

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.6027 OF 2019

Pravin @ Bhayya Pratap Shinde	]
Age ---- years, residing at	]..... Petitioner
886, Kasaba Peth, Pune	] (Detenu)

versus

1] The Commissioner of Police, Pune	]]]
2] The State of Maharashtra (Through Addl. Chief Secretary to Government of Maharashtra Mantralaya, Home Department Mantralaya, Mumbai)	]]]]]]]
3] The Superintendent Yerwada Central Prison Pune.	]]]]..... Respondents

Mr. U N Tripathi a/w Ms. Jayshree Tripathi, Advocate for the Petitioner.
Mr. J P Yagnik, APP, APP for the Respondent/State.

CORAM : S. S. SHINDE, J
N. B. SURYAWANSHI, JJ
Reserved on : 14th January 2020
Pronounced on :- 17th January 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/Detenu Pravin @ Bhayya Pratap Shinde has preferred this Petition questioning the preventive detention order passed

against him being No.PCB/DET/3001/2019 on 06/09/2019 by Respondent No.1 – The Commissioner of Police, Pune. The said detention order has been passed under Section 3 of 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 by Respondent No.1 as, according to him, the Petitioner/Detenu is a dangerous person whose activities are prejudicial to the maintenance of public order. The detention order is based on two Criminal Cases vide C.R. No.122 of 2019 registered with Faraskhana Police Station on 23/03/2019 for the offences punishable under Sections 385, 452, 506(2), 504, 34 of the Indian Penal Code, and C.R. No.152 of 2019 registered with Samarth Police Station on 16/05/2019 for the offences punishable under Sections 143, 147, 148, 149, 427 of the Indian Penal Code r/w Section 4/25 of the Arms Act r/w Section 37(1) (3)/135 of Maharashtra Police Act r/w Section 7 of Criminal Law Amendment Act, and two In-camera statements of Witness “A” and witness “B” which are recorded on 10/07/2019 and 08/07/2019 respectively.

3 Though the 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 three grounds before us i.e. Ground Nos. 5(b), 5(c), and 5(g), which are reproduced herein below in verbatim :-

- (b) The Petitioner says and submits that the detaining authority has taken into consideration two criminal cases vide C.R No.122 of 2019 under Section 385, 452, 506(2), 504, 34 of the I. P. C. and C.R. No.152 of 2019 under Section 143, 147, 148, 149, 427 of I. P. C. and two in-camera statements of witness 'A' and witness 'B' which are recorded on 08.07.2019 and 10.07.2019, thereby all required material were available to the detaining authority upto 10.07.2019, whereas the order of detention is passed much belatedly on 06.09.2019 after a lapse of about two months, thereby there is a gross delay in passing order of detention. The satisfaction of the detaining authority vitiates. The order of detention is illegal and bad in law liable to be quashed and set aside. The detaining authority is called upon to explain the said delay to the satisfaction of this Hon'ble Court.
- (c) The Petitioner says and submits that even though two in-camera statements are recorded in July, 2019 they are verified as 'seen' by the detaining authority much belatedly on 06.09.2019, thus there has become further delay in passing order of detention. It is pertinent to note here that the detaining authority 'seen' the documents on the very day of passing order of detention, which means that the in-camera statements were not the part of proposal. The order of detention is illegal and bad in law liable to be quashed and set aside.
- (g) The Petitioner says and submits that while recording his satisfaction in paragraph 7 of the grounds of detention, it is categorically stated by the detaining authority that the Petitioner has unleashed a reign of terror and have become perpetual danger to the Society at large in the areas of Shivaji Nagar, Vishrambaug Faraskhana and Samarth Nagar Police Station of Pune City. The people of said areas are experiencing a sense of insecurity and are living under a shadow of constant fear whereby even day to day businessman and activities of citizens are under threat from you. The Petitioner says and submits that there is no material to show that there is any incidents took place within Shivaji Nagar and Vishramkbaug of Pune City. The Petitioner says and submits that the detaining authority states in paragraph 8 of the grounds of detention that he has relied upon the material

mentioned in paragraphs 5.1, 5.2, 6.1 and 6.2 of the grounds of detention to arrive at his subjective satisfaction whereas in the abovesaid paragraphs there is no material to show that any material and/or incident in Shivaji Nagar and Vishrambaug of Pune City has taken place. The order of detention is illegal and bad in law, liable to be quashed and set aside.

4 The learned counsel appearing for the Petitioner – Detenu submits that the detaining authority passed the order of detention on 06/09/2019 much belatedly after a lapse of two months from the registration of crimes mentioned in Ground (b). He further submits that there is a gross delay in recording the in-camera statements of the witness “A” and “B”. It is submitted that even though the said two in-camera statements are recorded in July 2019, they are verified as “seen” by the detaining authority without taking into consideration the truthfulness of the incidents mentioned in the said statements, and that too much belatedly on 06/09/2019. It is further submitted that the detaining authority has seen the documents on the very day of passing the order of detention, it means the in-camera statements were not the part of proposal. The learned counsel for the Petitioner / Detenu submits that there is no material to show that any incidents took place within Shivaji Nagar and Vishrambaug of Pune City. He therefore submits that the subjective satisfaction of the detaining authority based on the said two in-camera statements stands vitiated, and as a result the order of detention impugned in this Writ Petition cannot be sustained. It is also submitted that though it is

stated in paragraph 8 of the grounds of detention that the detaining authority has relied upon the material mentioned in paragraphs 5.1, 5.2, 6.1 and 6.2 of the grounds of detention to arrive at his subjective satisfaction, however, there is no material in the aforesaid paragraphs to show that any incident in Shivaji Nagar and Vishrambaug of Pune City has taken place. In support of the aforesaid contentions, the learned counsel appearing for the Petitioner / Detenu has placed reliance on the expositions of this Court in the case of Narendra @ Chotya Mahadev Balkawade v/s. The Commissioner of Police, Pune City in Criminal Writ Petition No.6041 of 2019 and in the case of Vijaya Ganesh Gajre v/s. The Commissioner of Police, Pune in Criminal Writ Petition No.5052 of 2015. In the light of aforesaid submissions as also on the basis of the three grounds reproduced herein above, the learned counsel appearing for the Petitioner submits that Petition deserves to be allowed.

5 On the other hand the learned APP appearing for the Respondents/State invites attention of this Court to the averments made in affidavit and additional affidavit filed by Dr. K Venkatesham – the Commissioner of Police, Pune City, Pune; affidavit of Aniruddha Venkatesh Jewlikar – the Deputy Secretary (In-charge), and affidavit of Umaji Tolaram Pawar – Superintendent of Jail, Yerwada Central Prison, Pune. The learned APP submits that the court cannot look into the sufficiency of the grounds in passing the detention order. It is also submitted that mere delay in passing the

detention order itself cannot be a ground in causing interference in detention order if the delay is satisfactorily explained. It is submitted that even in case there is a delay, and said delay is not explained, that itself is not a ground to cause interference in the order of detention. It is further submitted that the detaining authority has mentioned the details about the prejudicial activities of the Petitioner / Detenu causing disturbance to the Public Order. He further submits that the incidents mentioned in two crimes i.e. CR No.122/2019 of Faraskhana Police Station and CR No.152/2019 of Samarth Police Station clearly indicates that the reign of terror of the detenu and his associates has traumatized the local residents. It is also submitted that the Assistant Commissioner of Police, Faraskhana Division forwarded a report after ascertaining and verifying the truthfulness and genuineness of the statements of Witnesses "A" and "B" and thereafter the detaining authority was satisfied about the truthfulness of the contents of the said in-camera statements made by witnesses "A" and "B". It is also submitted that the Petitioner / Detenu is an impulsively violent person who wants to spread terror in the society. According to the learned APP, there is no delay in passing the order of detention and there is no illegality in passing the order of detention. It is further submitted that Shivaji Nagar and Vishrambaug Police Stations areas are adjoining areas of Faraskhana Police Station and Samarth Police Station, Pune. He also submits that Sr. PI Faraskhana Police Station also conducted a confidential enquiry of the Petitioner/Detenu's criminal activities in the said adjoining areas, and in

the said enquiry it is revealed that the Petitioner / Detenu is a dangerous person, and therefore the detaining authority has subjectively satisfied that the Petitioner / Detenu is acting in a manner prejudicial to the maintenance to public order. It is also submitted that in the grounds of detention it is clearly mentioned by the detaining authority that, he is satisfied that the facts given in the written statements and the apprehension expressed by witnesses "A" and "B" are true and reasonable, and therefore, the learned APP submits that there is a compliance of relevant provisions and also the procedure at the time of passing the impugned order.

6 We have given our anxious consideration to the submissions of the learned counsel appearing for the Petitioner / Detenu and the learned APP appearing for the Respondents/State. With their able assistance we have also carefully perused the pleadings and Grounds (b), (c), and (g), annexures thereto, the replies filed by the Respondents/State, and the original record maintained by the Respondents in relation to the detention of the Petitioner / Detenu, which was made available by the learned APP

7 In so far as Ground 5(b) is concerned, in the affidavit in reply filed by the detaining authority i.e. the Commissioner of Police, Pune City, Pune it is stated that the incident mentioned in Faraskhana Police Station, Pune i.e. C.R. No.122 of 2019 had taken place on 20/03/2019, and thereafter

another incident which is the subject matter of C.R.No.152 of 2019 had taken place on 15/06/2019 within the jurisdiction of Samarth Police Station. In so far as in-camera statements of witnesses A and B are concerned, the statement of witness "A" has been recorded on 10/07/2019 and the incident mentioned therein has occurred on 14/05/2019, whereas statement of witness "B" has been on 08/07/2019 and the incident narrated therein has been occurred on 06/05/2019. The Senior Police Inspector of Faraskhana Police Station, who is the sponsoring authority, collected the relevant certified documents of Court pending cases against the Petitioner / Detenu from various courts and police stations, and then prepared a proposal for the detention of the Petitioner / Detenu, and submitted it to the Assistant Commissioner of Police, Faraskhana Division, Pune on 11/07/2019. Immediately on the next day, the Assistant Commissioner of Police verified the truthfulness and genuineness of the statements of witnesses "A" and "B" on 12/07/2019 and forwarded the said proposal to the Deputy Commissioner of Police, Zone-I, Pune City, who, after scrutinizing the proposal, forwarded it to the Additional Commissioner of Police, West Region, Pune on 12/08/2019. Thereafter the Additional Commissioner of Police further scrutinized the said proposal and forwarded it to P.C.B. Crime Branch, Pune on 16/08/2019. The concerned PI. of PCB Crime Branch prepared note-sheet about the proposal and submitted it to the A.C.P. Prevention, Pune on 17/08/2019, who submitted the proposal to D.C.P. Crime, Pune on 20/08/2019. The D.C.P. Crime sent it to the Additional Commissioner

of Police, Crime on 23/08/2019, who after scrutinizing the said proposal forwarded it to Joint Commissioner of Police, Pune on 26/08/2019. Further the Joint Commissioner of Police scrutinized the proposal and sent it to the Detaining Authority on 27/08/2019. It is therefore clear that the said proposal has been scrutinized at various levels and thereafter it reached to the Detaining Authority on 27/08/2019, and after arriving at subjective satisfaction that the Petitioner / Detenu is a dangerous persons as defined in Section 2(b-1) of the MPDA Act, the Detaining Authority has issued the order of detention on 06/09/2019. The aforesaid averments in the affidavit in reply of the detaining authority would abundantly make it clear that the authorities have expeditiously considered the proposal at every level, and thereafter the order of detention has been passed. As it is evident from the affidavits filed by the Respondents that, the role of the A.C.P Faraskhana Division Pune is important as he has to verify the truthfulness and genuineness of the statements of the witnesses and, after perusing all the documents he has to send the proposal to the DCP, Pune, who further has to scrutinize the said proposal before submitting it to the Additional Commissioner of Police, West Region, Pune.

8 Perusal of the affidavit in reply of the Commissioner of Police i.e. the detaining authority, it appears that the every authority has verified the proposal and thereafter forwarded it to the next authority. Therefore, it cannot be said that there is a considerable delay in passing the order of detention from

the date of registration of crime and recording of in-camera statements. It is true that ACP Faraskhana Division, Pune and Deputy Commissioner of Police, Zone-I Pune took one month's time to scrutinize and consider the said proposal, however, considering the process of scrutinizing the proposal, no much significance can be given to the said delay. In our considered view, in totality there is no delay in passing the order of detention. Therefore, there is no substance in the submissions of the learned counsel appearing for the Petitioner / Detenu that there was a considerable delay in passing the order of detention.

9 In so far as the next submission of the learned counsel appearing for the Petitioner / Detenu relying upon the contents of Ground No. 5(c) is concerned, it appears from the reply affidavit filed by the detaining authority that the ACP verified truthfulness and genuineness of the statements of witness "A" and "B" recorded in-camera, and the said statements were seen by the detaining authority and thereafter the order of detention has been passed. There is therefore proper application of mind while considering the said statements of witnesses "A" and "B" recorded in-camera. There is, therefore, no substance in the said submission of the learned counsel for the Petitioner.

10 The next ground urged by the learned counsel for the Petitioner that though it is mentioned in the order of detention that, the Petitioner has

unleashed a reign of terror and, the alleged activities of the Petitioner / Detenu have become perpetual danger to the society at large in the areas of Shivaji Nagar, Vishrambaug, Farashkhana and Samarth Nagar Police Stations of Pune City, however, there is no material to show that any incidents took place within Shivaji Nagar and Vishrambaug of Pune City. In this respect, out of the areas mentioned in Ground 5(g) i.e. Shivaji Nagar, Vishrambaug Farashkhana and Samarth Nagar Police Station of Pune City, the Crime bearing No. C R. 152 of 2019 has been registered with Samarth Police Station on 16/05/2019, and Crime bearing C R No.122 of 2019 has been registered with Farashkhana Police Station on 23/03/2019, the remaining two areas i.e. Vishrambaug and Shivaji Nagar mentioned in the said Ground are adjoining to Samarth Police Station. The reliance placed by the learned counsel appearing for the Petitioner / Detenu on the ratio laid down in Vijaya Ganesh Gajre's case (supra) is misplaced in the facts of the present case, inasmuch as in the said case the alleged activities of the detenu therein were in the areas falling within the jurisdiction of Kondhawa and Wanawadi Police Stations, however, while passing the order of detention, the detaining authority in the said case has not relied upon any case of Kondhawa Police Station or Wanawadi Police Station and therefore the Court held that in such case the detaining authority could not in paragraph 7 of the detention order have stated that it was subjectively satisfied that the detenu has unleashed a reign of terror and had become a perpetual danger to the society at large within the limits of Kondhawa and

Wanawadi Police Stations. However, in the present case, the crimes have been registered with Farashkhana and Samarth Police Stations and, these two areas and another areas i.e. Shivaji Nagar and Vishrambaug are adjoining to each other, and therefore, we do not find any merit in Ground 5(g) agitated by the learned counsel for the Petitioner / Detenu.

11 It is required to be noted that the Respondents-Authorities have given elaborate replies to the aforesaid grounds and we are satisfied that none of the ground is worth to consider so as to cause interference in the order of detention. We have carefully perused the original record maintained by the Respondents, which has been made available by the learned APP. In peculiar facts of the present case and keeping in view the past record of the Petitioner / Detenu, that he is a history – sheeter and habitual offender, we are of the considered view that there is no merit in the present Writ Petition, and the same is required to be dismissed. Hence the Writ Petition is accordingly dismissed. Rule stands discharged accordingly.

[N. B. SURYAWANSHI, J]

[S. S. SHINDE, J]

Laxmikant
G.
Chandan

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by Laxmikant G.
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