

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3433 OF 2019

SAGAR PRAKASH KAMBLE

)...PETITIONER

V/s.

- | | |
|---------------------------------------|------------------------|
| 1) THE COMMISSIONER OF POLICE |) |
| NASHIK |) |
| |) |
| 2) THE STATE OF MAHARASHTRA |) |
| |) |
| 3) THE SUPERINTENDENT |) |
| NASHIK ROAD CENTRAL PRISON, |) |
| NASHIK |) |
| |) |
| 4) THE SECRETARY |) |
| ADVISORY BOARD FOR M.P.D.A.ACT |)...RESPONDENTS |

Mr.U.N.Tripathi a/w. Mr.Jayshree Tripathi, Advocates for the Petitioner.

Mr.J.P.Yagnik, APP for the Respondent - State.

**CORAM: INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

**DATE : RESERVED ON 16th AUGUST 2019
PRONOUNCED ON 20th AUGUST 2019**

JUDGMENT : (PER : A.M.BADAR, J.)

1 By this petition, the petitioner/detenu is challenging the order of his detention dated 19th March 2019 passed by the first respondent 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, (hereinafter referred to as “the said Act” for the sake of brevity). By the said impugned order passed under Section 3(2) of the said Act, by recording satisfaction that the petitioner is a dangerous person and it is necessary to detain him in order to prevent him from acting in a manner prejudicial to maintenance of public order, the respondent no.1 had ordered detention of petitioner/detenu Sagar Prakash Kamble.

2 Though Mr.Tripathi, the learned counsel appearing for the petitioner raised only one legal contention in order to challenge the order of detention passed by the respondent no.1 by

relying on ground no.5(e) pleaded in the petition.

3 Ground No.5(e) raised by the petitioner/detenu needs to be reproduced for appreciating the contentions raised by the learned counsel for the petitioner. According to him, there is delay in sending the report to the State Government after passing order of detention of the petitioner. The law mandates that the report should be submitted to the State Government forthwith and there is no plausible explanation for delay in submitting the report to the State, which infact, resulted in approval of detention on 25th March 2019. The learned counsel for the petitioner urged that there is no plausible explanation for delay in not submitting the report forthwith to the State by the respondent no.1. The relevant portion of ground raised in this regard is found in paragraph 5(e), which reads thus :

“(e) The petitioner says and submits that it is incumbent on the detaining authority under Section 3(3) of the M.P.D.A. Act to send a report 'forthwith' to the State Government for the approval of the order. However in this case no such prompt action is taken for sending the report forthwith and the approval took place on

25.03.2019 belatedly after six days. Law is well settled by interpreting the word forthwith by the Hon'ble Apex Court, as well as by the Hon'ble Bombay High Court. The order of detention is illegal and bad in law, liable to be quashed and set aside.”

4 The learned counsel for the petitioner/detenu relying on this ground has urged that it was duty of the Detaining Authority to send the report, as envisaged by sub-section (3) of Section 3 of the M.P.D.A. Act to the State Government forthwith. There was no need to wait for procedural compliance such as supply of supporting documents to the detenu for forwarding the report to the State Government.

5 To counter this submission, Mr.Yagnik, the learned APP, by relying on counter affidavit of the Detaining Authority argued that the report was sent by the Detaining Authority to the State Government forthwith. The Detention Order was passed on 19th March 2019 and the petitioner/detenu came to be detained on 20th March 2019 by service of Detention Order on him. On 20th

March 2019, Mr.Kumar Choudhary, Police Inspector of the Crime Branch attempted to serve the petitioner/detenu copies of supporting material but the petitioner/detenu refused to accept the supporting material attempted to be served on him through Jailor. Accordingly, the Jailor has made necessary endorsement. It is further argued that panchnama of this fact could not be prepared as at night time the detenu could not be brought out of his barrack for security reasons, in order to prepare panchnama. Station Diary entry of this fact was taken. On the next day i.e. on 21st March 2019, again Mr.Kumar Choudhary, Police Inspector, went to the Central Jail, Nashik, and served the supporting material to the petitioner/detenu. In late hours of 20th March 2019, the report could not be sent to the State Government so also there was bandobast on account of Holi festival. On the next day i.e. on 21st March 2019, there was holiday on account of “Rang Panchami” festival. Hence, the report was sent on 22nd March 2019. The State Government approved the detention on 25th March 2019. As such, according to Mr.Yagnik, the learned APP, there was no delay in forwarding the report of detention to the

State Government.

6 We have considered the submissions so advanced. Section 3 of the said Act deals with powers to make orders detaining certain persons. After making of orders of detention in exercise of powers conferred by sub-section (2) of Section 3 of the said Act, the Detaining Authority is required to forthwith report the fact to the State Government together with the ground on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter. Relevant portion of Section 3 of the said Act reads thus :

“3(1).....

(2)

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.”

It is, thus, clear that, the Detaining Authority is enjoined to submit its report under Section 3(3) of the said Act to the Government forthwith.

7 In the matter of **Hetchin Haokip vs. State of Manipur and Others**¹ the Honourable Apex Court has interpreted the term “forthwith” by holding that this term does not mean instantaneous, but it means without undue delay and within reasonable time. Paragraphs 15 and 16 of the that judgment clinches the issue. Those read thus :

“15 The expression “forthwith” under Section 3(4) must be interpreted to mean within reasonable time and without any undue delay. This would not mean that the detaining authority has a period of twelve days to submit the report (with grounds) to the State Government from the date of detention. The detaining authority must furnish the report at the earliest possible. Any delay between the date of detention and the date of submitting the report to the State Government, must be due to

1 2018 (9) SCC 562

unavoidable circumstances beyond the control of the authority and not because of administrative laxity.”

“16 In the present case, the District Magistrate submitted the report to the State Government on the fifth day (17 July 2017), after the date of the detention order (12 July 2017). The reason for the delay of five days is neither mentioned in the State Government’s order confirming the detention order, nor in the impugned judgment. It was for the District Magistrate to establish that he had valid and justifiable reasons for submitting the report five days after passing the order of detention. As the decision in *Joglekar* (AIR 1957 SC 28) holds, the issue is whether the report was sent at the earliest time possible or whether the delay in sending the report could have been avoided. Moreover, as the decision in *Salim* (1975 SCC (Cri) 290) holds, there should be no laxity in reporting the detention to the government. Whether there were administrative exigencies which justify the delay in sending the reports must be explained by the detaining authority. In the present case, as we shall explain, this was a matter specifically placed in issue before

the High Court. The District Magistrate offered no explanation. This would vitiate the order of detention.”

8 We have perused the record. It is seen from the record that Detention Order dated 19th March 2019 came to be executed on 20th March 2019 by serving the copy thereof on the petitioner/detenu and accordingly, he came to be detained in the Central Prison, Nashik Road, Nashik, on 20th March 2019. The petitioner/detenu gave a statement before the Senior Police Inspector, Nashik Road Police Station, Nashik, on 20th March 2019 stating that he be served grounds for detention as well as all supporting documents in Marathi language. Record further shows that vide letter dated 20th March 2019 of the Detaining Authority addressed to the Superintendent, Central Prison, Nashik Road, Nashik, supporting documents were attempted to be served on the petitioner/detenu through Mr.Kumar Choudhary, Police Inspector of the Crime Branch, Nashik. There is endorsement of the Jailor, Nashik Road, Central Prison, on this letter dated 20th March 2019

to the effect that the petitioner/detenu had refused to accept the supporting documents and to sign those documents in token of receipt of the same. Record contains extract of Station Diary Entry No.107 taken on 20th March 2019 at Nashik Road Police Station, Nashik, to the effect that when Police Inspector Mr.Kumar Choudhary attempted to serve copies of supporting documents to the petitioner/detenu along with Jailor Mr.D.G.Chavan and Police Sub-Inspector Mr.Gaikwad, the petitioner/detenu refused to accept the documents and to sign the same in token of receipt thereof. The Station Diary entry makes it clear that, accordingly, the Jailor has given such written report and conveyed to the police that because of night hours, the petitioner/detenu could not be taken out of the barrack for effecting panchnama. It is, thus, clear that, supporting documents were attempted to be served on the petitioner/detenu on 20th March 2019 which he refused to accept, and therefore, as stated by Mr.Yagnik, the learned APP, those documents were served on him on 21st March 2019.

9 Duly sworn affidavit of the Detaining Authority shows

that the report, as envisaged by Section 3(3) of the M.P.D.A. Act was sent to the State Government on 22nd March 2019. Affidavit of the Detaining Authority explains the fact that on 21st March 2019, there was holiday on account of Rang Panchami festival. Therefore, the report was sent on 22nd March 2019. As stated by Mr.Yagnik, the learned APP, prior to that on 21st March 2019, all supporting documents were served on the petitioner/detenu, who was detained at the Central Prison, Nashik Road, Nashik. We have also reproduced sub-section (3) of Section 3 of the M.P.D.A. Act. No doubt the Detaining Authority is obliged to sent the report of fact of making of the order of detention to the State Government forthwith, but at the same time, the Detaining Authority has to sent such other particulars as in his opinion have a bearing on the matter, apart from the grounds on which the order of detention has been made. It is, thus, clear that the duty cast on the Detaining Authority by virtue of sub-section (3) of Section 3 of the M.P.D.A. Act cannot be held to be complied with unless and until the report is accompanied by grounds of detention as well as other particulars which have a bearing on the

matter. Service of all relevant documents on which the Detention Order is made on the detenu, undoubtedly constitutes a material particular having bearing on the matter, and as such, it cannot be said that the Detaining Authority ought to have mechanically forwarded only the Detention Order to the State Government without being accompanied by other relevant particulars such as grounds for detention as well as the details regarding service of grounds of detention and all relevant documents on the petitioner/detenu. Therefore, we find no substance in submission of the learned counsel for the petitioner/detenu that the Detaining Authority ought to have sent the Detention Order without further waiting for other procedural compliance such as service of supporting documents on the petitioner/detenu.

10 It is, thus, clear that the petitioner/detenu was detained on 20th March 2019 in pursuant to the Detention Order dated 19th March 2019. On 20th March 2019 itself, he gave statement that all documents apart from grounds of detention be served on him in Marathi language. On 20th March 2019 itself an

attempt was made to serve the supporting documents on the petitioner/detenu through the Jailor, Central Prison, Nashik Road, Nashik. However, the Jailor reported to the Detaining Authority that the petitioner/detenu had refused to accept those documents on 20th March 2019. Ultimately, those documents were served on the petitioner/detenu on 21st March 2019 and then the report as envisaged by Section 3(3) of the M.P.D.A. Act was sent to the State Government on 22nd March 2019 as 21st March 2019 was a holiday on account of Rang Panchami festival. We have also perused the copy of the report forwarded by the Detaining Authority to the State Government. The report mentions the fact that copies of all supporting documents are served on the petitioner/detenu apart from grounds of detention. Thus, the averment in the report sent to the State Government by the Detaining Authority makes it clear that the Detaining Authority considered service of grounds of detention as well as all relevant documents on the petitioner/detenu as a fact which has a bearing on the matter of detention of the petitioner/detenu. Thus, it cannot be said that the report was not sent to the State

Government at the earliest time possible. The sequence of events, so unfolded, shows that there was no unavoidable delay in sending the report to the State Government by the Detaining Authority.

11 In the result, the petition is devoid of merits and therefore the order :

ORDER

The writ petition is dismissed.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)