

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 501 OF 2022

Shivraj @ Shivaji S/o Janardhan Bangar
Age : 35 years Occu. Agri. And Social Activist,
R/o. Saundana, Tq. Dist. Beed.
At Present R/o Pitaji Wonder Apartment, Shahu Nagar,
Beed, Tq. Dist. Beed .. Petitioner

Versus

1. The Secretary,
Home Department (Special),
Government of Maharashtra, Mantralaya,
Mumbai-32.
2. The District Collector and District Magistrate,
Beed, Dist. Beed.
3. The Superintendent of Police
Beed, Dist. Beed.
4. The Sub-Divisional Police Officer,
Beed, Dist. Beed.
5. The Police Inspector,
Shivajinagar Police Station, Beed.
6. The Superintendent,
Aurangabad Central Prison,
Aurangabad – 431008. .. Respondents

Mr. V. D. Sapkal, Senior Advocate i/by Mr. S. R. Sapkal, Advocate for
the Petitioner.

Mr. R. V. Dasalkar, APP for the Respondents-State.

**CORAM : SARANG V. KOTWAL
AND
BHARAT P. DESHPANDE, JJ.**

DATED : 28th JUNE 2022.

ORAL JUDGMENT (PER SARANG V. KOTWAL, J.) :-

. The petitioner challenges the order passed by the District Magistrate, Beed on the file No. 2021/RB-Desk-1/POL/1/MPDA-08 dated 31.12.2021. Pursuant to the said order the petitioner was detained in Harsul Central Prison, Aurangabad on 09.01.2022. The order was confirmed by the State of Maharashtra on 10.01.2022. The advisory board had recommended confirmation of the order and after receiving opinion of the advisory board, the detention order was confirmed on 04.03.2022.

2. We have heard Mr. V. D. Sapkal, learned senior counsel for the petitioner and Mr. R. V. Dasalkar, learned APP for the respondents.

3. Along with detention order dated 31.12.2021, the petitioner was served with the grounds of detention. The petitioner was detained under the provisions 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).

4. The grounds of detention mentioned past history of offences and preventive action taken against the detenu. However, in paragraph

No. 4 of those grounds it is mentioned that the detaining authority had considered the offences mentioned in paragraph No. 5.1, 5.2 and two in-camera statements mentioned in paragraph No. 6.1 and 6.2 to issue the detention order.

5. Paragraph No. 5.1 refers to C.R. No. 146/2021 registered at Pimpalner Police Station, Beed for the offence punishable under Section 341, 283, 188, 269, 270 of the Indian Penal Code along with Section 51 of the Disaster Management Act, Section 2, 3 and 4 of the Epidemic Act. F.I.R. was lodged on 01.07.2021. On that day the petitioner alongwith other 20 to 22 persons participated in an agitation blocking the road. They were not wearing masks and therefore had violated the orders of the District Magistrate, Beed.

6. The detaining authority has also relied on a non cognizable crime No. 558/2021 registered under Section 323, 504, 506 of the Indian Penal Code at Shivaji Nagar Police Station, Beed. In that case, a complaint was made that on 11.08.2021, when the complainant was proceeding to his work in front of Collector office, the petitioner assaulted, abused and threatened the complainant.

7. Apart from these registered offences, the detaining authority has relied on the statements recorded 'in-camera' of two witnesses i.e.

witness A and witness B. The grounds of detention in paragraph No. 6.1 and 6.2 to these witnesses. In paragraph No. 6.1.1 the narration of witness A was mentioned. In that paragraph the date of that incident was mentioned as '28.07.2011'. It is mentioned that on that day the petitioner met the witness at Nagar Naka and demanded money. The petitioner removed Rs. 5000/- from the witness's pocket and threatened to set him on fire, if he disclosed it to anyone. It is mentioned that while the quarrel was going, persons seeing him ran away. No one intervened and the shopkeepers shut their shops.

8. Witness B's statement as referred in ground No. 6.2.1 mentions that, on 30.07.2011, the petitioner met the witness near a school and demanded Rs. 15000/-. The petitioner took out Rs. 6000/- from his pocket by pointing a weapon and threatened to kill him by pistol. On seeing the petitioner, the persons ran away and the road became silent. The businessmen shut their shops.

9. Thus, according to the detaining authority on being subjectively satisfied that the petitioner was a dangerous person as defined in Section 2 (b-1) of the MPDA Act, the detention order was passed. Importantly, in paragraph No. 15, the detaining authority has stated that "you are also further informed that, the offences and preventive actions as mentioned in para no. 3.1 & 3.2 against you are indicated

only to highlight your criminal back history. I have just referred to it. Said action is based on one offence and two in-camera statements as mentioned in para Nos. 6.1 and 6.2.” Thus, the detaining authority was specific and he has mentioned that he has relied only on one offence, which is contrary to the stand taken in para Nos. 4 and 5 of the grounds of the detention order, which refer to two registered offences and two ‘in-camera’ statements.

10. Mr. Sapkal, learned senior counsel for the petitioner raised certain points in the petition mainly about the delay in passing the order from initiation of the proposal, insufficiency of material and about delay in deciding his representation.

11. The District Magistrate, Beed who has passed the detention order, has filed his affidavit in reply and has supported his action. Upto paragraph No. 10, it is basically reiteration of the grounds accompanying the detention order. In paragraph No. 11, he has made reference to the representation of the petitioner. The District Magistrate has stated that a copy of representation dated 18.01.2022 addressed to the Additional Chief Secretary, Home Department, Government of Maharashtra was received on 18.01.2022. Parawise remarks were called from the District Magistrate, Beed himself on

20.01.2022. He in turn called parawise remarks from the Superintendent of Police, Beed on 24.01.2022. They were received by the District Magistrate, Beed on 26.01.2022. After receipt of parawise remarks from the Superintendent of Police, Beed, the same were submitted to the Additional Chief Secretary on 31.01.2022. After that, the representation was scrutinized and processed through concerned Assistant and submitted to the Additional Chief Secretary, Home Department for his consideration through Under Secretary and Deputy Secretary. Then, the Additional Chief Secretary (Home) considering the facts, police report and relevant documents rejected the representation on 08.02.2022 and immediately it was intimated to the petitioner.

12. Learned Senior Counsel for the petitioner submitted that the sponsoring authority acted in a malafide manner because of the previous enmity with the petitioner. There is no reply in the affidavit to this ground which the petitioner has specifically raised in paragraph No. 8 of the petition.

13. Next ground urged by learned senior counsel was about delay in passing the order from the date of proposal. The proposal was initiated on 09.09.2021 and the order was passed on 31.12.2021. The delay has

remained unexplained.

14. He further submitted that the material was not sufficient to pass the detention order. Public order could not be affected on these allegations. It shows non application of mind on the part of the detaining authority. The ordinary law was sufficient to curb the activities of the petitioner and the detention order was not necessary. He finally submitted that the petitioner's representation was not considered expeditiously without delay.

15. Learned APP submitted that there was no delay in passing the detention order. The representation was considered without any delay. The detention order was based on the material which showed that the activities of the petitioner affected the public order and therefore this Court may not set aside the impugned detention order.

16. We have considered the submissions and we have perused the petition, the affidavit in reply and the record.

17. First of all, it was quite surprising that the affidavit in reply is filed by the District Magistrate, Beed explaining the movement and consideration of the petitioner's representation in the Home Department, Government of Maharashtra. He cannot have any personal knowledge about said consideration. No affidavit in reply is

filed by any responsible officer from the Home Department. Therefore, it will have to be held that the delay in considering the representation has remained unexplained.

18. The necessity of calling for parawise remarks from the detaining authority for consideration of representation is also not explained. Subsequently, the necessity of the detaining authority calling for the parawise remarks from the sponsoring authority is also not explained. Thus, there is unexplained delay in dealing with the representation made by the petitioner. The same view is taken by a Division Bench of this Court in the case of *Chanda Birju Garunge Vs. State of Maharashtra and others* reported in *2015 (4) Bom.C.R.(Cri.) 219*.

Paragraph No. 14 of that judgment reads thus :

“14. There is one more aspect. On 27th November 2014, the same Additional Chief Secretary (Home) passed an order calling for the remarks of the Detaining Authority. Though the Detaining Authority received a letter calling for parawise remarks on 28th November 2014, the remarks were not sent immediately as the Detaining Authority in turn called for the parawise comments from the Sponsoring Authority. This is another crucial aspect for the delay. Firstly, necessity of calling for report from the Detaining Authority is not explained. Secondly, the necessity of the Detaining Authority calling for the report from the Sponsoring Authority is not explained. Thus, there is an unexplained delay in dealing with the representation made by the Petitioner. Apart from the delay, the constitutional rights of the detenu are violated as the representation made by the detenu was kept pending till confirmation of the order of preventive detention by the State Government. Thus, the Petition must succeed on both the grounds.”

These observations are applicable to the facts of this case and,

therefore, on this ground alone the petition must succeed.

19. Apart from that, there are other points in favour of the petitioner. The ground of detention in paragraph No. 15 mentions that the action of passing detention order was based on one offence and two in-camera statements. However, paragraph Nos. 4 and 5 of the same grounds mention that the detention order was based on two registered offences i.e. C.R. No. 146/2021 of Pimpalner Police Station and non cognizable crime No. 558/2021 of Police Station Shivaji Nagar, Beed. Thus, the petitioner is not clearly told on what basis the detention order was passed. Moreover, as far as the non cognizable crime No. 558/2021 is concerned, the description of the offence shows that it was strictly a private dispute and the public at large was not affected at all. Similarly, in the statement of witness A again it was only an incident between the petitioner and witness A. No weapon was used or shown and it was an incident involving a quarrel between two of them. It certainly did not pose any danger to public at large or cause alarm or panic in public at large, and therefore, public order was not affected.

20. As far as the statement of witness B is concerned, the detaining authority has mentioned in the grounds that the petitioner threatened this witness that he would kill him by using a pistol. We have perused the statement of witness B. We have also perused the original marathi

statement. There is no reference to the word 'pistol'. The only reference is to some "weapon", particularly weapon 'pistol' is not mentioned. This shows non application of mind on the part of the detaining authority. The word 'pistol' is not uttered by this witness. The weapon in this context is important. The weapon is not described by this witness. There is nothing to suggest that the people in the locality got scared looking at the weapon.

21. Apart from that, the dates mentioned of these two instances in respect of witness A and witness B in the grounds of detention are from the year 2011. There is a possibility that it could be a typographical error, but it was not explained anywhere by the detaining authority. In this particular case, it tends to create confusion. This does not give the minimum necessary correct particulars of these incidents to enable the petitioner to make effective representation. This has affected his valuable right of making effective representation.

22. Thus, taking all these issues into account together, the order of detention cannot be sustained and petition is required to be allowed. Hence, we pass the following order.

ORDER

- (i) Rule is made absolute in terms of prayer clause C.

(ii) The order passed by the District Magistrate, Beed on the file No. 2021/RB-Desk-1/POL/1/MPDA-08 dated 31.12.2021 is quashed and set aside.

(iii) The petitioner be released forthwith from the detention, if not required in any other case.

23. The petition is disposed of.

(BHARAT P. DESHPANDE)
JUDGE

(SARANG V. KOTWAL)
JUDGE

P.S.B.