

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.585 OF 2020

PETITIONER :- Bharat Kuldeep Sahare, aged about 28 years, R/o Shivaji Nagar Zopadpatti,. Dakkhni Mohalla, Police Station, Wadi, Nagpur City, Nagpur.
(Presently at Central Prison, Nagpur).

...VERSUS...

RESPONDENTS :- 1. The State of Maharashtra, through its Secretary, Home Department, Mantralaya, Mumbai 32.
2. Commissioner of Police, Civil Lines, Nagpur.
3. Superintendent Central Prison, Nagpur.

Mr.R.M.Daga, counsel for the petitioner.
Mr. A.S.Fulzele, Addl.PP for respondents.

CORAM : SUNIL B. SHUKRE &
AVINASH G. GHAROTE, JJ.

DATE : 19.01.2021.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. By the impugned order passed on 21.07.2018 by respondent no.2, the petitioner has been directed to be preventively detained for a period of one year from the date of his arrest. This order was confirmed by respondent no.1 on 16.09.2020 but, before that the petitioner was arrested on 28.07.2020 and detained in execution of the order dated 21.07.2018. Being aggrieved by such action of preventive detention taken against the petitioner that the petitioner has filed this petition.

4. We have heard Shri. Daga, learned counsel appearing for the petitioner and learned Addl.PP for the respondents. We have carefully gone through the impugned orders and also the record made available for our perusal by the learned Addl.PP

5. On considering the material available on record and what has weighed with the authorities i.e. respondent nos.1 and 2, we find that there is great substance in the argument of the

learned counsel appearing for the petitioner as regards the unexplained delay from the date of registration of last of the crimes considered till the date of the passing of the order on 21.07.2018 and no merit in the submissions of learned Addl.PP appearing for the respondents.

6. The last of the crimes considered in this case was registered against the petitioner under Section 392 of the Indian Penal Code, vide Crime No.68 of 2018 on 25.03.2018. In this crime, the petitioner was bailed out on medical grounds on 25.06.2018. Thereafter, that on 29.06.2018 in camera statements of two confidential witnesses, witness A and witness B were recorded by police. It is the contention of the learned counsel for the petitioner that these statements were recorded only with a view to create some false record against the petitioner to enable the authorities to order his preventive detention. This has been disagreed to by learned Addl. PP. We would not, however, like to go into this aspect of the matter as we find from the impugned order, a more basic issue involved in this case. This issue is about the unexplained delay which has occurred from the date of

registration of the last of the crimes considered and till the date of passing of the impugned order.

7. In the case of *Mohamad Ishaq Mohamad Ismail Shaikh Vs. Sanjay Barve and ors.* reported in [2020 (3) Mh.L.J. (Cri.) , 374] , a Division Bench of this Court relying upon the law settled by the Supreme Court in the case of *Pradeep Nilkanth Paturkar Vs. S Ramamurthi and ors. reported in AIR 1994 SC 656*, held that whenever there is an unexplained delay, whether short or long, especially when the petitioner has taken a specific plea of delay, it vitiates the detention order and the delay which is required to be explained is from the date of the registration of the crime which is considered as relevant for passing of the preventive detention order. Similar is the view taken by another Division Bench of this Court, in which, one of us was a party, in the case of *Rakesh Mohan Gadekar Vs. State of Maharashtra and anr.* reported in [2020(2) Mh.L.J. Cri.673]. In this case, this Court, has observed that while examining the legality or correctness of the preventive detention order, what is really examined, is the process by which the detention order is made. This Court also observed

that since preventive detention is an exception and not a rule, the authority passing the detention order must tread on an otherwise forbidden territory keeping his eyes open and his mind alive to the reality laid bare by the material available on record and it is only through such consciousness and alertness that the authority must reach his subjective satisfaction regarding the necessity of passing of the order. Here, we find that the authority has not at all applied his mind to the factum of the delay occurred in this case and therefore, the order suffers severely from the vice of non application of mind on the part of the detaining authority which results in vitiating of the impugned order passed in the present case. The first impugned order of course was passed by respondent no.2 and it has been confirmed by respondent no.1. As the first order is vitiated because of non application of mind, even the second order confirming the first order cannot be sustained in the eye of law.

8. In the result, we allow the petition. The writ petition is allowed accordingly. The impugned orders are hereby quashed and set aside.

9. It is directed that the petitioner be released forthwith,
if not required in any other case or crime.

10. Rule is made absolute in these terms.

JUDGE

JUDGE