

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2153 OF 2021

Anand Kankayya Bhandari,)
Age : 58 years, R/o. H. No. 10/44,)
Ghongade Wasti, Front of Jay,) ...Petitioner/
Bhawani Garden, Solapur) Detenue

Versus

1. The Commissioner of Police,)
Solapur.)
2. The State of Maharashtra,)
(Through Addl. Chief Secretary)
to Government of Maharashtra)
Mantralaya, Home Department,)
Mantralaya, Mumbai))
3. The Superintendent,)
Yerwada Central Prison,)
Pune.) ...Respondents

Ms. Jayshree Tripathi, Advocate for Petitioner.
Mrs. A.S. Pai, PP for Respondent – State.

CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.

DATE : MARCH 15, 2022.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Rule. Rule made returnable forthwith. With the consent of learned Counsel appearing for respective parties, matter is taken up for hearing and disposal, at admission stage.

2. The present Petition is filed challenging the preventive detention order passed against the Petitioner on 19th March, 2021 issued under sub-section 2 of Section 3 of M.P.D.A. Act, 1981 by Respondent No. 1 – Commissioner of Police, Solapur. The said detention order has been passed under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders, Dangerous persons and Video Pirates Act, 1981 (hereinafter referred to as 'MPDA Act'). The said detention order has been issued as the Detenu is a Dangerous person whose activities are prejudicial to the maintenance of public order. The said detention order is based on four crimes i.e., 1. C.R. No. 893 of 2020 registered with Jailroad Police Station, Solapur for the offences punishable under Sections 65(e) of Maharashtra Prohibition Act, 1949 read with Section 188, 269, 336 of IPC, Section 51(b) of Disaster Management Act, 2005, 2. C.R. No. 1170 of 2020 registered with Jailroad Police Station, Solapur for the offences punishable under Sections 65(e) of Maharashtra Prohibition Act, 1949, 3. C.R. No. 1233 of 2020 registered with Jailroad Police Station, Solapur for the offences punishable under Sections 65(e) of

Maharashtra Prohibition Act, 1949, 4. C.R. No. 1241 of 2020 registered with Jailroad Police Station, Solapur for the offences punishable under Sections 65(e) of Maharashtra Prohibition Act, 1949, and and two in-camera statements of witnesses 'A' and 'B', recorded by Dr. Priti Tipre, AC.P. Division – 02, Solapur on 21st January, 2021 and 23rd January, 2021 respectively.

3. Though, the number of grounds have been raised in the present Petition whereby the detention order has been challenged, however, the learned Counsel appearing for the Petitioner / Detenue heavily relied on three grounds before us i.e., ground nos. 'h', 'i' & 'j'. For ready reference, we may reproduce those grounds herein below in verbatim.

h. The petitioner says and submits that there is delay in passing the gaid detention order as the detaining authority has taken into consideration registered criminal cases that are not proximate to the time of passing the order along with two in camera statements that are recorded only to fill up the gap and pass the impugned detention order. It is pertinent to note that the detaining authority has taken into consideration four registered criminal cases vide C.R. No. 893 of 2020 dated 18/06/2020, C.R. No. 1170 of 2020 dated 17/08/2020, C.R.

No. 1233 of 2020 dated 24/09/2020 and C.R. No. 1241 of 2020 dated 30/09/2020 all U/Sec. 65(e) of Maharashtra Prohibition Act, 1949 along with two statement of witnesses 'A' and 'B' recorded in camera dates of recording the same are 21/01/2021 and 23/01/2021 respectively for incidents occurred in the first week and last week of January 2021 respectively. And the order of detention came to be passed belatedly on the 19/03/2021 i.e. after a long lapse of about seventeen weeks after the recording of the last statement i.e. on the 23.01.2021. The petitioner says and submits that nothing prevented the authorities to take immediate and prompt action by way of issuing detention order, after the last registered criminal cases in the month of September 2020 when it occurred. The concerned authorities are called upon to explain the above said delay of about three and half months to record in camera Statements after the last C.R., thereafter delay of about seven weeks in passing order of detention after recording statement of witness 'B', also as to when the proposal of detention was forwarded to higher authorities etc, to the satisfaction of this Hon'ble Court failing which the order of detention will be held illegal and bad in law for delay in passing the order of detention, The order of detention is illegal and bad in law liable to be quashed and set aside.

- i. The petitioner says and submits that the detaining authority has taken into

consideration old and stale cases to pass the detention Order vide C.R. No. 893 of 2020 dated 18/06/2020, C.R. No. 1170 of 2020 dated 17/08/2020, C.R. No. 1233 of 2020 dated 24/09/2020 and C.R. No. 1241 of 2020 dated 30/09/2020 all U/Sec. 65(e) of Maharashtra Prohibition Act, 1949 and the order of detention came to be passed on the 19/03/2021. The cases taken into consideration are not proximate in time for passing the order of detention order, live link snaps. If the alleged prejudicial activities of the petitioner were so dangerous and prejudicial to the maintenance of public order then the authorities ought to have acted promptly and should have taken action immediately. The order of detention is illegal and bad in law for consideration of old and stale cases for passing order which have no nexus with the purpose of detention. The order of detention is illegal and bad in law liable to be quashed and set aside.

- j. Petitioner says and submits that the Detaining Authority has not complied with the requirement of law strictly in as much as no report is sent promptly and expeditiously to the State Government "forthwith" as required by Sec. 3(3) of the MPDA Act. The Hon'ble Apex Court has interpreted the very word "forthwith" as immediately, without any loss of time and with sense of urgency. The petitioner further submits that on the perusal of approval order (EXHIBIT-H) it transpires that detaining authority has failed to report the fact of detention of the petitioner/detenu to the State Government

forthwith, rather he reported after a lapse of 5 (five days) i.e. in violation of Sec 3(3) of the MPDA Act thus the impugned detention order is illegal and bad in law, liable to be vitiated for non-compliance of the requirement of Sec 3(3) of the MPDA Act. The detaining authority is called upon to explain the said delay, to the satisfaction of this Hon'ble Court failing which the order will be held as illegal. It is therefore the order of detention is illegal and bad in law liable to be quashed and set aside.

4. Learned counsel appearing for the Petitioner – Detenu invited our attention to the ground 'h' and submits that, the detaining authority has taken into consideration four criminal cases registered against the Petitioner – Detenu for the period between June, 2020 to September, 2020, whereas the order of detention is belatedly passed on 19th March, 2021. In order to fill up the gap of this aforesaid delay two in-camera statements were recorded on 21st January, 2021 and 23rd January, 2021. Thus, the submission is, there is inordinate delay in passing the order of detention. In support of her submissions, learned counsel appearing for the Petitioner – Detenu placed reliance on following judgments: Pradeep Nilkanth Patrukar Vs. S.

Ramamurthi and Others¹, Niyazuddin @ Sonu Sirajuddin Ansari Vs. State of Maharashtra and Anr² & Shri. Sanjeev @ Sanjay @ Tatyasaheb Nagnath Upade Vs. The Commissioner of Police, Solapur and Others³.

5. Learned counsel appearing for the Petitioner – Detenu then invited attention of this Court to another ground i.e., ‘g’ in the memo of the Petition and submitted that, representation of the detenu was sent to the Superintendent, Yerwada Central Prison on 05.05.2021 to obtain the signature of the detenu on his representation and for onward submission to the State Government for consideration expeditiously. Learned Counsel further submitted that Respondent No. 2 filed the affidavit wherein in paragraph no. 2 it is stated that, representation of detenue dated 05th May, 2021 was not received in the Special Branch – 3B Desk. However, it is specifically stated by Respondent No. 3 in reply that representation of detenue was sent to State Government on 09th May, 2021. Thus, it is the submission of learned Counsel for Petitioner that the Respondents have not explained the delay of five days in sending

1 1993 Supp (2) SCC 61

2 2013 ALL MR (Cri) 3870

3 CRIMINAL WP/3035/2021

the said representation to the Government by the jail authority. Hence, learned Counsel submitted that on this ground alone petition deserves to be allowed.

6. Learned counsel appearing for the Petitioner – Detenu then invited attention of this Court to another ground i.e., ‘j’ and submitted that the detaining authority has not complied with the requirement of law in as much as no report is sent promptly and expeditiously to the State Government forthwith as required by Section 3(3) of the MPDA Act.

7. In support of above submissions, learned counsel appearing for the Petitioner – Detenu placed heavy reliance on following judgments: Hetchin Haokip Vs. State of Manipur and Others⁴, Dharani Raja Padyachi Vs. The State of Maharashtra and Others⁵, & Sanjay Ramuji Phatode Vs. The Commissioner of Police, Nagpur City and Others⁶. Therefore, learned counsel appearing for the Petitioner – Detenu prayed that, Petition may be allowed.

8. *Per contra*, learned APP appearing for

4 (2018) 9 SCC 562

5 2019 ALL MR (Cri) 3504

6 Criminal WP/2335/2021.

Respondent – State invited our attention to the documents placed on record such as, order of detention, averments in the affidavit & additional affidavit filed by Ankush Shinde, Commissioner of Police, Solapur, affidavit filed by Shrirish Nagorao Mohod, Deputy Secretary, Government of Maharashtra, Home Department (Special), affidavit filed by Umaji Tolaram Pawar, Superintendent, Yerwada Central Prison, Pune. Learned APP submitted that detaining authority considered four crimes registered against the Petitioner. Thereafter, in camera statements of two witnesses were recorded on 21st January, 2021 and 23rd January, 2021, and thereafter on 19th March, 2021 order of detention was passed. Therefore, learned APP submits that the detaining authority after proper application of mind considered the material / documents on record and arrived at the subjective satisfaction, and thereafter detention order has been passed.

9. In so far as the other ground of the Petitioner that there is unexplained delay in passing the order of detention is concerned, learned APP submitted that the delay by itself cannot be a ground

to quash the detention order if delay is properly explained. Learned APP further submitted that the Respondent No. 1 there is no delay in passing the impugned order. In support of his submissions, learned APP placed reliance on following judgments : Deepak Govind Murudkar Vs. R H Mendonca, Commissioner of Police⁷, Nagnrayan Saryu Singh Vs. The State of Maharashtra⁸, & Arif Shaikh Vs. A. N. Roy⁹. Thus, learned APP appearing for the Respondent – State prayed that Petition may be rejected.

10. With the able assistance of learned Counsel appearing for respective parties, we have gone through the record.

11. Considering the entire record, in our opinion, the Petition is devoid of any merit, deserves to be dismissed.

12. We have carefully perused the detention order and grounds of detention. The Respondent No. 1 have made clear that the order of detention is based only on four offences, which are referred to above and in

7 2001 ALL MR (Cri) 357

8 2006 ALL MR (Cri) 2147

9 2005 ALL MR (Cri) 1228

camera statements of two witnesses to show that the Petitioner - detenu has been habitually committing serious offences. The said offences show the criminal history of the detenu. It is also mentioned in paragraph 4-1 about preventive action under Section 107 of the Code of Criminal Procedure initiated against the detenu. There is also reference to other offences committed by the detenu. Detaining Authority has discussed in detail about the said incidents about which aforesaid four crimes were registered. It is stated by the detaining authority that an investigation of aforesaid four crimes revealed that the detenu created terror in the said area and also disturbed public order and terrorized the residents of the area where he is residing as well residence of the adjoining area. The witnesses from the said area have given in-camera statements & Dr. Priti Tipre, A.C.P. Division - 02, Solapur has duly verified the statements. The gist of the statements of witness no. 'A' and witness no.'B' is also mentioned in the grounds of detention. The authority arrived at the satisfaction that due to ill-acts of Petitioner people residing in said vicinity got scared and due to apprehension witnesses were not

coming forward to make report / complaint against the Petitioner – detenu. There is also discussion about statement of witness 'B'. It is specifically mentioned by the detaining authority in paragraph no. 7 of the ground that, he is subjectively satisfied that Petitioner is dangerous person as defined in Section 2(b-1) of the said Act. Detenu has unleashed a reign of terror and have become a perpetual danger to the society at large in the area of Solapur. The people residing in the said area are experiencing a sense of insecurity and are living under a shadow of constant fear, whereby even day to day businesses and activities of citizens are under thereat from detenu. Detenu has no respect to the law of the land and to the citizens of the society where he lives. It is also stated that, detenu is an impulsively violent man who wants to spread terror in the society by his violent criminal activities, in connivance with the detenu's criminal associates.

13. Upon careful perusal of the ground of detention, it is crystal clear that number of offences are registered against the Petitioner – Detenu in the

past. The offences registered till June, 2020 against the Petitioner so also preventive action taken against the Petitioner – Detenu under Section 107 of the Cr.P.C. mentioned by the detaining authority only to show that the Petitioner is history sheeter having criminal antecedents so as to discredit him as a law abiding citizen and he is habitual offender. As already observed C.R. No. 893 of 2020, C.R. No. 1170 of 2020, C.R. No. 1233 of 2020 & C.R. No. 1241 of 2020 mentioned herein above are relied upon by the detaining authority while passing the order of detention.

14. The submission of the Counsel appearing for the Petitioner is that there is considerable delay in registration of aforesaid four crimes and for recording of statements of witnesses and passing the order of detention, in our considered view cannot be accepted. The above four offences were registered for the period between June, 2020 to September, 2020 and thereafter two in-camera statements of two witnesses have been recorded on 21st January, 2021 and 23rd January, 2021.

15. For better particulars, we may refer to statement of one of witness i.e., witness A as referred

in para 5.7 of order of detention.

Witness 'A' is resident of Solapur. He stated that he is residing in the locality with his family and running his own grocery shop besides house of detainee. It is stated that on one morning of the first week of January, 2021, this witness was at his shop along with his labour. Then this witness and his labour set out from shop on motorcycle to purchase some grocery material for his shop. As soon as they passed some distance they saw that Petitioner and his four associates were coming driving motorcycle in a rash and negligent manner, carrying black coloured motor tubes. On seeing this witness, Petitioner took his motorcycle besides the road, but his associates gave dash to this witness. Due to dash, this witness fell down. Seeing this Petitioner stopped his motorcycle and came along with his associates near the witness and started abusing him. Then Petitioner threatened this witness on on the point of knife and abuses him in filthy language. Then Petitioner and his associates started beating this witness and his labour with hands and stick. While the said incident was going on, the people residing near, neighboring shopkeepers, customers and

people moving on the road gathered there. Then Petitioner rushed towards the people holding knife in his hand and started pelting stones. Due to which, people gathered on the spot ran away. Due to stone pelting, some of persons got injured and some persons fell down during running. Neighboring shop owners closed their shops due to fear and terror and no one came out for the help of this witness. Then this witness apologized the Petitioner by saying that this will not happen again. Then Petitioner threatened this witness and forcefully took out Rs. 5,000/- from the pockets.

16. Learned APP was justified in placing reliance on the judgment in the matter of Nagnarayan Saryu Singh (supra). It is admitted fact that at some point of time the entire region of Pune City and neighboring talukas have recorded large number of Covid 19 patients and the Government Machinery was essentially engaged in making arrangements so as to take necessary steps and as such, considering the priority in the peculiar circumstances, the explanation given was justified and it cannot be said that the delay by itself makes the order of

detention defective.

17. It is also argued on behalf of the Petitioner that there is no live link between the offences used for passing the detention order. In our opinion, there is a live link between the offences. As the offences are latest and the activities of the Petitioner in past were also causing annoyance in public and the Petitioner was indulged in criminal activities. So it can be used as one of the additional ground to hold Petitioner guilty.

18. Considering the discussions in foregoing paragraphs, we are of the opinion, that there is no merit in the Petition and accordingly, Writ Petition is dismissed. Rule is discharged.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)