

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 07 OF 2020

Shamim Makmood Khan	]	
Age : 65 years, Occ : Business	]	
Resident of A.D. Camp Chowk,	]	
1140, In front of Aaina Majjid,	]	
Bhavani Peth, Pune	]	...PETITIONER

VERSUS

1.	Shri. Dr. K. Venkateshan	]	
	Commissioner of Police	]	
	Pune City.	]	
		]	
2.	The State of Maharashtra	]	
		]	
3.	The Superintendent of Jail	]	
	Yerwada Central Prison,	]	
	Pune	]	
		]	
4.	The Secretary,	]	
	Advisory Board (MPDA),	]	
	Mantralaya, Mumbai	]	RESPONDENTS

Ms. Misbaah Solkar i/by Mr. Amin Solkar for the Petitioner.
Mrs. M.M. Deshmukh, APP for Respondent/State.

CORAM : S. S. SHINDE &
V. G. BISHT, JJ.

Reserved on : 12th FEBRUARY 2020
Pronounced on : 21st FEBRUARY 2020

JUDGMENT :- (PER S. S. SHINDE, J)

1 Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2 The Petitioner Shamim Makmood Khan, who is the mother of Detenu Firoj @ Babbali Maqbul Khan, has preferred this Petition questioning the preventive detention order passed against the dentenu on 16th October, 2019 by Respondent No. 1 – Commissioner of Police, Pune City. The said detention order has been passed under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders, Dangerous persons and Video Pirates Act, 1981 (hereinafter referred to as ‘MPDA Act’). The said detention order has been issued as, according to the Detaining Authority, the Detenu is a Dangerous person whose activities are prejudicial to the maintenance of public order. The detention order is based on two Crimes i.e. C.R. No. 188/2019 occurred on 09.06.2019 registered with Samarth Police Sation, Pune for the offences punishable under Sections 392, 506(2) of the Indian Penal Code read with Section 37(1) read with 135 of the Maharashtra Police Act read with 4/25 of the Arms Act read with Section 7 of the Criminal Law Amendment Act; and another incident i.e. C.R. No. 208/2019 occurred on 11.07.2019 registered with Samarth Police Station, Pune for the offences punishable under Sections 394, 324, 506(2), 34 of the Indian Penal Code, and two in-camera statements of witnesses ‘A’ and ‘B’, recorded.

3 Though number of grounds have been raised in the present Petition whereby the detention order has been assailed, however, the learned counsel appearing for the Petitioner / Detenu has pressed only five grounds

before us i.e. Ground Nos. 'A', 'B', 'C', 'F', and 'O'. Those grounds are reproduced herein below in verbatim:-

- A. *The Petitioner says and submits that the orders annexed and marked at Exhibits "A" and "B" are manifestly erroneous and patently illegal in as much as the same are based in total defiance to the facts of the case, and the said orders also display a complete non-application of mind and is malafide on the part of the Detaining Authority.*
- B. *The Petitioner says and submits that by no stretch of imagination can it be said that the activities of the detenu are prejudicial to the maintenance of public order entailing his detention under the provisions of the said Act. None of the activities of the detenu, as mentioned in the grounds of detention, can be said to be disturbing the maintenance of public order and as such the orders are obviously illegal, bad in law, malafide, unconstitutional and unsustainable.*
- C. *The Petitioner says and submits that it is obligatory on the part of the Respondent No. 1 under Section 3 (3) of the said Act to send a REPORT forthwith in respect of the detention, together with the grounds of detention and other particulars to Respondent No. 2. The Respondent No. 1 is called upon to furnish details of the exact date on which the proposal and the findings and also the copies of the documents relied upon were placed before him and also the exact date on which he submitted the said report under Section 3(3) to Respondent No. 2. The Respondent No. 2 is called upon to furnish the details of the exact date on which the said report was actually received by it. The Respondent Nos. 1 and 2 are called upon to state as to what were the documents accompanying the said report and are further called upon to state whether the grounds of detention, as formulated by Respondent No. 1 and the material on which the grounds are based as well as other documents, if any, including the proposal and the findings*

were forwarded to Respondent No. 2 together with the said report. The Respondent No. 2 is called upon to furnish all details about the consideration, if any, of the said report including the date of which such consideration, if any, and the exact date of the approval of the detention order and the exact date of issuance of the order of approval. The Respondent No. 2 is called upon to state whether the approval, if any, was by a person competent and duly authorized under the relevant Rules of Business and/or the Standing Orders issued thereunder, to exercise the power of the State Government under section 3(3) of the said Act. The Respondent Nos. 1 and 2 are called upon to furnish the above information to this Hon'ble Court based on the authentic contemporaneous official records and by due production thereof, before this Hon'ble Court since the documents relied upon by Respondent No. 1 in formulating the grounds of detention were not sent along with the order of detention for approval and if at all sent it was only after the order of detention was allegedly passed. If any of the provisions of the Section 3(3) of the said Act are not strictly observed or complied with, the detention and/or continued detention is illegal, unsustainable, unconstitutional, null and void.

- F. The Respondent No. 1 is bound to produce for the scrutiny of this Hon'ble Court the proposal and the findings for the detenu's detention, relied upon by Respondent No. 1 in formulating the grounds of detention. If the grounds of detention are no more than a repetition of the proposal with minor grammatical and consequential variations, there cannot be a greater proof of non-application of mind. It is well settled that the liberty of a Subject is a serious matter and the same cannot be trifled with any such casual, indifferent and routine manner. The Respondent No. 1 is called upon to state whether before formulating the grounds of detention, he did go through the opinion of different subordinate officers, if any, written on the said proposal. The Respondent No. 1 having gone through the

opinion of his subordinate Officers and having been influenced by them in formulating the grounds of detention and in the passing of the detention order, then the said detention order suffers from non-application of mind and is illegal, malafide, unconstitutional, null and void.

O. The Petitioner says and submits that the recording of “In-Camera” statements seems to be fabricated and got-up statements in order to put the detenu behind bars under Preventive Detention. The Petitioner says and submits that, even otherwise, the incidents mentioned therein are stale, remote and not proximate in time and, therefore, the order of detention smacks of malafides.

4 The learned counsel appearing for the Petitioner relying upon Grounds A, B, C, F and O submits that there was non-application of mind by the Detaining Authority while passing the order of detention; there was delay in passing the order of detention; the alleged in-camera statements are fabricated and not properly verified by the Detaining Authority. She further submits that there was delay in submitting the proposal to Mantralaya by the Detaining Authority seeking approval of detention of Detenu. In support of the aforesaid contentions, the learned counsel appearing for the Petitioner relied upon the following judgments :- 1] Anil vs State of Maharashtra and ors.¹ 2] Rashid Shaukat Husain Sayyed @ Jagga vs The State of Maharashtra and ors.² and 3] Pradeep Nilkanth Paturkar vs S Ramamurthi & ors.³

1 2000(2) Mh.LJ 400

2 Order Bombay High Court dated 01/03/2018 in Cri.WP No.5284/2017.

3 AIR 1994 SC 656

5 On the other hand, learned APP appearing for the Respondents/State invites attention of this Court to the order of detention so also the grounds and the replies filed by the respective Respondents/Authorities and submits that the Detaining Authority after proper application of mind has passed the impugned order of detention. She further submits that there is no delay in passing the order of detention. In support of the aforesaid contentions, the learned APP pressed into service the exposition of the Division Bench of the Bombay High Court in the case of Deepak Govind Murudkar v/s. R. H. Mendonca & ors. decided on 10/03/2000 passed in Criminal Writ Petition No.2090 of 1999 (Coram : Vishnu Sahai and P V Kakade, JJ). It is submitted that the Detaining Authority relied upon two crimes i.e. C.R. No. 188/2019 and C.R. No. 208/2019, both registered with Samarth Police Station, Pune, and two in-camera statements while passing the order of detention. It is submitted that in the grounds of detention it is made clear that paragraphs 5.1 and 5.2 are referred only for the purpose of showing that the Detenu is a habitual offender and the said grounds/material referred therein have not been considered by the Detaining Authority while arriving at subjective satisfaction before passing the order of detention. It is further submitted that the Detaining Authority has specifically stated in his reply that only paragraph Nos.6.1 and 6.2 of the grounds of detention are taken into consideration while passing the order of detention. It is also submitted that the statement of witnesses in-camera are recorded after adhering to the proper

procedure and those are verified by the Detaining Authority. She submits that the noting in the original file would make it clear that the Detaining Authority has personally seen those statements. It is submitted that the 2nd in-camera statement was recorded on 10/08/2019 and the detention order has been passed on 16/10/2019, as the proposal was routed through the concerned government authorities, time was consumed in processing the proposal and therefore it cannot be said that there was delay in passing the order of detention against the Detenu. The learned APP invites attention of this Court to the specific averments made in the reply filed by Respondent-1 i.e. the Detaining Authority so also the reply filed by the Sponsoring Authority, and submits that the contentions raised in Ground Nos. A, B, C, F and O are specifically dealt with and replied and therefore there is no substance in the submissions of the learned counsel for the Petitioner that there was non-application of mind by the Detaining Authority or there was delay in passing the order of detention or that in-camera statements are fabricated. It is submitted that the ground of delay in passing the order of detention has not been specifically raised by the Petitioner in the Petition and therefore the said ground orally agitated by the learned counsel appearing for the Petitioner may be kept out of consideration. In support of the aforesaid contentions the learned APP relied upon following judgments :- 1] Hemlata K Shah vs State of Maharashtra and anr⁴ and 2] Hetchin Haokip vs State of Manipur & ors.⁵

4 (9181) 4 SCC 647

5 (2018) 9 SCC 562

6 We have given careful consideration to the rival submissions. With the able assistance of the learned counsel appearing for the Petitioner and the learned APP appearing for the Respondents/State, we have carefully perused pleadings in the Petition and specifically the grounds A, B, C, F and O raised by the learned counsel for the Petitioner.

7 It is true that in the grounds of detention the Detaining Authority has stated that the offences registered against the Detenu mentioned in Paragraph Nos.5.1 and 5.2 are considered only for the purpose of arriving at a conclusion that the Detenu even in past indulged in the similar activities prejudicial to the maintenance of the public order. Upon careful perusal of the reply filed by Respondent No.1 – Detaining Authority, in paragraph 8 thereof it is stated that Respondent No.1 – Detaining Authority has carefully gone through the material placed before him and he has subjectively satisfied that, the Detenu is a weapon-wielding dangerous desperado of violent character, indulging in terrorizing activities and since 2014 the Detenu is engaged in criminal activities, and the criminal activities of the Detenu have created a reign of terror in the minds of people. It is further stated that the Detenu and his accomplices move, armed with deadly weapons such as Koyata, knife, wooden stick and sword and do not hesitate to use the same while committing the offences such a robbery, hurt etc. Furthermore, in the said paragraph it is

stated that the Detenu also does not hesitate to use these deadly weapons for threatening the peace loving public residing with the jurisdiction of Samarth, Wanawadi and Lashkar Police Stations, Pune City.

8 It is next stated that the Detenu has been habitually committing offences under Chapter XVI and XVII of Indian Penal Code as well as under Chapter V of the Arms Act and thus the Detenu is a dangerous person as defined in Section 2(b-1) of the said Act. The criminal activities of the Detenu are prejudicial to the maintenance of public order. The Detenu has thereby become dangerous to the lives and properties of people residing and carrying out their daily activities and vocations in the jurisdiction of Samarth, Wanawadi and Lashkar Police Stations in Pune City. There are 6 offences registered against the Detenu at Lashkar, Wanawadi and Samarth Police Stations in Pune City in addition to the two offences committed during past 6 months and that the dangerous criminal activities of the Detenu are found to be prejudicial to the maintenance of the public order. It is further stated that in order to curb the criminal activities of the Detenu, preventive actions under Section 56(1)(a)(b) of the Maharashtra Police Act, 1951 and under Section 3(2) of MPDA were taken against him but the same had no deterrent effect on the Detenu. It is further stated that the Senior Inspector of Police, Samarth Police Station i.e. the Sponsoring Authority conducted a confidential enquiry of the criminal activities of the Detenu and his associates, and during the

confidential enquiry the Sponsoring Authority recorded in-camera statements of witnesses “A” and “B” on 02/08/2019 and 10/08/2019. It is also stated that the incidents recorded in the in-camera statements also show that criminal activities of the Detenu are prejudicial to the maintenance of the public order. Lastly in paragraph 8, the Respondent No.1 – Detaining Authority, has stated thus :-

“after considering in-camera statements and two CRs i.e. Cr No.188/2019 and CR No.208/2019 and the documents placed before me by Sponsoring Authority, after perusing the said record, I was subjectively satisfied and after application of mind, I have passed the order of detention of the Detenu. As such the said order is legal, just and proper and as per the provisions of law and deserves to be confirmed.”

9 In paragraph 9 of the reply Respondent No.1-Detaining Authority has stated thus :-

“It is submitted that after my subjective satisfaction that the offences I considered for passing the Order of Detention are disturbing the public order and it is required to detain the detenu, I passed the order of detention under section 3(2) of MPDA Act 1981. It is further submitted that I being the Detaining Authority have passed the order of detention on the grounds mentioned in paragraphs 5.1, 5.2 and 6.1 and 6.2. As such in the said paragraph Nos.5.1, 5.2 particulars of offences mentioned, for passing order of detention.”

10 The aforesaid averments would make it clear that while arriving at subjective satisfaction, the Detaining Authority has not only confined his application of mind to the two in-camera statements and two CRs i.e. C R

No.188/2019 and C.R. No.208/2019, but also the documents placed before him by the Sponsoring Authority. It was incumbent upon the Detaining Authority to confine his application of mind to the two in-camera statements and two CRs i.e. C R No.188/2019 and C.R. No.208/2019 as has been stated in the grounds of detention while arriving at subjective satisfaction before passing the order of detention. However, it appears that the Detaining Authority has relied upon paragraphs 5.1 and 5.2 in which particulars of past offences are mentioned, and the material referred in the said paragraphs have been considered by the Detaining Authority to arrive at the subjective satisfaction.

11 The offences i.e. CR No.188/2019 under Sections 392, 506(2) of the IPC r/w Section 37(1)/135 of the Maharashtra Police Act r/w Sections 4/25 of the Arms Act r/w Section 7 of the Criminal Law Amendment Act, and CR No.208/2019 under Section 394, 324, 506(2), 34 of the IPC have been registered with Samarth Police Station, Pune City, however, it is apparent from the averments made in the affidavit in reply of Respondent No.1 i.e. the Detaining Authority that the Detaining Authority has considered the other offences registered with other two police stations i.e. Wanawadi Police Station and Lashkar Police Station, Pune City while passing the order of detention. Therefore, it cannot be said that the Detaining Authority has not considered the other crimes registered with other two police stations while arriving at subjective satisfaction before passing the order of detention.

12 Though it is vehemently submitted by the learned APP appearing for the Respondents/State that there was no delay in passing the order of detention, nevertheless, from the reply filed by Respondent No.1 – Detaining Authority it is clear that the Sponsoring Authority sent proposal of the detention of Detenu on 14/08/2019 to ACP Faraskhana Division, Pune, who after verifying the truthfulness and genuineness of the statements of witnesses sent the said proposal to the Deputy Commissioner of Police, Zone I, Pune City. The said Authority i.e. the Deputy Commissioner of Police forwarded the said proposal to the Additional Commissioner of Police, South Region, Pune on 03/10/2019. The Additional Commissioner of Police, West Region has scrutinized the proposal and forwarded it to the Police Inspector, Preventive of Crime Branch (PCB) Pune on 12/10/2019. The Police Inspector, Crime Branch (PCB) sent the said proposal to the DCP Crime Pune on 12/10/2019. The DCP Crime Pune forwarded it to the Additional Commissioner of Police Crime, Pune on 13/10/2019. Thereafter Additional Commissioner of Police Crime, Pune has scrutinized the proposal and submitted to the Joint Commissioner of Police, Pune on 14/10/2019. The Joint Commissioner of Police further scrutinized the said proposal and sent it to the office of the Commissioner of Police, Pune i.e. the Detaining Authority. Even if the time is reckoned from 14/08/2019 i.e. the date on which Sponsoring Authority sent the proposal to the ACP Faraskhana Division, Pune till 03/10/2019 i.e. the date on which

Deputy Commissioner of Police, Zone-I Pune sent the said proposal to the Additional Commissioner, South Region, Pune, more than 45 days time was taken by the authorities in perusing and scrutinizing the said proposal. Not only that, the Additional Commissioner of Police West Region, Pune has forwarded it to Police Inspector, Preventive of Crime Branch (PCB), Pune on 12/10/2019. It is therefore clear that the Additional Commissioner of Police, West Region had also taken about 9 days time in forwarding the said proposal to the Police Inspector Preventive of Crime Branch (PCB), Pune. No plausible explanation has been offered by the Respondents Authorities as to why the proposal was kept pending by the Deputy Commissioner of Police, Zone I, Pune City for a considerable period and then sent it to Additional Commissioner of Police, South Region, Pune on 03/10/2019 and as to why Additional Commissioner of Police, West Region, took 9 days time in scrutinizing and forwarding the proposal to Police Inspector, PCB Crime Branch, Pune.

13 In paragraph 9 of Pradeep Paturkar's case (supra) the Hon'ble Supreme Court held thus :-

"The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months

between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinize whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case."

14 In the facts of the present case, as observed herein above, delay in forwarding the said proposal by the DCP, Zone I Pune to the Additional Commissioner of Police, South Region, Pune remains unexplained, so also the further delay in forwarding the said proposal by the Commissioner of Police, West Region, Pune to Police Inspector, Preventive of Crime Branch (PCB) also remains unexplained. So far as the said delay is concerned, there is no satisfactory or plausible explanation offered by Respondent No.1-Detaining Authority. Therefore, keeping in view the exposition of law by the Hon'ble Supreme Court in the case of Pradeep Nilkanth Paturkar (Supra), and since no plausible explanation has been offered for delay in passing the order of detention, it will have to be held that there was delay in passing the order of detention.

15 It is contended by the learned counsel for the Petitioner that relying upon 6 offences, which were registered against the Detenu in the past, the order of an externment was passed against the Detenu externing him from

certain areas, and therefore relying upon the said past offences while passing the order of detention would amount to violation of mandate of Article 20(2) of the Constitution of India, which reads as under :-

“Art.20 (1).....

(2) No person shall be prosecuted and punished for the same offence more than once.

(3).....”

As already observed, the Detaining Authority in his reply stated that he has considered two in-camera statements and two CRs i.e. CR No.188/2019 and CR No.208/2019 and also the offences mentioned in paragraphs 5.1 and 5.2 of the grounds of order of detention, while arriving at subjective satisfaction before passing the order of detention. In that view of the matter, if the earlier offences are considered while passing the impugned order of detention, the Respondents Authorities were obliged to state proximity and live link between present proceedings for detention and those earlier offences registered against the detenu.

16 In the light of discussion in foregoing paragraphs an irresistible conclusion is that the order of detention impugned in this Writ Petition cannot be legally sustained, and therefore, the same is liable to be quashed and set aside. Hence the following order is passed :-

ORDER

- A] The impugned order of detention bearing No. PCB/DET/3405/2019 dated 16/10/2019 issued under Section 3(2) of M.P.D.A. Act, 1981 by Respondent No.1 is hereby quashed and set aside.
- B] The Detenu Firoj @ Babbali Maqbul Khan be set at liberty forthwith, if not required in any other case.
- C] The Writ Petition is accordingly allowed and Rule is made absolute in the aforesaid terms with no order as to costs.

(V. G. BISHT, J.)

(S. S. SHINDE, J.)

Laxmikant
G.
Chandan

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by Laxmikant
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