

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2392 OF 2021

Sunita Chandrashekhar Kapre
Aged: 48 years, Occ:
Resident of Alka Niwasm, Opp.
Sant Gadge Maharaj School,
Kondhwa Khurd, Pune.

...PETITIONER

Versus

1. Shri. Amitabh Gupta
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

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Ms. Misbah Solkar for Petitioner.
Mr. J.P. Yagnik, APP for State.

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

RESERVED ON: 18th 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. The Petitioner is mother of the detainee who is detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (hereinafter referred to as the “said Act”).

3. It is the case of the petitioner that a detention order, bearing No. PCB/DET/555/2021 dated 03.03.2021 was issued by Respondent No. 1, wherein it has been stated that with a view to prevent the detainee from acting in any manner prejudicial to the maintenance of public order, it is necessary to detain him under the said Act and, therefore, in exercise of the power conferred by sub Section (2) of Section 3 of the said Act, read with Government order, Home Department (Special) No. 1220/CR-200/Spl-3B, dated 06.01.2021. Respondent No. 1 directed that the detainee be detained under the said Act. The detainee was served with the said detention order and along with the said detention order, another order of same date was sent, directing the detainee to be detained in Yerwada Central Prison, Pune under the conditions laid down in the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders (Conditions of Detention) Order, 1981. The detainee was also served with the communication purportedly issued by Respondent No. 1, containing the grounds of detention on the basis of which the detention order was issued, and the documents

accompanied with its translation, alleging that the said grounds of detention have been formulated on the basis of said material. Being aggrieved by the said orders as mentioned herein before the petitioner has filed this petition by invoking writ jurisdiction under article 226 of the Constitution of India.

4. Learned counsel for the petitioner invites our attention to the grounds (A) to (H) in para 6 of the petition and submits that the orders passed by Respondent No. 1 display complete non application of mind and malafide on the part of the detaining authority. By no stretch of imagination can it be said that the activities of the detainee are prejudicial to the maintenance of public order entailing his detention under the provisions of the said Act. None of the activities of the detainee, as mentioned in the grounds of detention, can be said to be disturbing the maintenance of public order. It is submitted that there is an inordinate and unexplained delay of two months in passing the order of detention by Respondent No. 1 inasmuch the last alleged offence registered against the detainee is on 04.01.2021 and the detention order has been passed on 030.3.2021. It is submitted that due to the delay of two months the live link between the passing of detention order and registration of last offence has been snapped. The compilation of documents which has been relied upon while passing the detention order are running into 375 pages and same were placed before the detaining authority to formulate the grounds of

detention, arrive at subjective satisfaction and ultimately to pass the order of detention. The detaining authority has relied upon the extraneous material as it is mentioned in para 8 of the grounds of detention that Respondent No. 1 has relied upon the material mentioned in Para 50.1, 5.2, 6.1 and 6.2 of the grounds of detention to pass the order thereby the detaining authority has taken into consideration extraneous material pertaining to other crimes of year 2016, 2017 and 2020.

5. It is not clear from the grounds of detention whether Respondent No. 1 before formulating the grounds of detention, as a matter of fact, gone through the opinion of different sub ordinate officers written on the said proposal. The detaining authority has relied upon the statements of two witnesses A and B recorded in-camera for arriving at subjective satisfaction for issuing the detention order. It is submitted that the aforesaid two statements of the witnesses have not been properly verified by the superior officers of the rank of Assistant Commissioner of Police. It appears that belated attempt was made to verify said statements, however, there was considerable delay in verifying the statements by the Assistant Commissioner of Police. It is submitted that without opposing bail application of the detainee, the Sponsoring Authority moved a proposal for preventive detention before the detaining authority and the same was approved by the detaining authority

despite the fact that the detainee was already in judicial custody. The statement of said witnesses seems to be fabricated and got up statements in order to put the detainee behind bars in preventive detention. It is submitted that in-camera statements concerned only with the specific individuals and they have nothing to do with the members of public at large. Therefore, at best incident stated in the said statements can be considered as breach of law and order and do not disturb the tempo of public or public tranquility at large, therefore, the order of detention deserves to be quashed and set aside.

6. In support of the aforesaid contentions, the learned counsel for the petitioner has relied upon the judgments in the case of Hanuman Rajaram Mhatre Vs. The Commissioner of Police, Thane & Ors.¹, Pushkar Mukherjee & 29 Others Vs. The State of West Bengal.², Pawan Tukaram Kudale Vs. The Commissioner of Police.³, Mohamad Ishaq Mohamad Ismail Shaikh Vs. Sanjay Barve & Ors.⁴, Mr. Shubham Rajendra Hingade Vs. State of Maharashtra & Anr.⁵ and Banka Sneha Sheela Vs. The State of Telangana & Ors.⁶.

1 Writ Petition No. 4646/2017

2 1969 (1) SCC 10

3 Writ Petition No. 1811 of 2018

4 Writ Petition No. 133/2020.

5 Writ Petition No. 559 of 2021

6 Criminal Appeal No. 733 of 2021
(Arising out of SLP (Crl) No. 4729/2021)

7. On the other hand Mr. Yagnik, the learned APP appearing for Respondent-State relying upon the affidavit filed by Commissioner of Police, Pune City, Pune i.e. Respondent No. 1, submits that it is abundantly clear from the activities alleged against the detenue that he has indulged in serious offences covered under Chapter XVI and XVII of IPC, so also offences punishable under Arms Act. It is submitted that though the detaining authority did not place reliance upon the earlier detention order and offences, however, the criminal history of the detenue is writ large and cannot be ignored. It is matter of record that in 2018 the order of detention was passed against the same detenue and he was detained. Learned APP invites attention of this Court to the affidavit filed by Respondent No. 1 and submits that an exhaustive reply is given to the grounds raised in the petition which is self explanatory.

Learned APP placed reliance upon the judgment of Division Bench of this Court (Coram: Vishnu Sahai & P.V. Kakade, JJ) in the case of Deepak Govind Murudkar Vs. Mendonca, Commissioner of Police.⁷, and submits that the offences falling under Chapter XVI and XVII of IPC or Chapter V of the Arms Act, can be taken into consideration for determining whether the person is dangerous person under Section 2(b-1) of said Act as held in the aforesaid judgment in para 11. It is submitted that delay in issuance

⁷ Writ Petition No. 2090/1999

of detention order is not significant and before passing the detention order views of various authorities are required to be taken. It is submitted that it is made clear in the grounds of detention so also in the reply filed by Respondent No. 1 that the detaining authority is relying upon para 5.1, 5.2, 6.1 and 6.2 to form his opinion before setting out the grounds of detention. Therefore, relying upon the grounds of detention and averments in the affidavit filed by Respondent No. 1, the learned APP submits that the petition is devoid of any merit and same deserves to be dismissed in limine.

8. We have given careful consideration to submissions of learned counsel for the petitioner and learned APP for Respondent-State. With their able assistance we have carefully perused the pleadings and grounds in the petition, annexures thereto, reply filed by Respondent No. 1, grounds of detention and the original record produced by the Respondent-State. So far ground (A) and (b) are taken in the petition are concerned those are general in nature without referring to a specific ground of detention or any other material. It would be apt to reproduce herein below the ground (C), which reads as under:-

(C) The Petitioner says and submits that there is an inordinate and unexplained delay of 2 months in passing of the Detention Order by the Detaining Authority since the last alleged offence registered against the detenue is of 4.1.2021 and

the said Detention Order has been passed by the Detaining Authority on 3.3.2021. The Petitioner therefore submits that due to the aforesaid delay of 2 months, live link between the passing of the Detention Order and the last offence has been snapped and as such the orders are obviously illegal, bad in law, malafide, unconstitutional and unsustainable.

9. In reply to ground (C), Respondent No. 1 in his reply in para 9 stated thus:-

9. With reference to para no. 6(c) of the contents of para are denied. It is submitted that, the last offence which is registered against the Detenu is Kondhawa Cr.No. 11/2021. As the Detenu was arrested on 04/01/2021 in the said C.R. and 05/01/2021 he was produced before J.M.F.C. Cantonment Court and he was in police remand till 10/01/2021 & then remanded to judicial custody. On 10/02/2021 he had applied for bail to the Hon'ble Session Court and after coming to the notice of the said fact to the sponsoring authority i.e. Police Inspector, Kondhawa and considering the modus operandi of Detenu to commit the crime after released from court on bail. The sponsoring authority conducted confidential inquiry of the illegal activities of the Detenu and found that, the Detenu is a dangerous person and he will again repeat his illegal activities after released on bail from the court and decided to send detention proposal. Therefore, on 18/02/2021 the sponsoring authority send proposal along with all necessary documents to the detaining authority i.e. Commissioner of Police, Pune. The said proposal is received by the detaining authority on dated 25/02/2021 through divisional Asst. Commissioner of Police, Pune, zonal Deputy Commissioner of Police, Pune, regional Addl. Commissioner of Police, Pune who gave their

endorsement, and forwarded the same. All the senior officers above Asst. Commissioner of Police, have applied their mind, verified and examined the statements of the witnesses and history of illegal activities of Detenue, and recommended for the detention of the Detenue and therefore after application of mind the detaining authority i.e. Commissioner of Police, Pune have passed the detention order on 03/03/2021. Therefore, there is no inordinate delay in passing said detention order.

I have gone through the documents, I preliminary approved Detention Order then dictated the Draft, grounds of detention and same is forwarded back to prepare the same through proper channel, then I received grounds of detention and papers. I read carefully and subjectively satisfied preparation of detention order from receipt of the proposal to my office i.e. The Commissioner of Police, Pune and passing.

10. We have considered the reply filed by Respondent No. 1, so also the original record and we are of the opinion that two months time taken for passing the order of detention, in the facts and circumstances of the present case, cannot be considered as significant so as to cause the interference in the order of detention. It is evident from the reply filed by Respondent No. 1 that the delay of two months has been satisfactorily explained.

11. We have carefully perused the ground (D), wherein it is stated that Respondent No. 1 has relied upon the extraneous material before arriving at subjective satisfaction and passing the order of detention. Respondent No. 1 in his reply to ground (D) stated as under:-

10. *With reference to Para No. 6(d) of the Petition, it is submitted that, the contents of the said para are denied. It is submitted that, in para 3.1 it is clearly mentioned that “The past offences mentioned in the chart of offences have not been relied upon while passing the order of detention but is only referred to show that Detenue has habitually been committing serious offences. Hence the offences registered against the Detenue in the year 2016, 2017, 2020 were not taken into consideration. (except crime no. 1134/20, registered on 14/11/2020) The detaining authority has relied upon the material mention in para 5.1, 5.2, 6.1 and 6.2 of the grounds of detention to arrive at his subjective satisfaction that, Detenue is dangerous person as defied in para 2(b-1) of the MPDA act and criminal activities of the Detenue as discussed in above para. no. 6(A). Therefore, it shows that, the detention authority have applied his mind and after going through the material placed before him by the sponsoring authority the detention order is came to be passed which is legal according to the provisions of law.*

12. It is clear from reading grounds of detention and also aforesaid averment in reply filed by Respondent No. 1 that Respondent No. 1 has placed reliance upon the material mentioned in para 5.1, 5.2, 6.1 and 6.2 of the grounds of detention to arrive at subjective satisfaction that detenue is a dangerous person as defined under the said Act. It is clearly mentioned in the grounds of detention and affidavit filed by Respondent No. 1 that past offences mentioned in the chart of offences and also detention order and proceedings under Section 110(e) of Cr.P.C. are only for the purpose of

showing that the detainee has been habitual in committing serious offences. Therefore, we do not find any substance in ground (D) to the petition.

13. It appears that Respondent No. 1 has applied his mind, perused the opinion of sub ordinate officers and after arriving at subjective satisfaction passed the order of detention. Therefore, there is no substance in ground (E) raised in the petition.

14. So far ground (F), (G) and (H) are concerned, the said grounds raise concern about authenticity of statements of two witness A & B recorded in-camera. It is stated in ground (G) that said in-camera statements of two witnesses seem to be fabricated and got up statements in order to put the detainee behind bars under preventive detention. In-camera statements of said witnesses concerned only with the specific individual and they have nothing to do with members of public at large.

15. It is stated to the reply to ground (G) that statements of witnesses A & B are duly verified and examined by Assistant Commissioner of Police wherein on verification the said officer found that the said witnesses are deposing true facts about alleged incident.

16. So far ground in respect of bail application is concerned it is stated in the reply that to oppose the bail application and to resort an action under preventive detention both are different. In case of Detenue, the sponsoring authority satisfied that the illegal activities of the detenue were prejudicial to the maintenance of public order and also danger to the society at large. Therefore, sponsoring authority have no other alternative way except to select the remedy to detain the detenue under the MPDA Act., and the Senior Police Officers have verified and examined the material placed before them by the sponsoring authority and after their satisfaction they have recommended the proposal under MPDA Act to the detaining authority and detaining authority after application of mind passed the order of detention.

17. Respondent No. 1 in his reply stated that in due adherence to provisions of MPDA Act and in particular Section 8(2) of the said Act and article 22 of the Constitution of India, the order of detention has been passed.

18. So far grounds raised by the petitioner about authenticity and genuineness of in-camera statements of witnesses A and B are concerned, we have carefully perused the said statements and we are of the considered view that the activities alleged against the detenue are prejudicial to the maintenance of public order in the said area. The detenue and his associates

used deadly weapons like sword so as to create terror in the minds of public at large which has impact upon the community residing in the said area. It is a matter of record that inspite of detenue was detained in the year 2018, challenge to said order was negated, after his release he did not improve on the contrary started indulging in serious offences and posing danger to the interest of public at large.

19. The judgments relied by the learned counsel for the petitioner are distinguishable on facts. In that view of the matter and in the peculiar facts and circumstances of this case, we are of the opinion that there is no substance in the petition and same is devoid of any merit, accordingly stands dismissed.

20. Rule stands discharged.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)