

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.661 OF 2020

Sadashiv s/o. Shriram Jadhav,
Aged about 30 years, Occ. Nil,
r/o. Waghajadi, Tq. Barshitakli,
District Akola.

..... **PETITIONER**

// VERSUS //

1. The State of Maharashtra,
Through its Secretary,
Home Department (Special),
Mantralaya, Mumbai-32.

2.The Collector and District
Magistrate, Akola, Tq. and
District Akola.

..... **RESPONDENTS**

Mr.Sachin Zoting, Advocate for the Petitioner.
Ms H.N.Jaipurkar, A.P.P. for Respondent Nos. 1 and 2.

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

DATE : 23.2.2021.

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

1. **Rule.** Rule made returnable forthwith. Heard finally by consent.

2. Petitioner challenges legality and correctness of detention order dated 18.9.2020 passed by respondent no.2 and also the order of confirmation passed by respondent no.1 on 20.10.2020.

3. The detention order has been passed 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 “**the Act of 1981**”). Mr.Sachin Zoting, learned Counsel for the petitioner submits that the detention order is illegal as it does not specify the period for which detention has been ordered. He invites our attention to Section 3(2)

of the Act of 1981 wherein there is a proviso prescribing that no order passed under Section 3(2), shall, in the first instance, exceed six months and if the State Government is satisfied that the order is required to be passed for a further period, it may extend the period of detention by such period not exceeding three months at any one time and in no case, the period of detention would exceed the period of one year in total. He placed reliance upon the case of Lahu Shrirang Gatkal vs. State of Maharashtra, through the Secretary and Others, (2017) 13 SCC 519.

4. Ms H.N.Jaipurkar, learned Additional Public Prosecutor submits that it is not the requirement of Section 3(2) of the Act of 1981 that the period of detention must be specifically mentioned in the detention order for the reason that the maximum period of detention, as prescribed under the law, cannot exceed one year. She further submits that this view has been taken in a three judge Bench of the Supreme Court in the case of T. Devaki vs. Government of Tamil Nadu and Others, 1990 (2) SCC 456.

5. In the case of Lahu Shrirang Gatkal (supra), it has been held that any blanket order of detention passed without

specifying the period of detention is invalid in view of proviso to sub-section (2) of Section 3 of the Act of 1981, as it mandates that period to be specified in the detention order cannot be more than six months at the first instance. This judgment had been rendered by the two judge Bench of the Supreme Court and takes a view contrary to what has been held in the decision of three judge Bench of the Apex Court rendered in the case of T. Devaki (supra). In T. Devaki, the Supreme Court has held that non-mention of period of detention in the detention order is not fatal to the order and in such a case, the detention is taken to be for a maximum period prescribed in the Section. It is further held that the period as mentioned in Section 3 (2) of the Act of 1981 refers to the period of detention and that it has no relevance to the period for which a person may be detained. It is further held that as the Act does not require the Detaining Authority to specify the period for which the detainee is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification. Relevant observations of the Supreme Court appearing in paragraph 10 are re-produced as below :

“Provisions of the aforesaid sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered to, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained cannot exceed 12 months from the date of detention. The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression "the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order" occurring in sub-section (2) of Section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The legislature has taken care to entrust the power of detention to the State Government; as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed for a period of three months and it shall be specified in the order of delegation. But if the State

Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in [Section 3\(2\)](#) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification.”

6. The view taken in the case of T. Devaki (supra) has been recently followed by Hon’ble Apex Court in the case of State of Maharashtra and Others vs. Balu s/o. Waman Patole, Criminal Appeal No.1681 of 2019, decided on 13.11.2019. The view taken by the two judge Bench of the Apex Court in the case of Lahu (supra) came up for consideration in the case of Secretary to Government of Tamil Nadu Public (Law and Order) Revenue Department and another, 2018 (5) SCC 322. The decision in this case was rendered by three judge Bench, larger than the Bench which decided the case of Lahu (supra). In this case also, the view expressed in T. Devaki to the effect that since legislation did not require the Detaining

Authority to specify period for which the detenue is required to be detained, order of detention is not rendered invalid or illegal in absence of such specification, has been reiterated.

7. Thus, we find that there is no substance in the objection that the detention order and the order confirming the detention order, both are bad in law as they do not mention the period of detention at the first instance.

8. Learned Counsel for the petitioner further submits that no opportunity to cross-examine the confidential witnesses was given to the petitioner. Learned Additional Public Prosecutor states that there is no provision in law to give such an opportunity to the proposed detenue. We find that there is substance in the argument of learned A.P.P. for the reason that we could not come across any provision in the Act of 1981 which offers any such right to the proposed detenue. Learned Counsel for the petitioner could not point out to us any such provision of law existing in the Act of 1981. The argument is, therefore, rejected.

9. Learned Counsel for the petitioner further submits that, in the present case, the first Detaining Authority reached the subjective satisfaction regarding need for preventive detention of the petitioner even without verifying truthfulness of the statements of confidential witnesses. He further submits that there is no mention whatsoever in the impugned detention order dated 18.9.2020 or in the order confirming the first order that the allegations made by the confidential witnesses were verified and found to be true. Learned A.P.P. for the respondents submits that veracity of the statements of confidential witnesses was indeed checked by the first Detaining Authority and its reflection could be found in paragraph six of the grounds of detention supplied to the petitioner on 18.9.2020.

10. With the assistance of learned Counsel for the petitioner and also the learned A.P.P., we have gone through paragraph six of the detention order dated 18.9.2020. It is stated by the Detaining Authority in this paragraph that it had carefully gone through the documents as well as statements of in-camera witnesses A and B and that it became clear to it that the petitioner was a habitual bootlegger. The Detaining Authority had further noted that the in-camera statements of witnesses A and B make it clear that the

petitioner has created terror in the mind of public in the relevant area. We are of the opinion that these observations so made in the first detention order do show application of mind by the Detaining Authority to the facts stated by the in-camera witnesses and the satisfaction is reached by it upon careful consideration of statements of these witnesses. The first Detaining Authority ofcourse has not stated in so many words that it verified the genuineness of the statements of confidential witnesses but it has also said that it carefully considered those statements and was satisfied that they clearly indicated that the petitioner was a habitual bootlegger and a person who had created terror in the mind of public in the area. These observations indicate that the first Detaining Authority had considered these statements only after their due verification or otherwise it would not have said that they indeed show that the petitioner had become a habitual bootlegger and had developed propensity of spreading terror and alarm in the mind of public in the area of his activity. Thus, the satisfaction so reached by the Detaining Authority cannot be said to be one without due verification of facts revealed by statements of confidential witnesses. Such satisfaction has been expressed in terms not on the lines expected by the petitioner, but that does not mean that, in every case, the words that

may be used by the Authority must be in a particular form or be rhetorical or must use some stereo types. Ultimately, all that matters is reaching of subjective satisfaction based upon existence of material which is capable of verification and if it is found from the impugned order that such process of verification was indeed carried out, the words of the order impugned do not matter and thus, we do not think that any doubt could be expressed about the process conducted by the Detaining Authority in reaching his subjective satisfaction in the matter. A useful reference in this regard may be had to the decision of the Full Bench of this Court in the case of Sumit s/o. Ramkrishna Maraskolhe vs. Deputy Commissioner of Police Zone-1, Nagpur and another reported in 2019 SCC Online Bom 230. About the case of State of Maharashtra and Others .vs. Ramchandra Rammilan Mishra alias Pandey relied upon by learned Counsel for the petitioner, we find that it would render no assistance to the petitioner as the statements of confidential witnesses have been found to be genuine in the present case. Therefore, we find no substance in the argument so made in this regard by the learned Counsel for the petitioner and the same stands rejected.

11. The next objection of learned Counsel for the petitioner is based upon denial of opportunity to examine his own witnesses by the petitioner before the Advisory Board in accordance with the provisions made in Section 11 of the Act of 1981.

12. Learned A.P.P. disagrees. She submits that the petitioner never expressed his desire to examine any witness before the Advisory Board. In response, learned Counsel for the petitioner submits that the petitioner was not informed of the date on which the case of petitioner was to be taken up for consideration by the Advisory Board and therefore, the petitioner had been effectively denied an opportunity for presenting his witnesses before the Advisory Board.

13. Since the argument made on behalf of the petitioner originates from the provisions made in Section 11 of the Act of 1981, it would be useful for us to re-produce portion of Section here, which is relevant and it is contained in sub-section (1) of section 11. It reads thus :

11.(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State Government or from the person concerned, and if, in any particular case, the Advisory Board considers it essential so to do or if the person concerned desires to be heard, after hearing him inperson, submit its report to the State Government, within seven weeks from the date of detention of the person concerned.”

14. It would be clear from the language used in Section 11 (1) of the Act of 1981 that there should be a desire expressed by the detainee for grant of personal hearing and that there would not be taking place any personal hearing as a matter of right. However, if the Advisory Board considers it essential to call the detainee for personal hearing, it may do so on its own. But so far as the detainee is concerned, right of personal hearing granted to him originates only upon expression of desire to do so by the detainee. In the present case, admittedly, no such desire was expressed by the petitioner. In fact, as admitted by the petitioner, no representation was made by him to the State Government in this regard. This makes it clear that the petitioner never demanded any personal hearing and the

petitioner also did not express any desire to examine his own witnesses before the Advisory Board.

15. More or less, similar facts were involved in the case of State of Maharashtra and Others .vs. Ramchandra Rammilan Mishra alias Pandey, 2004(2) Bom.C.R.(Cri.) 180, which is a case relied upon not only by the petitioner but also the learned A.P.P. for the State. In this case, the question involved was as to whether or not the Advisory Board was obliged to require the detainee to produce witnesses. It was held that when a detainee did not produce any witness, the Advisory Board was not required to summon witnesses. This was held after considering the observations made in the Constitution Bench decision in the case of A. K. Roy vs. Union of India, 1982 (1) SCC 271. The relevant observations as they appear in paragraph nos.5 to 7 are re-produced as under :

“In order to appreciate rival submission it would be appropriate to refer to a Constitution Bench decision in A.K. Roy v. Union of India, [1982] 1 SCC 271, where it was observed as follows:

"104. The last of the three rights for which Shri. Jethmalani contends is the right of the detenu to lead evidence in rebuttal before the Advisory Board. We do not see any objection to this right being granted to the detenu. Neither the Constitution nor the [National Security Act](#) contains any provision denying to the detenu the right to present his own evidence in rebuttal of the allegations made against him. The detenu may therefore offer oral and documentary evidence before the Advisory Board in order to rebut the allegations which are made against him. We would only like to add that if the detenu desires to examine any witnesses, he shall have to keep them present at the appointed time and no obligation can be cast on the Advisory Board to summon them. The Advisory Board, like any other tribunal, is free to regulate its own procedure within the constraints of the Constitution and the statute. It would be open to it, in the exercise of that power, to limit the time within which the detenu must complete his evidence. We consider it necessary to make this observation particularly in view of the fact that the Advisory Board is under an obligation under [Section 11 \[1\]](#) of the Act to submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned. The proceedings before the Advisory Board have therefore to be completed with the utmost expedition." (Underlined for emphasis)

6. The position, therefore, is clear that detenu was free to produce the witnesses before the Advisory Board in order to rebut the allegations levelled. There was no obligation on the Advisory Board to summon witnesses and it was for the detenu to keep his witness present at the appointed time. In the instant case specific affidavit of the Secretary which was noted by the High Court, *inter alia*, stated as under:

"With reference to para 8 (D & K) of the petition, it is stated that the detenu Shri Ramchandra Rammilan @ Pandey was informed by the Advisory Board, through the Superintendent, Nasik Road Central Prison, Nasik to make representation to the Chairman, Advisory Board, M.P.D.A. 1981 and for taking assistance of his friend who is not a legal practitioner or examine witnesses and keep him/them present at the time of his interview before the Advisory Board.

The said detenu has submitted two representations dated the 1-3-1997 and 21-3-1997 through the Superintendent, Nasik Road Central Prison, Nasik. Both the representations were duly considered by the Advisory Board. He was heard against the detention order. The detenu did not produce any witness for examination and did not state before the Advisory Board that he wanted to examine witness.

(Underlined for emphasis)

7. The undisputed position, therefore, is that the detenu did not produce any witness for examination and even did not state before the Advisory Board that he wanted to examine the witness or that the witness was present. The High Court seems to have proceeded on the basis that once a representation is made indicating the desire to examine witness, there was no necessity for any oral prayer. That may be so. But as noticed in A.K. Roy' case (supra), it was for the detenu to keep his witness ready for examination. The specific statement of the Secretary to the Advisory Board on affidavit is that detenu did not produce any witness for examination. It was not for the Advisory Board to summon any witness. When the detenu did not produce any witness for examination, there was no necessity for the Advisory Board to require the detenu to produce witnesses. The approach of the High Court which proceeded on the basis as if there was such an obligation on the Advisory Board, therefore, is not right. That apart, the Court had nothing concrete before it to surmise that any witness was present, and the failure on the part of the Advisory Board to verify about the same constituted denial of an opportunity. We set aside the judgment of the High Court.

16. So, it is clear that whenever a detenue is called for hearing before the Advisory Board and the detenue is desirous of examining his own witnesses, it is necessary that the detenue keeps

present his witnesses on the date of hearing and that it is not necessary for the Advisory Board to summon the witnesses on the demand of the detenue.

17. In the present case, the Advisory Board did not consider it fit to call the petitioner for hearing before it. So, it was necessary for the petitioner to specifically ask for personal hearing from the Advisory Board as required under Section 11 r/w. Sections 8 and 10 of the Act of 1981 and in that case only, the date of hearing would have been fixed by the Advisory Board and it could have been informed to the petitioner well in advance so that the petitioner could keep present his witness on the date fixed for hearing of his case. As the petitioner did not demand any personal hearing, there was no question of Advisory Board to give any opportunity to the petitioner to keep present his witnesses and this was all the more so because the Advisory Board also did not consider it to be appropriate to fix the matter for personal hearing of the petitioner. Therefore, we find no substance in the argument so advanced on behalf of the petitioner in this regard.

18. Thus, there is no merit in the petition. The petition stands dismissed.

JUDGE

JUDGE

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Jaiswal

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by Suraj Jaiswal
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