

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2675 OF 2022

Majahar @ Majju Firoz Shaikh ...Petitioner
Versus
The State of Maharashtra and Anr. ...Respondents

....

Mr. Rajas A. Naik, Advocate for the Petitioner.

Mrs. S. D. Shinde, APP for the Respondent – State.

**CORAM : A.S. GADKARI AND
PRAKASH D. NAIK, JJ.**

DATE OF RESERVING ORDER : 12th DECEMBER, 2022

DATE OF PRONOUNCEMENT OF ORDER : 20th DECEMBER, 2022

PER : PRAKASH D. NAIK, J.

KAWRE
KIRAN
KALYAN

Digitally
signed by
KAWRE KIRAN
KALYAN
Date:
2022.12.20
14:46:25
+0530

. Petitioner has challenged the Order of detention dated 12th May, 2022 issued by Commissioner of Police, Thane under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders and Dangerous persons, Video Pirates, Sand Smugglers and persons engaged in black Marketing of Essential Commodities Act, 1981 (hereinafter referred to as MPDA, Act). The impugned Order has been issued with a view to prevent the detainee / Petitioner from acting in any manner prejudicial to the maintenance of Public Order. Alongwith the Order of detention, the Petitioner was also served upon the committal Order dated 12th May, 2022 and grounds of detention dated 12th May, 2022 formulated by the Detaining Authority.

2. Learned Advocate for the Petitioner submitted that, the impugned Order is assailed on several grounds, however the Order deserves to be set aside on the ground that, there is enormous delay in issuing the Order of detention. He referred to ground 7(o) in the Petition. It is submitted that, the Detaining Authority ought to have acted promptly and vigilantly, if at all the impugned Order of detention was warranted to be issued. The impugned Order was issued belatedly, after the Detaining Authority had received the proposal. The alleged cases relied upon by the Detaining Authority for issuing the Order of detention were relating to incident dated 14th December, 2021 and two in-camera statements recorded on 20th January, 2022 and 25th January, 2022 in relation to the incidents of November, 2021 and December, 2021 respectively. However the detention Order was issued on 12th May, 2021. The delay is not explained. On account of delay in issuing the Order of detention, the livelink between alleged incidents and the need for detaining the detainee has snapped. He placed reliance on the following decisions:-

- i. Sushanta Kumar Banik Vs. State of Tripura and Others in Criminal Appeal No.1708 of 2022 (Arising out of S.L.P. (Criminal) No.6683 of 2022).
- ii. Shivkumar Madeshwaran Devendra Vs. State of Maharashtra,

through Secretary Home Department (Special) and Others in Criminal Writ Petition No.3309 of 2021.

iii. Sachin Parshuram Mane Vs. Commissioner of Police Pune City and Others in Criminal Writ Petition No.3174 of 2021.

iv. Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and Others 1993 Supp (2) SCC 61.

3. Learned APP submitted that, there is no delay in issuing Order of detention. In the affidavit-in-reply, the time taken in issuing the Order of detention has been explained. The Petitioner is continuously involved in the activities which had prompted the Detaining Authority to issue Order of detention. It is submitted that, the Petitioner was involved in C. R. No. I-832 of 2021 registered with Mahatma Phule Chowk Police Station, Thane, for the offences punishable under Sections 364-A, 386, 387, 504, 506 read with Section 34 of the Indian Penal Code (for short 'IPC'). The incident in question had occurred on 14th December, 2021. The Detaining Authority has also relied upon the statements of two witnesses recorded in-camera on 20th January, 2022 and 25th January, 2022. There is sufficient material to show that the Petitioner is a dangerous person within the meaning of the Act. There is no delay in issuing Order of detention. Learned APP has relied upon the affidavit-in-reply of the Detaining Authority and

urged that, the steps taken by Authorities on receipt of proposal for detention has been explained in the affidavit. It is submitted that, the sponsoring authority carefully considered the material and submitted the proposal for the detention of the Petitioner. The proposal was submitted on 9th March, 2022. It was forwarded through proper channel. The Detaining Authority had examined the material and passed the detention Order on 12th May, 2022. The proposal alongwith the documents was submitted first to the Assistant Commissioner of Police, Kalyan Division, District Thane. He carefully went through all the papers and given his endorsement on 14th April, 2022. The papers were forwarded to the DCP Zone-3 Kalyan. He carefully went through the papers and give endorsement on 18th April, 2022. Thereafter the papers were forwarded to Additional Commissioner of Police, East Region, Kalyan. He gave endorsement on 28th April, 2022 and forwarded it to MPDA cell on the same day. The report was submitted to ACP on 2nd May, 2022. The remarks were given on 4th May, 2022 thereafter the approval was given by Detaining Authority on 6th May, 2022 and after preparing translation of the documents etc. The detention Order was issued on 12th May, 2022.

4. We have perused the detention Order, grounds of detention, documents on record and affidavit-in-reply. The Detaining

Authority has relied upon C. R. I-832 of 2021 for issuing the Order of detention. The incident which is subject matter of said Crime had occurred on 14th December, 2021. Petitioner was arrested on 15th December, 2021 and he was remanded to custody. The Detaining Authority has also relied upon the in-camera-statements of two witnesses recorded on 20th January, 2022 and 25th January, 2022. These witnesses have referred to the incidents of November, 2021 and December, 2021. Thus the incidents which are subject matter of the C.R. and in-camera statements had occurred in November, 2021 and December, 2021. However, the proposal itself was forwarded for issuing the Order of detention on 9th March, 2022 and Order of detention was issued on 12th May, 2022. The issuance of Order of detention is a preventive measure. The object of preventive detention is to prevent the person from indulging in the activities prejudicial to the maintenance of Public Order. Hence it is expected that prompt action is required to be initiated to adopt preventive measures or else the livelink between the alleged prejudicial activities and need for preventive detention would be snapped. From the perusal of Affidavit-in-reply it is apparent that, after submission of proposal belatedly, on 9th March, 2022, the proposal was moved from one authority to other thereby delaying the action of preventive detention. The proposal was

received on 9th March, 2022 and the detention Order was issued on 12th May, 2022. The last incident considered for issuing the Order of detention had occurred on 14th December, 2021. The sponsoring authority was lethargic in forwarding the proposal for initiating the action under the MPDA Act. On receipt of proposal on 9th March, 2022 it was forwarded to ACP on 14th April, 2022. Thereafter it was forwarded from one person to another and finally the Order was issued on 12th May, 2022. We are not satisfied with the explanation offered in the affidavit-in-reply for belatedly issuing the Order of detention.

5. In the case of Pradeep Nilkanth Paturkar (supra), it was held that, the Order of detention was issued five months after the registration of last case and four months from the submission of proposal. The statements of the witnesses were obtained only after the detenu became successful in getting bail in the cases registered against him. The statements were referred in the grounds of detention and relied upon by the Detaining Authority. Taking into consideration the unexplained delay whether short or long, the Order of detention deserves to be quashed and set aside.

6. In the case of Sushanta Kumar Banik Vs. State of Tripura and Others (supra), it was observed that, considering the object of preventive detention it became imperative on the part of the

Detaining Authority as well as executing authorities to remain vigilant and keep their eye skinned but not to turn a blind eye in passing the detention Order at the earliest from the date of proposal, because any indifferent attitude on the part of Detaining Authority or executing authority would defeat the very purpose of the preventive action and turn the detention Order as a dead letter and frustrated the entire proceedings. If there is unreasonable delay between the date of the Order of detention and actual arrest of the detenue and in same manner from the date of the proposal and passing of the Order of detention, such delay unless satisfactorily explained throw a considerable doubt on the genuineness of the requisite subjective satisfaction of the Detaining Authority in passing the detention Order and consequently render the detention Order as bad and invalid because the livelink and proximate lines between the grounds of detention and the purpose of detention is snapped. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

7. In the case of Shivkumar M. Devendra Vs. State of Maharashtra (supra), this Court has observed that, a person may be detained under the MPDA Act with a view to prevent him from engaging or making preparation in engaging in any activities

prejudicial to the maintenance of public Order. There is delay of more than three months from the date of grant of bail and four months from the last day of incidents before the issuance of Order.

8. In the light of principles enunciated in various decisions and applying the same to the present case, we are of the opinion that, there has been unexplained delay in issuing Order of detention which has snapped the livelink between the alleged activities and the need for preventive detention. Hence the impugned Order is required to be quashed and set aside.

Order

- i. Criminal Writ Petition No.2675 of 2022 is allowed.
- ii. Rule is made absolute in terms of prayer clause 'a'.
- iii. The impugned Order of detention dated 12th May, 2022 issued by Commissioner of Police, Thane, is set aside and the Petitioner / detenue is directed to be released forthwith unless required in any other case.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)