

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

WRIT PETITION NO.610 OF 2021

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Sultan Yakub Qureshi

Age : 30 years,

R/o : 278, Hajimai Chowk Masjid,

Shukrawar Peth, North Kasba,

Solapur.

.... Petitioner
(Detenu)

Vs.

1. The Commissioner of Police
Solapur

2. The State of Maharashtra
Through Additional Chief Secretary
to Government of Maharashtra,
Home Department, Mantralaya,
Mumbai – 400 026

3. The Superintendent,
Yerwada Central Prison, Pune

4. The Secretary,
Advisory Board for M.P.D.A.
C/o Home Department,
Mantralaya, Mumbai

.... Respondents

Ms. Jayashree Tripathi i/by Mr. U.N. Tripathi for Petitioner.
Mr. J.P. Yagnik, APP for Respondent-State.

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

**JUDGMENT RESERVED ON : 01.03.2021
JUDGMENT PRONOUNCED ON : 19.03.2021**

JUDGMENT (PER MANISH PITALE, J.)

1. Heard respective Counsel. Rule. Rule made returnable forthwith with the consent of the parties.

2. By this Writ Petition, the Petitioner has challenged detention order dated 9th November, 2020 passed by the Respondent No.1, Commissioner of Police, Solapur under Section 3 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 (hereinafter referred to as “MPDA Act” for short), whereby the Petitioner has been detained. The detention order and the grounds of detention were served upon the Petitioner. His representation stood rejected, as a consequence of which, the Petitioner is before this Court challenging the detention order on various grounds.

3. The learned counsel, Ms. Jayashree Tripathi appearing for the Petitioner raised two specific grounds to challenge the detention order. These are grounds (c) and (f). Ground (c) raised on behalf of the Petitioner pertains to definition of “dangerous person” under the provisions of MPDA Act. It is emphasized that only two F.I.Rs. have been referred to and relied upon in the detention order, which pertain to offences under the Maharashtra Animal Preservation Act and Prevention of Cruelty of Animals Act. It is submitted the said offences do not indicate that the Petitioner has unleashed reign of terror or that he is a habitual offender, who has become dangerous for the lives and property of the society. It is further submitted that the recent F.I.R. registered against the Petitioner under Section 302 of the Indian Penal Code also does not demonstrate that the activities of the Petitioner can be said to be prejudicial to public order, because he is merely alleged to be owner of vehicle which dashed some police personnel. The learned counsel relied upon judgments of the Hon’ble Supreme Court in the case of *Rashidmiya @ Chhava Ahmedmiya Shaik Vs. Police Commissioner, Ahmedabad and Another*, reported in (1989) 3 Supreme

Court Cases, 321 and Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others, reported in (1995) 3 Supreme Court Cases, 237.

4. Ground (f) pressed into service on behalf of the Petitioner raised the issue that two in-camera statements relied upon by the Respondent No.1, detaining authority, were recorded after a long gap from the time when the Petitioner was arrested and then released on anticipatory bail in connection with the FIRs registered against him. It was submitted that such in-camera statements were recorded only to fill the gap and show as if the detention order dated 9th November, 2020 was justified. On this basis, it was claimed that the detention order stood vitiated. In this regard, the learned counsel appearing for the Petitioner relied upon judgment of the Hon'ble Supreme Court in the case of *T.A. Abdul Rahman Vs. State of Kerala and Others*, reported in (1989) 4 Supreme Court Cases, 741 and judgments of this Court in the case of *Austin William Luis Pinto Vs. Commissioner of Police, Greater Mumbai and Ors*, reported in 2005 ALL MR (Cri.) 28 and in *Criminal Writ Petition No.6041 of 2019* in *Narendra @ Chotya*

Mahadev Balkawade Vs. The Commissioner of Police, Pune City and Others (Judgment dated 9th January, 2020) and in the case of ***Aalam Yosuf Shaikh Vs. The Commissioner of Police, Pune and Ors***, reported in *2018 ALL MR (Cri.) 1908*.

5. On the other hand, Mr. J.P. Yagnik, learned APP submitted that there was no substance in both grounds sought to be raised on behalf of the Petitioner. As regards the first ground, it was submitted that the material on record, particularly the FIRs registered against the Petitioner and the in-camera statements demonstrated that the Petitioner was a habitual offender and that he was covered under the expression “dangerous person” under the MPDA Act. In this regard, the learned APP relied upon judgment of the Hon’ble Supreme Court in the case of ***Phulwari Jagdambaprasad Pathak (Smt.) Vs. R.H. Mendonca and Others***, reported in *(2000) 6 Supreme Court Cases, 751*. As regards the alleged delay in recording of in-camera statements, the learned APP submitted that the crucial aspect in such cases was the time period that had elapsed between recording of in-camera statements and issuance of detention order. In the present case, the in-

camera statements were recorded on 16th October, 2020 and 20th October, 2020, while the detention order was immediately issued on 9th November, 2020. Therefore, there was no substance in the contentions raised on behalf of the Petitioner in this regard. Learned APP relied upon the judgment of this Court in the case of ***Deepak Govind Murudkar Vs. Mr. R.H. Mendonca & Ors***, reported in *2001 ALL MR (Cri.) 357*.

6. Heard learned counsel for the rival parties and perused the material on record, as also the judgments relied upon by the learned counsel. In matters concerning challenge to detention orders, Courts have always zealously protected the rights of detenu, particularly the rights guaranteed under Article 22 of the Constitution of India. Any lacunae in the process of issuing a detention order are frowned upon and the detention orders stand set aside on the slightest of defect in the process of issuance of such detention orders. This is because liberty of an individual is sought to be curtailed by using the extraordinary power of issuance of detention orders, which is significantly distinct from the ordinary process of law. In this backdrop, the specific grounds of challenge raised on behalf of the Petitioner need to be considered.

7. The first ground of challenge pertains to the question as to whether the Petitioner answers the description of “dangerous person” as defined under 2(b-1) of MPDA Act. The requirement of the said Section is that a person can be categorised as a “dangerous person” who habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any offences punishable under Chapter V of Arms Act. The definition also refers to such a person who may be committing such offences either by himself or as a member of a gang.

8. In the case of *Rashidmiya @ Chhava Ahmedmiya Shaik Vs. Police Commissioner, Ahmedabad and Another* (supra), the Hon’ble Supreme Court considered the definition of “dangerous person” under the Gujarat Act, which is parimateria to the definition under the MPDA Act. It was held in the said judgment that for a person to be brought within the aforesaid definition of dangerous person, it must be shown that he has habitually committed or attempts to commit the offences enumerated in the said definition. The said case was concerned with

the offences registered under Section 307 of Indian Penal Code and Section 25 of Arms Act. Yet, the Hon'ble Supreme Court held that the detenu therein could not be covered under the definition of "dangerous person" because there was nothing to show that he was habitually committing such offences. Similarly in the case of ***Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police and Others***, (supra), the Hon'ble Supreme Court referred to parimateria definition of dangerous person in the Gujarat Act and held that for a person to be covered under the said definition, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences specified in the definition.

9. Applying the said position of law to the facts of the present case, it becomes evident that the Petitioner cannot be covered under the definition of "dangerous person" under 2(b-1) of MPDA Act, on the basis of material brought on record. The two FIRs on which the Respondent No.1 has placed reliance pertain to offences under Maharashtra Animal Preservation Act, 1976 and the Maharashtra

Keeping & Movement of Cattle in Urban Areas Control Act, 1976, as also the Prevention of Cruelty of Animals Act. The learned APP has pointed out that these offences are not the offences that are relied upon, but they have been referred to only to highlight the previous criminal history of the Petitioner. The only other F.I.R. on which reliance is placed, does include offences under Sections 302, 307 and other such provisions of the Indian Penal Code, alongwith offences under the above-mentioned Acts.

10. But, apart from the said latest F.I.R. dated 22nd May, 2020, showing registration of offences under the Indian Penal Code against the Petitioner, there is no other instance of registration of offence relied upon by the Respondent No. 1. Even under the said F.I.R. registered on 22nd May, 2020, wherein offence under Section 302 of the Indian Penal Code has been registered, the only allegation against the Petitioner is that he is the owner of the jeep which was driven in a rash manner causing injury to Police personnel, one of whom died. The material on record shows that the said jeep was being driven by somebody else and that the Petitioner was not even present at the place of incident. Apart

from this, there is no other offence registered against the Petitioner under the Indian Penal code. Thus, it becomes clear that the Petitioner cannot be said to be a habitual offender to be covered under the definition of dangerous person and the said singular F.I.R. registered on 22nd May 2020, could not become the basis for the Petitioner to be labelled as a dangerous person for issuance of the order of detention. The judgment in the case ***Phulwari Pathak (Smt.) Vs. R.H. Mendonca and Others*** (supra) relied upon by the learned APP cannot be of any assistance for defending the detention order, because the allegations against the Petitioner clearly do not make out a case for holding him to be a dangerous person as defined under MPDA Act, thereby suggesting that his detention was necessary, in absence of which public order would be prejudicially affected.

11. As regards the second ground raised on behalf of the Petitioner, the material on record shows that the F.I.R. relied upon by Respondent No.1 was registered on 22nd May 2020, while the in-camera statements were admittedly recorded after a gap of four months i.e. on 16th October 2020 and 22nd October 2020. The in-camera statements

also referred to alleged incidents that occurred in the second and third week of August 2020, which was two months prior to recording of in-camera statements. These dates do show that the in-camera statements seem to have been recorded after a long gap from registration of aforesaid F.I.R. on 22nd May 2020 and the alleged incidents of August 2020, in respect of which the witnesses made allegations in the in-camera statements. These facts indicate that the material was prepared in the month of October for issuance of detention order on 9th November 2020. Even though the gap between recording of in-camera statements and the issuance of the detention order is not much, the long time duration between the F.I.R. and recording of in-camera statements is glaring and this proves to be fatal for the detention order.

12. In this regard, the learned counsel for the Petitioner is justified in relying upon the judgment of this Court in the case of *Aalam Yosuf Shaikh Vs. The Commissioner of Police, Pune and Ors*, (supra), wherein this Court in similar facts held that when the incident alleged in the in-camera statements had occurred much earlier in point of time, its narration and recording in a delayed manner, indicated that

the detention order was not sustainable. This position has been recognised in the judgment of this Court in the case of ***Austin William Luis Pinto Vs. Commissioner of Police, Greater Mumbai and Ors*** (supra). On the other hand, the judgment relied upon by the learned APP in this context in the case of ***Deepak Govind Murudkar Vs. Mr. R.H. Mendonca & Ors.*** (supra) cannot be of any assistance because in the said case, it was laid down that the delay in issuance of detention order has to be computed from the date of last in camera statement. But, the argument in the present case is on a different footing and it is supported by the aforementioned judgments in favour of the Petitioner.

13. In view of above, we are of the opinion that the Petitioner has succeeded in demonstrating that the impugned detention order deserves to be quashed and set aside on both the grounds specifically raised on behalf of the Petitioner.

14. Accordingly the Writ Petition is allowed.

15. The impugned detention order dated 9th November, 2020 issued by the Respondent No. 1, Commissioner of Police, Solapur is quashed is set aside.

16. Consequently, the Petitioner is directed to be released forthwith, unless required in any other case.

17. In paragraph 10 above, the following observations have been made :

“Even under the said F.I.R. registered on 22nd May, 2020, wherein offence under Section 302 of the Indian Penal Code has been registered, the only allegation against the Petitioner is that he is the owner of the jeep which was driven in a rash manner causing injury to Police personnel, one of whom died. The material on record shows that the said jeep was being driven by somebody else and that the Petitioner was not even present at the place of incident. Apart from this, there is no other offence registered against the Petitioner under the Indian Penal code. Thus, it becomes clear that the Petitioner cannot be said to be a habitual offender to be covered under the definition of dangerous person and the said singular F.I.R. registered on 22nd May 2020, could not become the basis for the Petitioner to be labelled as a dangerous person for issuance of the order of detention.”

. It is made clear that the above quoted observations made in paragraph 10 are limited to decision of the present petition and that the Petitioner would not be entitled to rely upon the same in any other proceedings.

18. Rule is made absolute in above terms.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)