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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.108 OF 2021

Shamim Makhmood Khan]
Resident of A.D.Camp Chowk, 1140,]
in front of Aaina Majjid,]
Bhavani Peth, 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 |

Ms.Misbaah Solkar for the Petitioner.

Mrs.M.H.Mhatre, APP for the Respondents/State.

**CORAM : S.S.SHINDE &
MANISH PITALE, JJ.**

**RESERVED ON : 24th FEBRUARY, 2021
PRONOUNCED ON : 08th MARCH, 2021**

JUDGMENT (PER MANISH PITALE, J.)

1. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.

2. This writ petition is filed by mother of the person, who is detained as per detention order dated 10th October, 2020, issued by respondent No.1 under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous persons, Video Pirates, Sand Smugglers and persons engaged in Black-marketing of Essential Commodities Act, 1981 (for short, **“the MPDA Act”**). According to respondent No.1, the said order was necessitated to prevent the detenu from acting in any manner prejudicial to the maintenance of the public order. While issuing the said detention order, in the grounds of detention, respondent No.1 referred to the offences registered against the detenu as also two in-camera statements.

3. Ms.Solkar, learned counsel appearing for the petitioner, in support of challenge raised on behalf of the detenu, submitted that the impugned detention order deserved to be set aside on the grounds that respondent No.1 had placed reliance on the extraneous material, there was delay in passing the detention order when compared with the dates of the alleged offences, there was nothing to show that public order would be disturbed by the detenu and that the detenu was already in custody when the detention order was issued. Learned counsel for the petitioner relied upon ground (A) of the petition in support of the contention pertaining to extraneous material relied upon by respondent No.1. She relied upon ground (B) in support of her contention pertaining to the question of public order. Reliance was placed on grounds (C) and (D) in support of the contention regarding delay in passing the detention order and absence of live link between the alleged offence and the issuance of the detention order. She relied upon ground (K) in respect of in-

camera statements being relevant to the question of disturbance of public order. Learned counsel for the petitioner relied upon judgment of this Court in case of *Pawan Tukaram Kudale Vs. The Commissioner of Police*¹ and the judgment in the case of *Pradeep Nilkanth Paturkar Vs. S.Ramamurthi & Ors.*²

4. On the other hand, Mrs.Mhatre, learned APP appearing on behalf of the respondents, submitted that there was no substance in the contentions raised on behalf of the detenu. It was submitted that the grounds of detention clearly distinguish between the previous offences that were merely referred to as the background in which the detention order was passed and the specific offences, which were relied upon for passing the detention order. On this basis, it was claimed that the ground pertaining to extraneous material raised on behalf of the detenu was, without any substance. As regards the question of public order, learned APP relied upon the judgment of the Hon'ble Supreme Court in the case of *Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat & Ors.*³ to contend that the detention order was passed on correct appreciation of law. On the question of the detenu already being in custody, it was submitted that the same could not be the reason for preventing respondent No.1 from issuing the detention order, which was otherwise justified in the facts and circumstances of the case. As regards absence of live link and alleged delay in issuance of the detention order, learned APP invited attention of this Court to the reply filed by respondent No.1, particularly paragraph 12 thereof to show that there was no delay and further that the in-camera

1 2019 ALL MR (Cri) 503

2 1993 Supp (2) SCC 61

3 (1999) 5 SCC 613

statements indicated the necessity to issue the detention order.

5. It is settled position of law that detention orders are to be scrutinized with utmost care because the freedom of an individual is curtailed otherwise than under usual process of law. The Courts have been zealous in protecting the liberty of the individual while scrutinizing the correctness of detention orders and much emphasis is placed on the requirement of following the settled law while issuing such detention orders by the detaining authority.

6. In the present case, according to the petitioner, respondent No.1-detaining authority, took into consideration extraneous material while issuing the detention order. In this regard, attention of this Court was invited to paragraph 3.1 of the detention order wherein offences registered against the detenu between the year 2016 to 2019 were stated. Learned counsel appearing for the petitioner submitted that these very offences were the basis of earlier detention order passed against the detenu. It was submitted that earlier detention order had been already set aside by the Division Bench of this Court by its judgment and order dated 21st February, 2020 passed in Criminal Writ Petition No.07 of 2020. By relying upon the said earlier order of this Court, as also the judgment of the Division Bench of this Court in the case of **Pawan Tukaram Kudale** (supra), it was submitted that the impugned order deserved to be set aside as extraneous material was relied upon.

7. But, a perusal of the detention order would show that the detaining authority specifically stated in paragraph 3.1 itself, after referring to the aforesaid offences registered against the detenu, that

the detention order was not based on the said offences and then in paragraph 4 of the detention order, it was specifically stated that the detaining authority was relying upon the offences recently registered against the detenu in May and June, 2020. Considering the specific statements made in the detention order, we are of the opinion that the aforesaid contention raised on behalf of the detenu cannot be accepted.

8. As regards delay in issuance of the detention order and there being absence of live link, it needs to be appreciated as to which offences formed the basis of issuance of the detention order and the date when the detention order was issued. According to learned counsel appearing on behalf of the petitioner, while the offences in question were registered on 27th May, 2020 and 27th June, 2020, the detention order was issued on 10th October, 2020. Reference to the in-camera statements also shows that although the statements of the witnesses were recorded on 2nd September, 2020, the instances described by the said witnesses pertained to May, 2020 and June, 2020.

9. In response, it was stated on behalf of respondent No.1 that there was indeed a live link between the said instances, statements of the in-camera witnesses and the detention order, because the in-camera statements were recorded on 2nd September, 2020 whereafter the file was forwarded to D.C.P (Zone I), who in turn endorsed the file on 11th September, 2020. The entire proposal alongwith compilation was placed before the Additional Commissioner of Police Western Region on 16th September, 2020. The DCP Crime endorsed the file on 24th September, 2020. It is then

stated on behalf of respondent No.1 in the reply that during the said period, two more proposals pertaining to other detenus were placed before him and that eventually, the detention order was issued on 10th October, 2020. On this basis, it was claimed that there was a live link discernable from the material on record and that there was no delay in issuing the detention order.

10. We have perused the material on record and we find that the dates of registration of offences on which reliance is placed in the detention order are 27th May, 2020 for C.R.No.701 of 2020, pertaining to offences punishable under Sections 324, 323, 504 read with Section 34 of the Indian Penal Code (“**IPC**”) and 27th June, 2020 for C.R.No.608 of 2020, pertaining to the offences punishable under Sections 353, 332, 352, 504, 506 read with Section 34 of the IPC and Section 4/25 of the Arms Act as also Section 3 of the Epidemic Diseases Act, 1897. These offences were registered as far back as in May and June, 2020. The incidents in respect of which the in-camera statements were recorded, pertained to the second week of June and 21st June, 2020, which are also before four months prior to the issuance of the detention order. In this backdrop, even if these in-camera statements of the witnesses were recorded on 2nd September, 2020, that in itself would not justify the delay in issuance of the detention order, which was issued on 10th October, 2020.

11. Learned counsel appearing for the petitioner is, therefore, justified in contending that the live link had snapped and there was delay in issuance of the detention order. In this regard, learned counsel appearing for petitioner, is justified in relying upon the

judgment of the Hon'ble Supreme Court in the case of **Pradeep Nilkanth Paturkar** (supra) wherein it was held as follows :

“13. Coming to the case on hand, the detention order was passed after 5 months and 8 days from the date of the registration of the last case and more than 4 months from submission of the proposal. What disturbs our mind is that the statements from the witnesses A to E were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him. That too in the later part of March, 1991. These statements are very much referred to in the grounds of detention and relied upon by the detaining authority along with the registration of the cases under the Act.

14. Under the above circumstances, taking into consideration of the unexplained delay whether short or long especially when the appellant has taken a specific plea of delay, we are constrained to quash the detention order. Accordingly we allow the appeal, set aside the judgment of the High Court and quash the impugned detention order. The detenu is directed to be set at liberty forthwith.”

12. Applying the said position of law to the facts of the present case, we are inclined to accept the contention raised on behalf of the detenu. In this context reliance placed by learned APP on the judgment of this Court in the case of **Omkar Chandrashekhar Kapare Vs. The Commissioner of Police, Pune** (Judgment & Order dated 28th January, 2019 passed in Criminal Writ Petition No.4456 of 2018), is not justified because the said case is distinguishable on facts, on question of delay in issuance of the detention order. In the said case, on facts, this Court found that there was proper explanation furnished on behalf of the detaining authority and therefore, it could not be said that there was delay in issuance of the detention order.

13. As regards the question of in-camera statements of the witnesses demonstrating disturbance of public order, which would justify the issuance of the detention order, we are of the opinion that there is a clear distinction between “law and order” and “public order”. The two offences registered against the detenu in May and June, 2020 indicate offences against individuals. The in-camera statements of the witnesses pertaining to the alleged incidents in the second week of June and 21st June, 2020, were recorded much later i.e. on 2nd September, 2020 and the said statements also do not justify reaching a conclusion that there was disturbance of public order.

14. In order to reach a conclusion that there was every likelihood of disturbance of public order, if detention order is not issued against the detenu, specific material ought to have been brought on record. On the basis of alleged offences against individuals, it would not be possible to reach a conclusion that if the detenu was not kept behind bars, it would be prejudicial to the maintenance of public order. Even in the case of **Amanulla Khan Kudeatalla Khan Pathan** (supra) on which reliance is placed by the learned APP, the distinction between “law and order” and “public order” has been clearly stated. It has been categorically held that degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality determines whether the disturbance caused by such activity amounts only to a breach of “law and order” or it amounts to breach of “public order”. Applying the test evolved in the aforesaid judgment on which the learned APP has placed reliance, we are of the opinion that in the present case, respondent No.1 was not justified in issuing the detention order against the detenu.

15. As regards the contention raised on behalf of the detenu that since he was in custody when the detention order was issued, the order stood vitiated, we are of the opinion that merely because a person is in custody, it cannot be said that the detention order cannot be issued against such a person. The requirement of law is that the detaining authority has to be aware of the fact that the detenu is already in custody and despite that fact, the detaining authority is of the opinion that the order of detention needs to be issued against such a person. In paragraph 8 of the detention order, the detaining authority has specifically referred to the fact that bail application of the detenu is pending and there is likelihood that he would secure bail. It is thereupon that the detaining authority has referred to the tendencies and inclinations of the detenu, necessitating issuance of the detention order. Therefore, it becomes clear that the said contention raised on behalf of the detenu cannot be accepted.

16. But, since, we have already held that in the present case, the live link stood snapped as the offences on the basis of which, the detention order was issued were registered in May and June, 2020 and the alleged incidents referred to by the witnesses also took place in June, 2020, thereby showing delay in issuance of the detention order, we are inclined to allow the present writ petition. Additionally, we have found that the detention order is not sustainable on the question of disturbance of public order also.

17. In view of the above, the writ petition is allowed and the impugned detention order dated 10th October, 2020 is quashed and set aside. Accordingly, the detenu shall be released forthwith, unless

required in any other case.

18. Rule is made absolute in the above terms.
19. The writ petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)