

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2335 OF 2021

Sanjay s/o Ramuji Phatode
Age 47 years, R/o Ram Nagar,
Behind Pandhrabodin Hutment
P. Stn. Ambazari, Nagpur City
(At Present Yerwada Central Prison,
Pune.)

...PETITIONER

Versus

1. The Commissioner of Police
Nagpur City.
2. The State of Maharashtra
Through Additional Chief
Secretary to Government of
Maharashtra, Mantralaya,
Home Department, Mantralaya,
Mumbai.
3. The Superintendent
Yerwada Central Prison,
Pune.

...RESPONDENTS

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

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

RESERVED ON : 5th AUGUST, 2021.
PRONOUNCED ON: 30th AUGUST, 2021.

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

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

2. On 16.03.2021, order of detention under Section 3(2) of the MPDA Act, was issued by Respondent No. 1- Commissioner of Police, Nagpur City, Nagpur. On 22.06.2021, a representation of the petitioner was sent to the State Government through the Superintendent Yerwada Central Prison, Pune, for expeditious consideration and revocation of the order of detention. On 08.04.2021, the representation of the petitioner was rejected. The petitioner was interviewed by the advisory board at Mumbai through virtual conference. Hence, this writ petition thereby challenging the legal and constitutional validity of the detention order.

3. The Petitioner has incorporated grounds (a) to (e) in the petition, however, learned counsel for the petitioner while arguing the petition confined her arguments to ground (c), (d), (e), (f) and (g). Learned counsel submits that though the detaining authority i.e. Respondent No. 1 has relied upon C.R. No. 351 of 2020, it is to be noted that in the said crime the petitioner was not even present on the spot of incident, it was his son who has dealt with the complainant. Therefore, the said offence should have kept out of consideration while passing the order of detention. It is further submitted

that in three cases which have been relied upon by the detaining authority while passing the detention order, in all those cases the petitioner was produced before the Court and the Court has granted bail to him. It is submitted that the alleged offences are under the Maharashtra Money-Lending (regulation) Act, 2014, and in respect of those offences, the law will take its own course and there was no need to invoke the provisions of MPDA Act. It is submitted that two in-camera statements of witnesses 'A' and 'B' are found to have been recorded on 12.02.2021 and 13.02.2021 respectively. On a close scrutiny of both the statements it was noticed that that there are at least seven blanks in both the statements of witnesses 'A' and 'B'. The statements therefore cannot be said as true and authentic for having several blanks. Whereas the detaining authority in the grounds of detention while narrating the statements of witnesses 'A' and 'B' has furnished the details which are not disclosed in the material statements of witnesses and it is difficult to understand, as to how and from where these material/information is incorporated in the grounds of detention, when they are not furnished in the material statement of witness 'A' and 'B'. Such a variance in the grounds of detention when compared with the contents of in-camera statements, creates confusion and its truthfulness cannot be believed. As a result, the petitioner is deprived of making any effective representation, as such petitioner's right guaranteed under Article 22(5) of the Constitution of India is violated.

4. It is submitted that the representation of the petitioner dated 22.06.2021 was sent to the Superintendent of Yerwada Central Prison, Pune for forwarding the same to the State Government for expeditious consideration, revocation, but, so far, no communication has been received from the State Government as regards to the consideration of said representation of the petitioner. The State Government has caused considerable delay in considering the representation of the petitioner and not considered and decided the same expeditiously and diligently. The State Government has not explained the delay occurred from the date of representation till same was decided. It is further submitted that the detaining authority has not complied with the requirement of law strictly inasmuch as no report is sent promptly and expeditiously to the State Government forthwith as required by Section 3(3) of MPDA Act.

The Hon'ble Apex Court while interpreting the very word 'forthwith' as immediately, without any loss of time and with sense of urgency. This has been followed by this Court in a number of pronouncements. The delay in sending the report has to be explained to the satisfaction of this Court. In the present the order of detention came to be passed on 16.03.2021 which was approved by the State Government, Home Department, Mantralaya, Mumbai, on 23.03.2021 i.e. eight days from the date of passing the order of detention. Therefore, there is delay in approval of the detention order as

required under Section 3(3) of MPDA Act, 1981. As the approval of the detention by the State Government is not done forthwith, as per requirement of law. Therefore, the order of detention is illegal, bad in law and liable to be quashed and set aside.

5. Pursuant to the notices issued to the respondents, the Respondent No. 1 has filed affidavit in reply and the record is made available for perusal of this Court. So far ground (g) raised in the petition that there was delay in approval of detention order as required under Section 3(3) of the MPDA Act, is concerned, in the reply filed by the said authority it is stated that as required the report was sent to the Government of Maharashtra on 20.03.2021. The State Government was pleased to approve the order of detention on 23.03.2021 and confirmed the said order of detention on 27.04.2021. Admittedly, from 16.03.2021 i.e. date of passing of detention order, till 20.03.2021, were the working days for State Government and there was no single holiday in between that period. It is clear from aforesaid reply that the delay in sending the report to the State Government is not explained. The Division Bench of this Court in the case of *Dharani Raja Padyachi Vs. The State of Maharashtra & Ors*¹, in para 6 and 8 held as under:-

“6. Perusal of provisions of subsection (3) of Section 3 of the said Act makes it clear that

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upon making the order directing detention of the detenu, the specified officer is required to forthwith report that fact to the State Government together with the grounds on which the order has been made and such other particulars, as in the opinion of the Detaining Authority have a bearing on the matter. Thus, report is required to be sent forthwith to the State Government upon making an order directing detention of the detenu. Forwarding of such report is not required to be kept pending for execution of order of detention. In the case in hand, order of detention was made on 6th November 2018 and from affidavit of the Detaining Authority, it is clear that from 7th November 2018 were nonworking days being 2nd Saturday and Sunday. As such, the delay up to 11th November 2018 got explained from the affidavit of the Detaining Authority. However, there was no reason with the Detaining Authority to not to sent the report in respect of making of order of detention to the State on 12th November 2018. However, it appears that, without any plausible reason, the report of making of order of detention was not sent to the State by the Detaining Authority on 12th November 2018 and 13th November 2018. Ultimately, it was sent to the State Government on 14th November 2018. The reason for not sending the report on these two days is totally irrelevant to the cause. It was not at all necessary for the Detaining Authority to wait for execution of order of detention by getting custody of the petitioner from the court. The Detaining Authority ought not to have waited for sending report to the State till taking custody of the detenu and till lodging him in the Nashik Road Central Prison Nashik.

8. It is thus, clear that, the report as envisaged by subsection (3) of Section 3 was not sent by the Detaining Authority to the State Government at the earliest and without loss of time. Sending of the report was delayed and the delay was avoidable. There appears to be laxity in report of the detention to the Government by the Detaining Authority on the pretext that the detention order was to be executed by getting custody of the detainee transferred to it from the concerned Judicial Magistrate.”

6. The Hon’ble Supreme Court in the case of *Hetchin Haokip Vs. State of Maharashtra & Ors*², in para 15 observed that 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 unavoidable circumstances beyond the control of the authority and not because of administrative laxity.

7. In the facts of the present case, admittedly, the report was not forwarded to the State Government till 20.03.2021, though the detention

2 (2018) 9 SCC 562

order was passed on 16.03.2021. Thereafter the State Government approved the detention order on 23.03.2021. The delay of three days in sending the report to the State Government remained unexplained and thereafter delay in approving the order of detention by the State Government also remained unexplained. There was delay in communicating the grounds of detention and same was beyond five days, on the part of detaining authority, which according to us is fatal to the case.

8. This Court (Coram:- S.S. Shinde & N.B. Suryawanshi, JJ.) in the case of Mahesh Gopinath Pawar Vs. The Commissioner of Police Pimpri-Chinchwad & Ors³, while considering the same ground of delay in sending report to the State Government, in para 8 held as under:-

“8. The learned counsel for the Petitioner was justified in placing reliance in the case of Dharani Padyachi (supra) wherein the Division Bench of this Court in similar facts held that delay of 2 days in forwarding report was fatal. It was held that “in terms of section 3(3) of the said Act, it is clear that upon making the order directing detention of the detenu, the specified officer is required to forthwith report that fact to the State Government together with the grounds on which the order has been made and such other particulars, as in the opinion of the detaining authority have a bearing on the matter”. Thus the report is required to be sent forthwith to the State Government upon making the order

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directing the detention of the detenu. In that case delay was of 2 days in forwarding the report, which was held to be fatal though the same was sought to be explained by the detaining authority. In the present case, admittedly there is delay of 3 days in forwarding the report under section 3(3) of the said Act which according to us is not explained and the same vitiates the impugned detention order.”

9. Another contention raised by the learned counsel for the petitioner that two in-camera statements of witness A and B, which were recorded on 12.02.2021 and 13.02.2021 respectively, of which copies were served to the petitioner, there are at least seven blanks in both the statements, whereas the detaining authority in the grounds of detention while narrating the statement has furnished the details, which were not disclosed in the statement of witness A and B. According to the learned counsel for the petitioner, such variance in the grounds of detention when compared with the contents of statements of witness A and B creates confusion and the truthfulness of said statements cannot be believed and as a result, the petitioner was deprived of making an effective representation. As such petitioner's right guaranteed under article 22(5) of the Constitution of India is violated.

10. In the reply filed by the respondent no. 1 it is stated that though the petitioner has committed several offences, the witnesses were not willing to come forward to give complaint against the petitioner due to the terror created by him and his associates. It was only when the assurances were given to the witnesses, that their names and identifying particulars would not be disclosed, the two witnesses came forward to give their statements and thereafter, statements were recorded in-camera on 12.02.2021 and 13.02.2021 respectively. Hence, their names, address, occupation are not disclosed to detainee along with grounds of detention.

We can understand that name, address and occupation of the witnesses are not disclosed, however, least expected is that the detaining authority should disclose the date and place of incident, so as to enable the detainee to make an effective representation or reply to the statements of those witnesses.

11. So far ground (f) i.e. delay in deciding the representation of the petitioner dated 22nd June, 2021 is concerned, the respondent in the reply stated that representation of the petitioner dated 22.06.2021 was sent to the Superintendent, Yerwada Central Prison, Pune and to the State Government which was received by the State Government on 25.06.2021 and the State Government has called for the parawise comments from the office of detaining

authority. The same was received by us on 28.06.2021 and on 29.06.2021 the detaining authority has sent the representation to the Deputy Commissioner of Police, Nagpur City. On 30.06.2021 the Deputy Commissioner of Police, Zone-II has sent to Police Inspector, Police Station Ambazari for preparing the parawise comments. The Police Inspector, Police Station, Ambazari received the same on 01.07.2021. In the said period there were two Government holidays i.e. on 03.07.2021 and 04.07.2021 being Saturday and Sunday. On 05.07.2021, the Police Inspector, Police Station Ambazari submitted parawise comments to the Deputy Commissioner of Police, Zone-II, Nagpur. On 06.07.2021, the Deputy Commissioner of Police, Zone-II, Nagpur submitted parawise comments to the detaining authority, which was received on 07.07.2021 and the same was finalized on 08.07.2021 by the Respondent No. 1. Thereafter, the same was forwarded to the State Government for the consideration of the representation.

12. On careful perusal of reply of Respondent No. 1, it is clear that, the explanation about how the said communication the representation of the petitioner dated 22.06.2021 was sent to the State Government, and further when the said representation reached to the State Government and what happened on 26.06.2021 and 27.06.2021 has not been explained.

13. In the light of discussion in foregoing paragraphs, we are of the considered opinion that the writ petition deserves to be allowed. Hence, the following order.

ORDER

1. The impugned order of detention bearing No. D.O. No. DET/MPDA/Zone-II/PCB/14/2021 dated 16.03.2021 issued under Section 3 of MPDA, Act, 1981, by Respondent No. 1, is quashed and set aside.
2. The Petitioner is to be released forthwith, unless required in any other offence or proceedings.
3. Rule is made absolute to above terms.
4. The writ petition stands disposed of.
5. Parties to act upon an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)