

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1497 OF 2021

Swapnil Subhashrao s/o Salunkhe
Age- 34 years, R/o. Om Nagar,
In front of Nagoba Temple
Police Station Sakardar,
Nagpur City.
[At Present at Nashik Central Prison]

...PETITIONER

Versus

1. Commissioner of Police
Nagpur City.
2. The State of Maharashtra
Through Addl. Chief Secretary
To Government of Maharashtra,
Mantralaya, Home Department,
Mantralaya, Mumbai.
3. The Superintendent
Nashik Road Central Prison
Nashik.

...RESPONDENTS

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Ms. Jayshree Tripathi for the Petitioner.
Mr. J.P. Yagnik, APP for Respondent-State.

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**CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.**

**RESERVED ON: 25th AUGUST, 2021.
PRONOUNCED ON: 16th SEPTEMBER, 2021.**

JUDGMENT: [PER S.S. SHINDE. J.]

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

2. On 29.07.2020, an order of detention under Section 3(2) of the Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drug-Offencers, Dangerous Persons And Video Pirates Act, 1981 (the “MPDA Act”), was issued by Respondent No. 1 i.e. Commissioner of Police Nagpur City, for the offences registered vide C.R. No. 159/2020 with Sadar Police Station for the offences punishable under Section 387, 452, 120 (b), 506 (b) of IPC and C.R. No. 221/2020 registered with Wathoda Police Station for the offences punishable under Section 4/25 of Indian Arms Act read with Section 135 of Maharashtra Police Act. The two in-camera statements of witnesses “A” and “B” are also taken into consideration by the detaining authority to arrive at his subjective satisfaction while passing the detention order. On 08.03.2021, a representation was sent to the State Government through Superintendent, Central Prison, Nashik Road, Nashik and Nagpur Central Prison, Nagpur, for expeditious consideration and revocation of the order of detention.

3. Learned counsel for the petitioner submits that the representation of the petitioner was not considered expeditiously by the State Government. There is delay in execution of detention order. It can be gathered from the allegations made in the C.R. No.

159/2020 with Sadar Police Station for the offences punishable under Section 387, 452, 120 (b), 506 (b) of IPC and C.R. No. 221/2020 registered with Wathoda Police Station for the offences punishable under Section 4/25 of Indian Arms Act read with Section 135 of Maharashtra Police Act that the statements of witnesses “A” and “B” are vague, and no public order is disturbed. It is submitted that the word disjunctive ‘or’ used in para 2 of the grounds of detention shows non application of mind.

4. In support of contention that there is delay in execution of the order of detention, learned counsel for the petitioner placed reliance on judgments in the case of SMF Sultan Abdul Kader Vs. JT Secy. To Govt. of India & Ors¹, K.P.M. Basheer Vs. State of Karnataka & Anr², P.M. Hari Kumar Vs. Union of India & Ors³, Manju Ramesh Nahar Vs. Union of India & Ors⁴, Ismail Shaikh Ali Vs. State of Maharashtra & Ors⁵, Shri. Netaji N. Lotikar Vs. State of Goa & Anr⁶ and Iqbal Vs. Union of India & Ors⁷.

1 (1998) 8 SCC 343

2 (1992) 2 SCC 295

3 (1995) 5 SCC 691

4 (1999) 4 SCC 116

5 (1998) ALL MR (Cri) 928

6 1992 CRI. L.J. 2363

7 JT 1991 (6) S.C. 496

5. In support of contention that there is unexplained delay in considering representation of the detenue, learned counsel placed reliance on judgments in the cases of Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police & Ors⁸, Harish Pahwa Vs. State of U.P.⁹, Rohit Sidhram Khatal¹⁰, Aslam Ahmed Zahir A. Shaikh Vs. Union of India & Ors¹¹ and Vilas Shankar Dhande Vs. Commissioner of Police & Ors¹².

Therefore, learned counsel appearing for the petitioner submits that the writ petition may be allowed.

6. On the other hand, Mr. Yagnik, the learned APP appearing for Respondents-State relying upon the reasons assigned in the order of detention, so also affidavit filed by Dr. Bhushan Upadhyay, the then Commissioner of Police, Nagpur City, Nagpur, Mr. Amitesh Kumar, Commissioner of Police, Nagpur City, Nagpur and Mr. Shirish Mohod, Deputy Secretary, Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai, and submits that the impugned order of detention is perfectly justified in law, and therefore, the petition may be dismissed.

Learned APP invited our attention to the averments in the said

8 (1989) 3 SCC 173

9 (1981) 2 SCC 710

10 Cri. W.P. 1576 of 2020.

11 1989 CRI. L.J. 1447

12 2012 ALL MR (Cri) 1118

affidavits in reply, so also the original record, during the course of hearing of the writ petition.

7. We have given due consideration to the submissions of learned counsel for the petitioner and learned APP appearing for State. With their able assistance we have carefully perused the pleadings and grounds taken in the petition, annexures thereto, affidavits in reply filed by Respondent-State and the original record produced by Respondent authorities. In our opinion only three grounds set out in the petition deserve consideration i.e. ground (d), (e) and (h).

8. Ground (d), reads as under:-

d). The Petitioner says and submits that even though the order of detention is passed against the Petitioner on 29.07.2020 whereas the said order along with the compilation of documents are executed and served upon the Petitioner much belatedly on 01.03.2021 i.e. after a long gap of seven months. The executing authority should explain the long delay in executing and serving the grounds of detention to the Petitioner to the satisfaction of competent authority failing which the said order of detention will be held as illegal for non-execution of the order of promptly and expeditiously. The order of detention is

illegal and bad in law for gross delay in execution of the order liable to be quashed and set aside, unless explained to the competent authorities the reasons for delay in execution and due procedure followed. Law is well settle in this point that whenever there is a gross delay in execution of the order of detention the authorities should move to the Competent Court for cancellation of bail, which is not done in this case. The order of detention is illegal and bad in law liable for delay in execution liable to be quashed and set aside.

9. In reply to the said ground (d), in affidavit in reply filed by Mr. Amitesh Kumar, Commissioner of Police, Nagpur City, Nagpur, it is stated that the detention order was issued on 29th July, 2020, but the detenue was absconding since then thereby avoiding the execution of the detention order, therefore, it cannot be said that the order of detention was executed with a delay of seven months. The very next date of passing of the detention order, on 30th July, 2020 the order of detention along with its translation was pasted on a conspicuous place at the house of the detenue. The said order was also published on the notice board of police station, Sakkardara, and detailed panchnama of the pasting of the order is drawn. Thereafter, the detenue was searched, however, he was not found, hence, 'Chespa panchnama' (Execution Panchnama), to that effect

was made at Plot No. 319, Om Nagar, in front of Nagoba Temple under the jurisdiction of Sakardara Police Station. The effective search of the detinue was carried out and to that effect on 12.02.2021, a report was submitted and the station diary entries were taken in respect of search of the detinue. Also vide Section 91 of Cr.P.C., bank details of the detinue was sought and communication was made to the Registrar office for seeking information as to the immovable properties acquired by the detinue. There was further continuous search and to that effect entries are taken vide No. 23/2020 on 06.12.2020. Officers of Crime Branch unit also searched the detinue and entry to that effect was taken vide No. 26/2020 on 14.12.2020. We have also perused the averments in the other affidavit in reply in this respect. Nowhere it is stated that the concerned authority has applied for cancellation of bail of the detinue, since according to them he was absconded or not traceable.

We find considerable force in submission of Ms. Tripathi, the learned counsel for the petitioner that there was considerable delay in executing the order of detention.

10. The Hon'ble Supreme Court in the case of **P.M. Hari Kumar** (Supra) in the facts of that case, held that no attempt was

made by the respondent authorities to approach the courts for cancellation of bail is a important factor while considering the contention of the detenue that there is a delay in execution of order of detention.

11. Ground (e), reads as under:-

e). The Petitioner says and submits that the detaining authority has taken consideration two criminal case vide C.R. No. 159/2020 u/Sec. 387, 452, 120(b), 506 (b) I.P.C. and C.R. No. 221 of 2020 u/Sec 4, 25 of Indian Arms Act r/w 135 Maharashtra Police Act. The narration of the fact of these two incidents are disclosed in para 701 and para 7.1.11 of the grounds of detention wherein the incidents are narrated in detail. On a plain reading of these two incidents by no stretch of imagination a man of prudence will come to the conclusion that due to the alleged incident public order is disturbed, particularly taking into consideration the occurrence of the incidents at the place like within the four corners of office and the time factor i.e. like at mid night where normally public in general/ gathering does not take place, thus it cannot be said that public order is disturbed it is to be noted that in case of disturbance to public order there should be material before the detaining authority to come to the conclusion that public at large are affected and due to the activities of the Petitioner public at large ran away helter skelter, disturbing the even tempo of the life of

society, the effect and impact of the incident on the public and society at large has to be disclosed. On a minute study of both the incident taken into consideration by the detaining authority to pass the detention order reveals that the incidents are directed against individuals and not against the public at large, it does not fall within the scope and ambit of disturbance to public order. Hence it cannot be said that public order is disturbed, at the best it can be said that law and order is disturbed, law is well settled that unless public order is disturbed detaining authority cannot pass detention order for disturbance to law and order. This shows non application of mind of the detaining authority. The order of detention is illegal and bad in law liable to be quashed and set aside.

12. We have carefully perused the contents of statements of witnesses "A" and "B" recorded by the concerned authority. Upon careful perusal of said statements it is difficult to accept the contention of the respondents that the alleged activity stated by the said witnesses would amount to breach of the public order.

13. Ground (h) reads as under:-

h) The Petitioner says and submits that a representation of the Petitioner dated 08.03.2021 was sent to the Superintendent of Nashik Road Central Prison, Nashik and Nagpur Central Prison, Nagpur (as was instructed by

the relatives of clients that the client was initially detained at Nagpur) by speed post for expeditious consideration and communication. The Petitioner says and submits that so far no communication has been received from the State Government as regards to the consideration of the said representation of the Petitioner by the State Government, thereby the State Government has delayed in considering the representation of the Petitioner expeditiously and diligently and communicating the result to the Petitioner. The said authority i.e. the State Government is called upon to explain delay occurred from the date of representation till today to the satisfaction of this Hon'ble Court failing which the continued detention will be held as illegal and bad in law, liable to be quashed and set aside.

14. We have carefully perused the reply filed by one Mr. Shirish Mohod, Deputy Secretary, Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai. It is stated that the representation of the petitioner dated 08.03.2021 was forwarded to the Government of Maharashtra by Superintendent, Nagpur Central Prison, Nagpur, vide letter dated 21.03.2021 which was received in the Special 3B branch of Home Department, on 31.03.2021. Thereafter the remarks were called from the detaining authority i.e. Commissioner of Police, Nagpur City, Nagpur. The said remarks were received on 08.04.2021 vide letter dated 05.04.2021

via e-mail. The concerned Assistant Section Officer submitted file containing remarks of detaining authority alongwith the representation of the detainee to the Section Officer on 09.04.2021. The Section Officer submitted file to the Deputy Secretary on 09.04.2021. The Deputy Secretary endorsed the said file on 09.04.2021 and forwarded it to the Additional Chief Secretary (Home), on the same day. There were holidays on 10.04.2021 (Saturday) and 11.04.2021 (Sunday). The Additional Chief Secretary (Home) considered the representation of the detainee and the remarks of the detaining authority and rejected the representation on 12.04.2021 by applying his mind independently. The rejection of representation was communicated to the detainee vide letter dated 12.04.2021. Thus, the representation of the detainee was considered by the State Government as expeditiously as possible.

15. Upon perusal of aforesaid reply it is abundantly clear that the representation was given by the detainee on 08.03.2021 was forwarded to the Government of Maharashtra by Superintendent Nagpur Central Prison, Nagpur vide letter dated 21.03.2021. The said delay of 13 days on the part of Superintendent Nagpur Central Prison, Nagpur remains unexplained. It appears that the said representation reached to Special 3B branch of Home Department

on 31.03.2021. The delay of 10 days in reaching the said representation to the Special 3B branch of Home Department also remains unexplained. Apart from it, at every stage there is a delay. Even though there is couple of days delay, the said delay needs to be explained. The Supreme Court in the case of **SMF Sultan Abdul Kader** (Supra), in the facts of that case held that “the unreasonable delay in executing the order created a serious doubt regarding the genuineness of the detaining authority as regards the immediate necessity of detaining the petitioner in order to prevent him from carrying on the prejudicial activity referred to in the grounds of detention the order of detention was passed by the detaining authority not in lawful exercise of power vested in him”.

16. In another unreported judgment of this Court (Coram: S.S. Shinde & M.S. Karnik, JJ.) in the case of Rohit Sidram Khatal (Supra), in the facts of that case, held that period from 20th July, 2020 till 11th August, 2020 there is absolutely no explanation much less a satisfactory explanation for the delay in processing the representation. Therefore, the said delay was fatal.

17. It is not necessary to multiply the reliance placed upon the judgments cited by the learned counsel for the petitioner during

the course of haring. Suffice it to say that the delay in considering the representation of the petitioner remained unexplain.

18. In that view of the matter, in the facts and circumstances of this case and in view of discussion in foregoing paragraphs, an inevitable conclusion is that the petition deserves to be allowed. Hence, the following order:-

ORDER

- A) The writ petition is allowed.
- B) The impugned order of detention bearing No. DET/ MPDA/ CRIME BRANCH/PCB/07/ 2020 dated 29.07.2020 issued under Section 3 of the MPDA Act, 1981 passed by Respondent No. 1, is quashed and set aside.
- C) Consequently, the petitioner is directed to be released forthwith unless required in any other case.
- D) Rule is made absolute in the above terms.
- E) The writ petition stands disposed of.
- F) Parties to act upon an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)