

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.731 OF 2022

Shaikh Shakil s/o Shaikh Khalil
Age: 35 years, Occu.: Labour,
R/o. Indira Nagar, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli

... Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32
2. The Addl. Chief Secretary,
(Preventive Detention)
Home Department,
Mantralaya, Mumbai-32.
3. The District Magistrate, Collector
Office, Hingoli.
4. The Superintendent of Police, Hingoli
5. The Police Inspector,
Police Station, Kalamburi,
Dist. Hingoli.

... Respondents

...
Mr. H. I. Pathan, Advocate for petitioner.
Mr. R. V. Dasalkar, Advocate for respondents – State.
...

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 5th August, 2022

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. By invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India, the petitioner, who is a detenue, challenges the order passed by the learned District Magistrate, Hingoli on 28.03.2022, which has been later on confirmed by respondent No.1 – State by order dated 05.05.2022.

2. The factual matrix leading to the petition are that respondent No.3 – learned District Magistrate, Hingoli on the report of respondent No.5 had passed an order of detention 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 (hereinafter referred to as the “MPDA Act”). By the said authority, the petitioner has been detained for a period of one year from the date of the order.

3. Heard learned Advocate Mr. H. I. Pathan for the petitioner and learned APP Mr. R. V. Dasalkar for respondents – State.

4. The learned Advocate appearing for the petitioner submits that as per Section 3(3) of the MPDA Act, respondent No.1 should approve the detention order within 12 days from the date of the order, otherwise

that order will lapse. According to the information that was received to the petitioner, the Government had not approved the said order within stipulated period and, in fact, the jail authorities had supplied letter dated 07.04.2022 of approval of detention order to the petitioner on 18.05.2022 along with order dated 05.05.2022 passed by respondent No.1 confirming the detention order and, therefore, it appears that the said order dated 07.04.2022 is backdated order. The petitioner had made an application to respondent No.3 for his temporary release on bail in view of Section 15 of the MPDA Act in the meantime, as he was not served with the detention order. However, no decision was taken on the same. Further, the petitioner is challenging the said order on the ground that his representation was not at all considered by the Advisory Board under the MPDA Act. Further, after the passing of the order, respondent No.3 was supposed to supply all the copies of the material on which he had relied and, therefore, when such necessary documents were not supplied at all, it is violative of Article 21 and 22(5) of the Constitution of India. Reliance has been placed on the decision in ***Kamla Kanyalal Khushalani Vs. State of Maharashtra and another, [(1981) 1 SCC 748]***, wherein it has been held that :-

“ It is of the utmost importance that all the necessary safeguards laid down by the Constitution under Article 21 or Article 22(5) should be complied with fully and strictly

and any departure from any of the safeguards would void the order of detention. The law of preventive detention has now to satisfy a two-fold test: (1) that the protection and the guarantee afforded under Article 22(5) is complied with, and (2) that the procedure is just and reasonable. If a procedure under Article 21 has to be reasonable, fair and just, then the words 'effective representation' appearing in Article 22(5) must be construed so as to provide a real and meaningful opportunity to the detenu to explain his case to the detaining authority in his representation. In this view of the matter, unless the materials and documents relied on in the order of detention are supplied to the detenu along with the grounds, the supply of grounds simpliciter would give him not a real but merely an illusory opportunity to make a representation to the detaining authority.

For the above reasons the continued detention of the detenu is void.”

Another fact, which was not considered by the learned Authorities, was that some of the cases against the petitioner have been decided and some are pending. There was no live link to order his detention branding him as dangerous person under MPDA Act. Cases in which he has been acquitted of the Bombay Prohibition Act will not fall under the category of those cases to which the provisions of MPDA Act would be applicable. Further, reliance has been placed on the decision in *Ajay @ Golu Shyam Solanki Vs. State of Maharashtra and another*,

decided by this Court Bench at Nagpur in Criminal Writ Petition No.27.06.2021, wherein it was held that the prosecution should prove the live link. When all these lacunas could be found in this case, the said detention order cannot be said to be legal. It deserves to be quashed and set aside.

5. Learned APP representing all the respondents has made available the entire file. As regards the non supply of documents are concerned, in the order itself, what the confidential witnesses A and B had stated against the petitioner has been mentioned and further all those documents, which were referred in the order, were supplied to the petitioner on 03.03.2022. His signature in token of receipt of those documents has been obtained. In the said order itself, it was informed to him that he can make representation to the Advisory Board and also to make a representation to respondent No.3. Further, it was also informed in the said order itself that if he has desire to be heard by the Advisory Board, then the appointment would be made but then he will have to inform the said fact to the Superintendent of Jail. Thus, it can be seen that all the necessary compliance appears to have been mentioned and made part of the order itself by respondent No.3.

6. Now, turning towards the decision by respondent No.3, it can be seen that as per the chart that has been given, the petitioner was

involved in ten offences registered with Kalamnuri Police Station. Out of them three have been decided, which were of the year 2009, 2011 and 2013. The first two appear to be under the Bombay Prohibition Act. In those cases, when he has been acquitted, definitely, those have not been considered by respondent No.3. However, the offences since 2014 are pending. The last three offences are of 2021. Crime No.325 of 2021 has been registered under Section 307, 326, 323, 324, 143, 147, 148, 149 of Indian Penal Code and other Sections of Arms Act. It is stated to have been committed on 22.11.2021. Thereafter, Crime No.361 of 2021 came to be registered on 15.12.2021 under the Arms Act and Maharashtra Police Act. The statements of confidential witnesses A and B have also been recorded. The petitioner is also involved in six chapter cases. The last one is of the year 2021, but it is stated that it has been closed. It is to be noted that the proposal for such action was initiated on 25.03.2022 by Police Inspector, Kalamnuri Police Station. When the last offence was committed in the month of December, 2021, the action that was taken in March, 2021 cannot be said to be not having a live link.

7. Now, turning towards the representation that was filed by the petitioner, it is to be noted that he has given the said representation on 27.04.2022 and the document at Exhibit-B itself is clear in that respect.

It appears that similar representation was given by him to Additional Chief Secretary, Government of Maharashtra, Home Department, Mantralaya, Mumbai on 29.04.2022. Though it was not addressed to the Advisory Board, definitely, it can be said that the Government was duty bound to place it before the Advisory Board, however, it can be seen that he himself had given the said representation late. We have, in the said file supplied by the Government, the order passed by the Advisory Board. It appears that the Advisory Board consisting of the sitting Judge of this Court as Chairman and two retired Judges of this Court as members constituted under Section 9(2) of the MPDA Act had heard the petitioner personally through video conferencing and had come to the conclusion that sufficient grounds for further detention of the detenu have been made. That order came to be passed on 27.04.2022 itself. Under such circumstance, the representation that was given by the petitioner on 29.04.2022 could not have been placed by the Government before the Advisory Board along with other papers on which they were supposed to take the decision. Section 11(1) of the MPDA Act provides that, 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 in person submit its report to the State Government, within seven weeks from the date of detention of the person concerned. Thus, the requirements of this section have been adhered to.

8. It was tried to be submitted that the order dated 07.04.2022 appears to be backdated and it appears that it was served on the petitioner on 10.05.2022. It was the order in respect of approval by the Government. From the detention order passed by respondent No.3, it is to be noted that as per Section 8 of the MPDA Act, the petitioner was supposed to be served with the grounds of detention within a period of five days from the date of detention and as aforesaid, opportunity was given to the petitioner to make representation by specifying what are the rights of the petitioner in the order itself. Thereafter, in view of Section 9 of the MPDA Act, the Advisory Board has to be constituted and as per Section 10 of the MPDA Act, in every case where the detention order is passed, the State Government shall within three weeks from the date of the detention of the person, should be before the Advisory Board. Then in view of Section 11 of the MPDA Act, the Advisory Board may hear all the relevant persons including the detenu if he has so desire and then has to communicate its order to the State Government. Therefore, if we

consider the date of the detention order here i.e. 28.03.2022, then the confirmation of the detention by the State Government under Section 3(3) of the MPDA Act appears to be proper. Section 3(3) of the MPDA Act provides that, when any order is made under this Section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government. Communication of the said order on 10.05.2022 cannot be the ground for holding that there is violation of any constitutional right of the petitioner for the simple reason that prior to that, the petitioner was produced before the Advisory Board around 4.00 p.m. on 27.04.2022 through video conferencing. Communications about asking the petitioner to be produced before the Advisory Board are in the file. So also in the order passed by the Advisory Board, there is specific reference that they have heard the petitioner. In spite of the said fact, if the petitioner has responded late, then it cannot be said to be the violation of his constitutional rights. Taking into consideration the fact that about three cases under Section 307 of Indian Penal Code, two cases under Section

324, 326 of Indian Penal Code are pending against the petitioner, the Advisory Board has approved the detention of the petitioner and no fault can be found in the same. No case has been made out for exercising constitutional powers of this Court under Article 226 and 227 of the Constitution of India. The ratio laid down in the decisions relied by the petitioner cannot be disputed, however, they are not applicable to the facts of the present case. For the aforesaid reasons, the writ petition stands dismissed.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]

scm