

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3309 OF 2021

Shivkumar Madeshwaran Devendra,

Age : 36 years, an Indian

Inhabitant, residing at Block No.3,

Row-II, Room No.11, Transist Camp,

90 Feet Road, Near Sai Baba Mandir,

Rajiv Gandhi Nagar, Dharavi,

Mumbai - 400 017.

.. Petitioner

(Brother in Law of Detenu)

Manoj Tangarj Devendra

.. Detenu

Versus

1. The State of Maharashtra,

Through Secretary Home

Department (Special),

Mantralaya, Mumbai 400 032.

2. Hemant Nagrale,

The Commissioner of Thane,

Brihan Mumbai.

3. The Superintendent of Thane,

Central Prison, Thane.

4. The Superintendent of Nasik,

Road, Central Prison, Nashik.

.. Respondents

.....
• M.S. Ansari a/w. Ibraheem K.M., Advocates for the Petitioner

• Ms. M.H. Mhatre, APP for the Respondents - State
.....

CORAM

: S.S. SHINDE &

MILIND N. JADHAV, JJ.

RESERVED ON : JUNE 10, 2022.

PRONOUNCED ON : JUNE 15, 2022.

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

- 1.** Heard learned counsel appearing for the parties.
- 2.** By the present petition, the Petitioner has prayed for the following relief:

"(a) This Hon'ble Court be pleased to issue a Writ of Habeas Corpus or any other appropriate writ, order direction quashing and setting aside the said order of detention dated 12.06.2021 D.O. No. PCB/DP/Zone-IV/2021 and be pleased to direct that the detenu Manoj Tangraj Devendra be set at liberty forthwith."

- 3.** On 12.06.2021, the Commissioner of Police - Respondent No. 2 passed the order of detention under section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short "**M.P.D.A. Act**") directing the Petitioner to be detained with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

- 4.** Learned counsel for the Petitioner submits that for issuing the detention order the detaining authority has considered an incident which occurred on 25.02.2021 and in respect of which a report was registered on 26.02.2021. The Petitioner was taken in judicial custody; that he filed bail application on 02.03.2021 which was granted on 06.03.2021 and he was released on bail on that date. Hence the learned counsel has argued that the impugned order of detention has

been passed after an abnormal delay of 4 months from the date of the Petitioner's arrest and almost about 3 months from the date on which he was granted bail reasons for which have in no way been explained in the impugned order.

5. The next ground argued by the Petitioner is that for the purpose of passing the impugned order of detention the detaining authority has relied upon two in-camera statements; one recorded on 19.04.2021 and the second recorded on 22.04.2021. Learned counsel submits that *prima facie* there is a delay of one and half months in passing the impugned order after the recording of in-camera statements and thus this delay vitiates the impugned order of detention. The in-camera statements are disputed by the Petitioner as being false and fabricated. Learned counsel has further argued that while issuing the detention order, the detaining authority has relied upon 5 CRs registered against the Petitioner which were already relied upon an earlier in point of time for issuing the previous detention order dated 12.06.2019; hence there is complete non-application of mind as the 11 CRs mentioned in the present impugned order in fact repeat and rely upon the earlier 5 CRs. Therefore the subjective satisfaction is with complete non-application of mind. It is further argued that the State Government has approved the impugned order of detention on 12.06.2021; that the Petitioner is not aware as to

when the detaining authority has sent the report to the State Government for seeking approval and if there has been any delay the same needs to be placed on record. In support of the Petitioner's case the following decisions are referred to and relied upon for the following propositions:

- i. *T. A. Abdul Rehaman Vs. State of Kerla & Ors.*¹;
- ii. *Pradeep Nilkhanth Paturkar Vs. S. Ramanmurthi*²;
- iii. *Austin W.L. Pimto Vs. Commissioner of Police Gr. Mumbai and Ors.*³;
- iv. *Shekhar B. Satam Vs. A.N. Roy and Ors.*⁴;
- v. *Mohd. Yousuf Rathor Vs. State of J & K and Ors.*⁵;
- vi. *Hadibandhu Das Vs. Dist. Magistrate and Ors.*⁶;
- vii. *Chhangan B. Kahar Vs. N.L. Kalra and Ors.*⁷

6. *PER CONTRA*, learned APP has referred to and relied upon the affidavit dated 20.11.2021 filed by the Respondent No.3, affidavit dated 20.10.2021 filed by the Sponsoring Authority and affidavit dated 18.10.2021 filed on behalf of the Respondent No.1 - State and contended that the impugned order of detention has been correctly passed by following the due process of law. It is submitted that since the Petitioner had committed several offences in the past, the witnesses were not willing to come forward to file any complaint

1 AIR 1990 SC 225

2 AIR 1994 SC 656

3 2005 ALL MR (Cri.) 28

4 Cri.W.P.No.1322 of 2006

5 (1979) 4 SCC 370

6 AIR 1969 SC 43

7 1989 (2) SCC 318

openly against the Petitioner and it was only when assurances were given to the witnesses that their identity would not be disclosed, that two witnesses came forward and their statements were recorded on 19.04.2021 and 22.04.2021 and a proposal submitted there upon on 26.04.2021 through the proper channel. It is further submitted that after studying the proposal and the same being scrutinized by various officers, the impugned order dated 12.06.2021 came to be passed looking at the propensity and potentiality of the Petitioner to indulge in prejudicial activities in the future. With respect to the in-camera statements it is submitted that they are genuine and cannot be termed as false and fabricated. Hence it is submitted that the impugned order be upheld.

7. We have perused the pleadings and the affidavit-in-replies. Submissions made by the learned counsels are on pleaded lines.

8. Section 3(1) confers the power of detention in the following terms:

"3. Power to make orders detaining certain persons, - (1) The Government may, if satisfied with respect to any bootlegger, dacoit, drug offender, goonda, immoral traffic offender or land grabber that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained."

8.1. The purpose for which a detention order may be passed is

confined to "preventing him from acting in any manner prejudicial to the maintenance of public order".

9. The term "acting in any manner prejudicial to the maintenance of public order" is further defined as follows:-

"2. Definition. - In this Act, unless the context otherwise requires,-

(a) **"acting in any manner prejudicial to the maintenance of public order"** means when a bootlegger, a dacoit, a drug- offender, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order:

Explanation:- For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave wide spread danger to life or public health:"

9.1. A person may be detained under the M.P.D.A. Act of with a view to prevent him from engaging in, or making preparations for engaging, in any such activities.

10. In the present case, it is seen that the impugned order of detention relies upon 11 pending CRs against Petitioner out of which CRs mentioned at serial No.1 to 5 in para No.7(a) of the grounds of detention are those CRs which were already considered and relied

upon for issuing the previous detention order dated 12.03.2019. Thus the reliance by the detention authority is on stale and old incidents in which the Petitioner has been granted bail and they cannot be said to have any relevant for detaining the Petitioner. It is stated that the grounds on which the satisfaction of the detention authority is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. The grounds must be relevant to the subject matter of the inquiry and must not be extraneous to the scope and purpose of the statute. Incidents which are stale cease to have relevance to the subject matter of the inquiry. In the present case in para No.7(a) the detaining authority has consider 11 incidents to demonstrate the antecedents of the Petitioner. However in the operative part of the order the detaining authority in para No.10 has based his subjective satisfaction on the material placed and appearing in para No.8 of the said order. It is also seen that Annexure-D to the detention order refers to the list of documents based on which the grounds of detention have been formulated; however the exercise carried out by the detaining authority while relying upon such documents is absent and not explained in the impugned order.

11. Incidents which are old and stale and in which the detenu has been granted bail, cannot be said to have any relevance for

detaining a citizen and depriving him of his liberty without a trial.

This Court observed the following in the case of *Khudiram Das Vs.*

*State of W.B.*⁸:

“9. The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. *Pratap Singh v. State of Punjab*. If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to them, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider.”

12. It is further seen that the last date of incident considered by the detaining authority took place on 25.02.2021 in respect of which crime was registered on 26.02.2021. The Petitioner was arrested and was granted bail on 06.03.2021 in this crime. However the detention order has been passed after an abnormal delay of more than 3 months after the Petitioner was granted bail; this delay is completely unexplained and inexcusable. In between this period of 3 months the detaining authority has recorded two in-camera statements of witnesses and relied upon the same. These two statements have been recorded on 19.04.2021 and 22.04.2021; despite recording these two statements the impugned order has been passed after a delay of

⁸ (1975) 2 SCC 81 :: 1975 SCC (Cri) 435

almost two months thereafter. It is pertinent to note that both these statements which were recorded pertain to the occurrence of incidents in the first and second week of April 2021. Perusal of the statements clearly reveal that assurances have been given by the police authorities to the witnesses. The statements are of a fruit vendor and a pan stall vendor who have stated that the Petitioner has threatened them with a knife, abused them and attempted to extort money from them. It is pertinent to note that both the witnesses have stated that despite the threat received from the Petitioner, due to fear of retaliation the witnesses did not tell anyone about the incident and did not register a complaint with the police. On reading the statements of the witnesses, it is seen that both the witnesses have stated that on the occurrence of the actual incidents several persons, passerby, hawkers, shopkeepers, motor vehicle riders and pedestrians came forward to help the witnesses and the Petitioner thereafter threatened them all with the weapon. If this statement is to be *prima facie* believed then certainly if so many persons had gathered, there would have been atleast one aggrieved person who would have lodged a report and complaint with the police. Hence, on a bare reading of the in-camera statements of the witnesses do not inspire confidence in us to readily believe that the same can be relied upon by the detaining authority.

13. That apart, the delay is clearly writ large on the face of

record in passing the detention order after the last date of incident considered by the detaining authority. There is an admitted delay of more than 3 months from the date of grant of bail and delay of 4 months from the last date of incidents in the present case before the order of detention is passed. The explanation offered by the Respondent authority for such delay is not satisfactory when seen. Further there is no plausible explanation given for the delay in recording the statements of the witnesses from the date of the incidents.

14. In the light of the above discussion, we are of the considered opinion that the detention order dated 12.06.2021 cannot be legally sustained. Hence, we pass the following order:

- i. The impugned order of detention dated 12.06.2021 passed by the Respondent No.2 is quashed and set aside;
- ii. The Petitioner be released forthwith unless not required in any other offence;
- iii. The Writ Petition stands disposed of;
- iv. Parties to act on an authenticated copy of this order.

[MILIND N. JADHAV, J.]

[S. S. SHINDE, J.]