

S.S.Kilaje

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3174 OF 2021**

Sachin Parshuram Mane

Age 22 yrs. R/o. 425/26,

Industrial Estate, Swargate, Pune

(At present Yerwada Central Prison, Pune)

.. Petitioner

Versus

1. **The Commissioner of Police Pune City**

2. **The State of Maharashtra**

(Through Addl. Chief Secretary to

Government of Maharashtra Mantralya,

Home Department, Mantralaya, Mumbai

3. **The Superintendent, Yerwada Central Prison**

Pune

.. Respondents

-
- Ms. Jayshree Tripathi for the Petitioner
 - Ms. S.D.Shinde, APP for Respondent - State
-

CORAM

**: S.S.SHINDE &
MILIND N. JADHAV, JJ.**

RESERVED ON

: JUNE 09, 2022.

PRONOUNCED ON

: JUNE 15, 2022.

JUDGMENT (PER : MILIND N. JADHAV, J.)

1. This Petition takes exception to the order of Detention bearing No. D. O. No. PCB/DET/1480/2021 dated 30.06.2021 issued under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous persons and Video Pirates Act, 1981 (for short "**M.P. D.A. Act**") by the Respondent No.1.

2. Learned counsel Ms. Tripathi has restricted her submissions to the contentions raised in grounds (b), (c), (d) of the Petition. It is argued that there is a gross delay of about 5 months in

passing the impugned order of detention from the last date of the last incident on 27.01.2021. The delay in passing the impugned order on 30.06.2021 is unexplained. There is no promptitude on the part of the authorities.

2.1. Learned counsel has in support of her proposition referred to an relied upon the following 4 judgments for the unexplained and undue delay of 5 months in passing the impugned order of detention :

1. *Pradeep Nilkant Paturakar Vs. S. Ramamurthi & Ors.*¹
2. *Sanjeev @ Sanjay @ T.N.Upade Vs. Commissioner of Police, Solapur*²
3. *Niyazuddin @ Sonu Ansari Vs. State of Maharashtra*³
4. *Mohsin Ahmed Vs. State of Maharashtra*⁴

2.2. Learned counsel has further argued that the requirement of law as envisaged under Section 3(3) of the M.P.D.A. Act has not been complied with in the present case. It is submitted that the approval of the order of detention is not done forthwith as per requirement of law. The representation dated 26.08.2021 of the Petitioner was sent to the Superintendent, Yerwada Central Prison, Pune for forwarding it to the State Government for expeditious consideration; there is no communication received so far from the authorities till date and thus there is an admitted delay.

¹ 1993 Supp (2) SCC 61

² Cri. W.RNo 3035 of 2021

³ 2013 ALL MR (Cri) 3870

⁴ 2014 ALL MR (Cri) 2409

2.3. Learned counsel has referred to and relied upon the following judgments in support of non-compliance of the requirement of law under Section 3(3) of the M.P.D.A. Act in the present case :

(i) *Hetchin Haokip Vs. State of Manipur & Ors.*⁵

(ii) *Sanjay s/o. Ramuji Phatode Vs. Commissioner of Police, Nagpur and Ors.*⁶

(iii) *Dharani Raja Padyachi vs. State of Maharashtra & Ors.*⁷

(iv) *Mahesh Gopinath Pawar Vs. Commissioner of Police, Pimpri Chinchwad & Ors.*⁸

2.4. Petitioner has also pleaded that on reading of the statements of the witnesses, it *prima-facie* appears that the police authorities have given assurances to them to give those statements and as such the same are not independent and have been recorded on receiving false assurances.

3. **PER CONTRA**, learned APP Ms. S.D.Shinde has drawn our attention to the Affidavit-in-Reply dated 06.10.2021 filed by Shirish Nagorao Mohod., Deputy Secretary, Government of Maharashtra, Home Department (Special), Mantralaya, dated 12th October, 2021 filed by Commissioner of Police, Pune City, Pune and dated 5th October, 2021 filed by the Superintendent, Yerwada Central Prison, Pune and contended that the detention order has been passed

⁵ (2018)9 SCC 562

⁶ Cri.W.PNo. 2335/2021

⁷ 2019 ALL MR (Cri) 3504

⁸ Cri. W.PNo. 3372/2019

in accordance with law. It is submitted that the Petitioner was a dangerous person and the authority was satisfied on the basis of material available which included in-camera statements of witnesses and only on going through the same, there was subjective satisfaction of the competent authority. It is further submitted that there is no illegality committed in granting assurance of safety and secrecy to the witnesses whose statements have been recorded as it became necessary for the police to assure the witnesses about their safety. It is also denied that the order of detention is passed only taking into consideration solitary criminal case vide C.R.No. 13/2021 and two in-camera statements of witnesses and that there are 8 offences registered against the Petitioner in Pune City and the criminal activities of the detenu are found to be prejudicial to the maintenance of law and order. Therefore the Petition may be rejected.

4. We have given careful consideration to the rival submissions and with the able assistance of the learned counsel for the Petitioner and the learned APP perused the pleadings and considered the annexures and relies filed by the Respondents.

5. It is seen that in the present case, the detaining authority has recorded two in-camera statements of 2 witnesses on 12.05.2021 and 19.05.2021 of the incidents which occurred on 10.01.2021 and

sometime in the 3rd week of January 2021; that there is admittedly delay of 5 months in passing the impugned order after the date of the last date of incident i.e. on 27.01.2021. It is seen that the authority submitted the proposal on 12.06.2021 for detention and the Detention order was passed on 30.06.2021. It is merely pleaded in paragraph No. 9 of the Affidavit-in-Reply dated 12th October, 2021 that the proposal went through the proper channel i.e. ACP, DCP, Addl. C.P, Joint C.P and after proper application of mind the detention order was passed. The delay between 12.06.2021 and 30.06.2021 is sought to be explained in one sentence without giving any effective timeline and reasons therefor. What matter is the explanation offered by the Respondent authorities for such delay. It is explained that the detention order was passed on 30.06.2021 and there was heavy Palkhi bandobast on 1st July, 2nd July, 3rd July and 4th July being holiday, the report could not be submitted to the Additional Chief Secretary (Home), Government of Maharashtra.

6. The Hon'ble Supreme Court in the case of **Pradeep Paturakar** (Supra) in Para 9 to 14 held thus:-

“9. According to Mr. Gupte, the explanation given by the High Court for the delay that the "procedure required sometime before the powers are exercised" is not the explanation offered by the detaining authority and therefore that explanation should not be accepted to the prejudice of the right of the detenu. In support of his submission that the unexplained and undue delay in passing the order vitiates

the impugned detention order, he drew our attention to a decision of this Court in T.A. Abdul Rahman v.State of Kerala, to which one of us (S.Ratnavel Pandian, J.) was a party. In that case after recapitulating the various decisions on this point the following dictum has been laid down: (SCC p. 748, para 10)

“The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case.”

10. Reference also may be made to Hemlata Kantilal Shah v. State of Maharashtra, in which case this Court observed: (SCC p. 655, para 16)

“Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What

is required by law is that the delay must be satisfactorily explained by the detaining authority.”

11. We feel that it is not necessary to refer to all the decisions on this point.

12. Countering the argument of Mr. Gupte, the learned Additional Solicitor General drew our attention to *Rajendrakumar Natvarlal Shah v. State of Gujarat*, in which this Court held that the non-explanation of the delay between 2nd February and 28th May, 1987 could not give rise to legitimate inference that the subject of satisfaction arrived by the District Magistrate was ; not genuine. In the same decision, the learned ' Judges have pointed out "It all depends on the nature of the acts relied on, grave and deter mined or less serious and corrigible, on the length of the gap, short or long, on the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation". A perusal of the various decisions of this Court on this legal aspect shows that each case is to be decided on the facts and circumstances appearing in that particular case.

13. Coming to the case on hand, the detention order was passed after 5 months and 8 days from the date of the registration of the last case and more than 4 months from submission of the proposal. What disturbs our mind is that the statements from the witnesses A to E were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him, that too in the later part of March, 1991. These statements are very much referred to in the grounds of detention and relied upon by the detaining authority along with the registration of the cases under the Act.

14. Under the above circumstances, taking into consideration of the unexplained delay whether short or long especially when the appellant has taken a specific plea of delay, we are constrained to quash the detention order. Accordingly we allow the appeal, set aside the judgment of the High Court and quash the impugned detention order. The detenu is directed to be set at liberty forthwith.”

As already observed herein before that the respondents have not properly explained the delay from the date of incident till order of detention was passed. There is no plausible explanation given why there was gap in recording statements of witnesses 'A' and 'B' from the date of alleged incident.

7. In the present case, the justification given for the delay in submitting the report to the State Government is contrary to the provisions of Section 3(4) of the M.P.D.A. Act. It is mandated that the Act provides that when a detention order is made, it shall be “forthwith” reported to the State Government alongwith the ground on which the order is made and any other relevant facts.

8. Next we come to the in-camera statements recorded by the two witnesses. Perusal of the two statements clearly reveal that both the witnesses have been assumed complete secrecy. In the statement of one witness “B”, the date of the incident is not known and is approximately stated to be sometime in the third week of January, 2021.

9. It is stated that if the date of the last incident admittedly is 27.01.2021, then the impugned order has been passed belatedly on 30.06.2021; that there is an abnormal delay; no promptitude shown

by the authority; the two in-camera statements of the witnesses are not without fear or false assurances; the explanation for the delay is not sustainable at all; thus it follows that the detention order is not legally sustainable. Hence the following order :

- (i) The impugned order of detention bearing No. D.O.No.PCB/DET/1480/2021 dated 30.06.2021 passed by the Respondent No.1, is quashed and set aside;
- (ii) The Petitioner be released forthwith unless required in any other offence or proceedings;
- (iii) The Writ Petition stands disposed of.

[MILIND N. JADHAV, J.]

[S.S.SHINDE, J.]

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