining Authority says that, on a careful perusal of these materials he was satisfied that the detenu is acting in a manner prejudicial to the maintenance of public order. It is in these circumstances that, in para 7, it is stated that though the detenu is not granted bail in connection with Shivaji Nagar Police Station C.R. No.186 of 2017, but that offence being not punishable with death or life imprisonment, in future he can make an application for bail and get it. All the more, because he has already been charge-sheeted. After becoming a free person and being a criminal, he was likely to indulge in activities prejudicial to the maintenance of public order in future and that with a view to prevent him from acting in such a prejudicial manner, it is necessary to detain him.

8. It is such a detention which is challenged in this petition on several grounds.

9. After the writ petition was filed, on an application made for amendment and obtaining the leave to amend, the petitioner/detenu has added grounds/paras 24A, 24B and 24C at pages 10-A to 10-C of the petition.

10. Out of these newly added grounds, paragraph Nos.24A and 24B are pressed.

11. The counsel for the petitioner, after referring to these grounds, would submit that the delay of four months in passing the detention order is fatal. There has been no explanation offered for this delay in making the detention order, beyond a routine one. That routine explanation and to be found in the additional affidavit of the Detaining Authority, according to the learned counsel, far from assisting the respondents, would militate against the stand taken by them. He would invite our attention to this affidavit, styled as additional affidavit and particularly the contents of paragraph No.2, running pages 3 and 4 of the affidavit.

12. It is urged by the counsel and relying upon

Judgments of this Court that, in view of the inordinate delay of four months in making the detention order, the live link is snapped. The very object and purpose of passing an order of preventive detention is, therefore, frustrated and defeated. The petition, therefore, be allowed.

13. On the other hand, the learned APP heavily relies on the additional affidavit to submit that there is no merit in these added grounds of challenge. Firstly, no hard and fast rule can be laid down and, according to the learned APP, every case must be considered on its facts and circumstances. In the present case, bearing in mind the antecedents of the detenu and his indulging continuously in criminal acts, the Detaining Authority was of the opinion that there are adequate materials even after the earlier detention under the very same enactment. Those materials refer to serious cases of assault and extortion which have been reported against the detenu. He unleashed a reign of terror and to this extent that there are two in-camera statements which have been recorded. After those in-camera statements were recorded, promptly a proposal was prepared. That proposal then

was forwarded to the authorities and competent to make an order of detention, but as per the usual practice this proposal has to pass through several hands. There has to be an Inquiry and scrutiny of all the materials that are gathered, collated and placed before the Detaining Authority. This ordinary and normal procedure takes some time. Merely because it has taken time, does not mean that the detention is vitiated, for the subjective satisfaction has clearly referred to the nature of the activities which have a continuity in them. Given the nature of the activities and the serious acts which are committed and are attributed to the detenu and leading to punishable offences, it is her argument that we should not interfere with the order of detention and the petition be dismissed.

14. Reliance is placed on a series of Judgments and commencing from the case of **Olia Mallick alias Oliruddin Mallick Vs. The State of West Bengal**, reported in (1974) 1 SCC 594, **Hasan Khan Ibne Haider Khan Vs. R.H. Mendonca and others**, reported in (2000) 3 SCC 511, **Shri Nagnarayan Saryu Singh Vs. Shri A.N. Roy & Ors.**, reported in 2006 All

M.R. (Cri.) 2147, and finally an unreported Judgment and Order, dated 3-5-2017, in Criminal Writ Petition No.3945 of 2016 **{Krishna Hari Godambe Vs. The Commissioner of Police, Mumbai & Ors.}**.

15. For properly appreciating the rival contentions, we must make a reference to the MPDA Act. That Act has been referred on several occasions in numerous Judgments but we would only like to emphasise that its object is of preventive detention of slumlords, bootleggers, drug-offenders, dangerous persons, video pirates, sand smugglers and persons engaged in black-marketing of essential commodities for preventing their activities prejudicial to the maintenance of public order. As the law deals with activities prejudicial to the public order, committed now and then, and styled as dangerous, of certain persons who are known as slumlords, bootleggers and drug-offenders, having regard to the resources and influence of the persons by whom, the large scale on which, and the manner in which, the dangerous activities were being clandestinely organised and carried on in violation of law by them, and

particularly in the urban areas that circumstances existed, based on which satisfaction is recorded of taking immediate action to have a special law in the State to provide for preventive detention of these three classes of persons and for matters connected therewith. An order of detention will be made in terms of the power conferred by the law with all promptitude and seriousness.

16. There is an expediency demanded by the law inasmuch as the definitions themselves outline what is “acting in any manner prejudicial to the maintenance of public order”. The definition in Clause (a) of Section 2 refers to specific persons, namely, slumlord, bootlegger, drug-offenders, dangerous person, sand smuggler, person engaged in black-marketing of essential commodities and video pirate. It is clear that in the case of a dangerous person, the definition says that, when he is engaged, or is making preparations for engaging, in any of the activities as a dangerous person, which may affect adversely, or are likely to affect adversely, the maintenance of public order. A dangerous person is defined in Section 2(b-1) to mean a person,

who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959. Pertinently, Chapters XVI and XVII of the Indian Penal Code deal with distinct offences. While Chapter XVI deals with offences affecting the human body, Chapter XVII deals with offences against property. The order of detention can be made in terms of Section 3(1) of the MPDA Act on the satisfaction that the activities of the person are prejudicial to the maintenance of public order.

17. In the present case, the narration of the incidents and cases against the detenu would reveal that the Detaining Authority referred to his past. The past is referred by pointing out that he was involved in criminal cases. They are tabulated. The criminal cases are of the year 2014, and prior to that in 2009 there was an order of externment. In the year 2010, he was detained under the MPDA Act, but later on the detention

order was revoked by the Advisory Board. In the year 2014, detention order under the MPDA Act was issued and which detention was undergone but there was a defect in executing the detention order. Then, the complaint of one Rashid Sikandar Sayyed is referred in paras 5(a), 5(a)(i) and 5(a)(ii) and C.R. No.186 of 2017 was registered on 11-5-2017. Pertinently, the Detaining Authority says that the detenu is in custody in connection with this offence but the charge-sheet has been filed on 7-8-2017 after which the detenu is likely to be released on bail, though not released.

18. The subjective satisfaction is not based only on this material but there is a reference to two in-camera statements, recorded on 6-7-2017 and 9-7-2017.

19. It is in relation to these two in-camera statements that the proposal was drawn up and forwarded so as to enable the Detaining Authority to record the subjective satisfaction.

20. The argument before us is, when these two statements were forwarded and if the detention order was to be

based thereon, that detention order should have been made with the required degree of expediency and promptitude but there is a delay in recording of these in-camera statements which by themselves refer to the past incidents of April and May, 2017. However, the order of detention is made on 12-9-2017. This delay vitiates the subjective satisfaction as there is no nexus with the criminal activities of the detenu or the live link that is sought to be established is completely snapped.

21. It was expected of the Detaining Authority then to give a reasonable explanation for this delay but what comes out in the affidavit is, if not surprising but a routine one. It is astonishing for this explanation is given mechanically and virtually in every case. That is taken to be reasonable and we must necessarily presume it to be so given the multiple duties and functions performed by Senior Police Officials. It is as if, according to the Detaining Authority, this delay should never have been made a ground of challenge but if at all it is available as a ground of challenge, then, that is answered by the following explanation. The explanation is that after the arrest of the

detenu, during the course of investigation, it was learnt that even though the detenu had committed several offences, the witnesses were not willing to come forward to make any complaint openly against the detenu due to the reign of terror which was created by the detenu and his associates. It is only when assurances were given to the witnesses that their names and identifying particulars would not be disclosed, that two witnesses came forward to give their statements and which were recorded on 6-7-2017 and 9-7-2017. The witnesses were produced before the Assistant Commissioner of Police, Deonar Division, Mumbai and who in turn verified the genuineness and truthfulness of the statements made, on 6-7-2017 and 9-7-2017 respectively. Thereafter, the Sponsoring Authority carefully went through these materials, prepared the necessary set of documents for getting them typed, photocopied, etc.. After the necessary set of documents were ready, they were submitted along with the proposal for detention and it was submitted on 12-7-2017. It was forwarded through the proper channel. It was carefully considered and scrutinised by various authorities at

various levels and thereafter the entire material was placed before the Detaining Authority, which he carefully examined for arriving at his subjective satisfaction and then passed the order of detention.

22. Pertinently, this is an explanation which is entirely mixed up. We do not see how after the verification of the truthfulness of the statements and the exercise in relation to it is carried out, the proposal is drawn up with all the documents being kept ready, duly forwarded, that it has to go through what is styled as a proper channel. Then, it is stated that it is carefully considered, scrutinised by various authorities at various levels and thereafter the entire material is placed before the Detaining Authority. This is a hopelessly vague excuse if not a routine explanation. We have not been enlightened how such careful consideration and scrutiny by various authorities at various levels is carried out and in terms of what commands, leave alone any circular or guidelines. We are not informed how the proposal and papers pertaining to the present detenu were forwarded to various authorities and at different levels, why it

was required to be scrutinised, for then the explanation follows is that this proposal with the accompanying papers was submitted, as per usual practice, first, to the Deputy Commissioner of Police, Zone-VI. Thereafter, it was forwarded to the Crime Branch (Preventive) for scrutinising the same on 18-7-2017. If the proposal for its scrutiny was submitted to the Deputy Commissioner of Police, Zone-VI, then what role he played in this matter has not been clarified at all. This proposal was under scrutiny from 19-7-2017 to 22-7-2017. The Senior Inspector of Police, PCB, Crime submitted the same to the Assistant Commissioner of Police (Preventive) on 1-8-2017. Then, this Assistant Commissioner of Police endorses the same on 2-8-2017. It is thereafter placed before the Deputy Commissioner of Police (Preventive) who in turn goes through the same and endorses it on 5-8-2017. Thereafter, the papers were forwarded to the Additional Commissioner of Police (Crime) on 8-8-2017, who places his endorsement thereon on that very day and puts up the same before the Joint Commissioner of Police (Crime). The Joint Commissioner of

Police and pertinently sitting in this very City, sat on this proposal and made his endorsement on 14-8-2017. Then the proposal with the papers was perused by the Detaining Authority and he was of the opinion that it is fit case for detaining the detenu. He approved this proposal on 28-8-2017. Then he gave dictation of the grounds of detention. Then these papers were again forwarded to the Sponsoring Authority for fair typing, for preparing the translation of the documents in the languages known to the detenu and for preparing the necessary set of documents, etc.. After the matter was complete in all respects, namely, typing, translation in Hindi, these were received as per the procedure in the office of the Senior Police Inspector, PCB, CID. He checked all the documents and gave his endorsement. Then, the Detaining Authority is supposed to have carefully gone through it and finalised the grounds of detention and contemporaneously issued the detention order on 12-9-2017. He says that in all this, the Detaining Authority, who is also the Commissioner of Police, Mumbai, was busy in bandobast of important festivals such as Ganesh festival (11

days) and Bakri Eid. During the proceedings there were Government holidays and other festivals such as Independence Day and Parsi New Year. There were six other proposals in process. Hence, time was taken for considering this proposal. This is reasonable explanation and therefore the learned APP submits that we should condone this delay and accept it.

23. We are unable to agree with her and for more than one reason. We have elaborated this explanation only to emphasise that this is a matter of preventive detention. This is an exception and not a rule. The circumstances permit such order to be passed and such a detention to be made. It is not without any safeguard. The Constitution of India guarantees life and liberty to every individual. The Article 22, which permits preventive detention, is with safeguards and not for tinkering with individual liberty so easily and casually.

24. If the incidents are as narrated by the two in-camera witnesses, of this detenu allegedly going around with deadly weapons, assaulting people, extorting money in several

areas, market and within the jurisdiction of Shivaji Nagar Police Station and around, then, it was expected of the Detaining Authority to take prompt action. If not swiftly, at least expeditiously. If not immediately, at least with reasonable promptitude. We do not see how we can term this explanation for the delay as reasonable for we find that every authority, whose name is mentioned, is supposed to be playing some role. If the proposal has to be scrutinised and verified at various levels by various authorities, then, there is no need for each authority to sit on it for days and weeks together. For example in this case, if the proposal is dated 12-7-2017, that itself refers to the two in-camera statements recorded on 6-7-2017 and 9-7-2017. The incidents occurred are of the month of April/May, 2017. From 12-7-2017 to 12-9-2017, the explanation is as above. That explanation would denote that merely forwarding of the papers has been done by these authorities. The papers have been routed through these authorities and may be that is a requirement or practice in the hierarchy but we do not see how that can be taken note of and judicially recognised in every matter.

25. We are sorry to record such an opinion for we find that in the instant case a gentleman styled as the Joint Commissioner of Police (Crime) sat on the proposal and although it was placed before him after it was scrutinised by at least three to four officials in the hierarchy. He sat on that proposal from 8-8-2017 to 14-8-2017 and there is no explanation why this gentleman had to sit on the file for he was not prevented or it is not as if every single duty or burden in the police force is discharged or carried out only by him. Pertinently, this proposal reaches the Detaining Authority's office on 28-8-2017 but the detention order is not issued till 12-9-2017. For this as well, the explanation is routine, namely, giving of dictation, fair typing, preparing the translation, etc.. If we go on accepting the explanation of this routine nature in case after case, possibly every detention order would have to be sustained despite being challenged on the ground that it is vitiated by enormous delay. That is not what the law is. Even if we go back as far as to the decision of 1974 in **Olia Mallick** (supra), there the argument was somewhat same. An order of preventive

detention was made. That was made on 29-3-1972. That was challenged because the Maintenance of Internal Security Act, 1971, under which it was made, required that the said order ought to be confirmed by the Advisory Board. The confirmation came on 3-10-1972. Though the order is passed on 29-3-1972, the petitioner before the Hon'ble Supreme Court could not be apprehended and served with the detention order till 29-7-1972.

26. For such a detenu, the argument canvassed was that there is delay of about five months before the order of detention was passed. Reference is made to incidents of cutting of conductor wire of October and November, 1971. The argument was that, this very delay in passing the order would show that it was passed not because the District Magistrate was satisfied that the detention was necessary but because he felt that the petitioner deserved to be punished as the police had failed to prove the criminal cases against him. In the backdrop of this, the Hon'ble Supreme Court held that mere delay in making the order is not sufficient to hold that the District Magistrate must not have been satisfied about the necessity of the detention

order. We do not think that any exception can be taken to this principle for it binds us. Thus, mere delay in making the order was not sufficient to hold that the satisfaction about the necessity is lacking. We are concerned with a case where the detention order is challenged on the ground of inordinate and enormous delay and for which there is no reasonable and acceptable explanation.

27. Now admittedly, that is an issue which must be considered in the backdrop of the facts peculiar to each case. In the case of **Nagnarayan Saryu Singh** (supra), the order of detention was made under the MPDA Act on 22-6-2005. The ground of challenge was that there was an incident resulting in a case being registered on 19-1-2005 and the incidents of four in-camera statements have taken place in February, 2005 whereas the order of detention came to be made belatedly on 22-6-2005, that is after a long lapse of four months. Pertinently, the ground itself refers to in-camera statements recorded in the last week of May, 2005.

28. The Division Bench relied upon the insufficiency in the pleadings of the detenu himself and came to the conclusion that if the last incident is stated to have occurred in May, 2005 and was recorded on 27-5-2005 and the detention order is dated 22-6-2005, the delay will have to be computed from the date the last material came to be known to the Sponsoring Authority. In the circumstances, the explanation is that after this last material was recorded, the proposal was prepared promptly within three days of that recording, namely, on 30-5-2005 and the order of detention was issued on 22-6-2005. Hence, it was accepted.

29. This case is, therefore, clearly distinguishable on facts. We do not have any such recording and even if we take the last of the statement, that is, of 9-7-2017, but the order of detention is made on 12-9-2017, which is after a delay of more than two months. The second case which was relied upon, namely, **Hasan Khan Ibne Haider Khan** (supra), concerns a challenge to the detention order and the delay in the passing thereof. There were absolutely no pleadings much less on the ground of delay. Before the High Court, the detention order was

challenged on two grounds, namely (1) the documents supplied to the appellant therein were illegible, and (2) if the alleged prejudicial activities of the detenu were accepted on their face value, they would demonstrate a breach of law and order and not public order. The High Court rejected both the grounds. Before the Hon'ble Supreme Court as well, only ground (2) of the activities demonstrating breach of law and order and not public order was pressed. In the passing, an argument was canvassed that there was delay. In other words, the delay in passing the detention order vitiated the detention. That was rejected with the reasoning in para 12. Once again we must state that no general rule has been laid down that an explanation, as is placed before us, which is styled as a routine one, must be accepted and equally routinely. Possibly para 12 of this order has influenced the wording of the affidavit in the present case. That affidavit is filed in reply to the additional grounds. Thus, this decision also is of no assistance.

30. In the case of **Sujit Suresh Menpal Vs. A.N. Roy & Ors.**, reported in 2007 (1) Bom. C.R. (Cri.) 938, the delay in

passing the detention order was a ground raised but the Court found that the crime was registered on 16-1-2005. Thereafter, investigations were carried out and the charge-sheet was filed on 10-5-2005. The first in-camera statement of Witness "A" was recorded on 13-8-2005 and the second statement of Witness "B" was recorded on 17-8-2005. The detention order was passed on 7-10-2005 and it is undoubtedly based on a C.R. and two in-camera statements. Even if these incidents are of January or February, still, the live link was held not to be snapped and for the explanation provided on oath. That explanation is referred in para 5 of the Judgment. In such circumstances, purely on facts, it is stated that there was an element of continuity in the sense the events took place allegedly in January, July and August, 2005. The explanation was accepted, in the wording of the Division Bench, in the typical facts of the case by distinguishing the Judgment of the Hon'ble Supreme Court in the case of *Pradeep Nilkanth Paturkar Vs. S. Ramamurthi* {AIR 1994 SC 656}. Thus, this case also turns on its own peculiar facts.

31. In the case of **Krishna Hari Godambe** (supra) as well, we find the last criminal activity of the detenu took place in the third week of June, 2016 and the detention order is passed on 7-10-2016. There was a delay of 3-months and 2-weeks. However, the last criminal activity of the detenu is of the period less than what is set out in **Pradeep Nilkanth Paturkar** (supra). In this case, the Hon'ble Division Bench understood that if the delay was of 5-months and 8-days from the date of registration of the last case, that could be taken to be enormous or inordinate and the detention order can, therefore, be termed as delayed. We do not think we should enter into this controversy for we find that purely on facts and when the Division Bench found that the proposal is dated 20-7-2016, but with the explanation which was forwarded and placed before the Division Bench, the delay was not termed as fatal or of such an extent as would snap the live link. We do not think even this case is of any assistance.

32. After we have referred to the explanation in the

additional affidavit placed before us, we are satisfied that in this case the delay has not been reasonably explained. The explanation cannot be accepted for the reasons which we have already assigned hereinabove. There is complete lack of promptitude, expediency and urgency on the part of the authorities in making the detention order. If the incidents which are narrated in the in-camera statements are of April and May, 2017 and the detenu was already in custody in a criminal case when these in-camera statements were recorded, then, we do not see how relying upon the in-camera statements which were recorded on 6-7-2017 and 9-7-2017, an order of detention can be made good two months and more thereafter. There is virtually no explanation for this delay and the explanation that is provided is hopelessly vague and general in nature.

33. Consequently, the writ petition succeeds. The order of detention, dated 12-9-2017, is quashed and set aside. The detenu is directed to be released forthwith if not required in any other case. Rule is accordingly made absolute.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)