

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 2650 OF 2022**

Shahabaj Ejaj Sayyad

...Petitioner

V/s.

The Commissioner of Police Thane And Ors.

...Respondents

Ms. Jayshree Tripathi, Advocate for Petitioner.

Mrs. S.D. Shinde, A.P.P. for the Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.****DATE : 12th DECEMBER, 2022.****PC.:-**

. By the present Petition under Article 226 of the Constitution of India, Petitioner/Detenu has impugned Order of Detention bearing No.TC/PD/DO/MPDA/11/2022, dated 27.05.2022 passed by Respondent No.1 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 (for short, "M.P.D. Act"), thereby preventively detaining the Petitioner for a period of one year from the date of passing of the said Order. The said Order is also accompanied with Committal Order dated 27.05.2022 and the Grounds of Detention dated 27.05.2022.

2. Heard Ms. Tripathi, learned Advocate for Petitioner and Mrs. Shinde, learned A.P.P. for Respondent-State. Perused Record.

3. Though the Petitioner has taken many grounds in the Petition impugning the said Detention Order, learned Advocate for Petitioner restricted her arguments to the ground of, delay in issuing Detention Order. Learned Advocate for Petitioner submitted that, the Detention Order proceeds on the basis of one crime and two in-camera statements of witnesses. That, the crime in question i.e. C.R. No. I-56 of 2019 was registered on 19.01.2022 and in-camera statement of witness No. "B" was recorded on 21.04.2022. That, initially there is an unexplained delay from 19.01.2022 till 21.04.2022 in recording statement of witness No. "B" and thereafter from 21.04.2022 till 27.05.2022 i.e. the date of passing of the impugned Order. She submitted that, the said delay is unexplained by the Authority concerned and therefore safe inference has to be drawn that, the live link of alleged spreading rein of terror by the Petitioner in the locality and issuance of Detention Order is snapped. She submitted that, therefore the Order of Detention stands vitiated on that count alone. In support of her contentions, she relied on the following Decisions:

i) Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and Ors. reported in 1993 Supp(2) SCC 61.

ii) *Shri. Sanjeev @ Sanjay @ Tatyasaheb Nagnath Upade Vs. The Commissioner of Police, Solapur reported in 2021 O Supreme(Bom)359. (Criminal Writ Petition No.3035 of 2021 dated 30th September 2021).*

iii) *Niyazuddin @ Sonu Sirajuddin Ansari Vs. State of Maharashtra and Anr. reported in 2013 ALL MR (Cri) 3870. (Criminal Writ Petition No.52 of 2013 dated 3rd September 2013).*

iv) *Mohsin Ahmed s/o. Mushtaque Ahmed Vs. State of Maharashtra & Anr. reported in 2014 ALL MR (Cri) 2409. (Criminal Writ Petition No.421 of 2013 dated 24th March 2014).*

She therefore prayed that, the impugned Order may be set aside by setting the Petitioner at liberty.

4. Per contra, learned A.P.P. vehemently opposed the Petition and pointed out the pleadings from the affidavit of Commissioner of Police, District Thane. She pointed out the alleged delay contended by the learned Advocate for Petitioner is in fact explained by the concerned authority. She submitted that, as a matter of fact there is no delay in issuing the Detention Order and assuming for the sake of arguments it is there, it has been satisfactorily explained. She therefore submitted that, there are no merits in the Petition and the same may be dismissed.

5. Perusal of record indicates that, apart from the fact that the Petitioner is a history sheeter, earlier proceedings for preventive detention

under the M.P.D. Act was initiated against him. It appears that after he was released from jail, he did not improve.

6. Be that as it may.

In the present case, the crime against Petitioner was registered on 19.01.2022 with Mahatma Phule Chowk Police Station, Kalyan under Sections 143, 147, 149, 323, 324, 504 and 506 of Indian Penal Code (*for short "IPC"*). The Petitioner was absconding in the said crime and was arrested only on 14.03.2022. That, immediately on his date of arrest he was produced before the learned Magistrate, who was pleased to release the Petitioner on bail on 14.03.2022 itself. That, subsequently statements of witnesses Nos. "A" and "B" were recorded by the concerned Police Station on 18.04.2022 and 21.04.2022 respectively. The said statements were verified by the Assistant Commissioner of Police, Kalyan Division Kalyan on 05.05.2022. It is categorically stated by Respondent No.1 in his affidavit that, from 22.04.2022 to 05.05.2022, the law and order situation within the jurisdiction of said Police Station was volatile due to the call given by a political party. That, during the said period the auspicious month of Ramzan falls and huge crowd of people from Muslim community had gathered at Durgadi Fort. That, the local Police and other Police authorities were therefore continuously on Bandobast duty between 22.04.2022 to 05.05.2022 and that is the reason, in-camera statements of witnesses were verified on 05.05.2022. It is stated that, the said circumstances were

unavoidable and due to the same, the in-camera statements of the said witnesses could not be verified immediately by the Assistant Commissioner of Police, Kalyan Division. Respondent No.1 has thereafter, given detailed break up of how the file was processed by each and every Authority in the hierarchy till passing of the impugned Order dated 27.05.2022. Perusal of relevant paragraphs from the affidavit of Respondent No.1 would clearly indicate that, the alleged delay in passing the impugned Order, has been more than satisfactorily explained by it.

7. The decisions relied upon by learned Advocate for Petitioner are pronounced in the facts mentioned in those cases and are not applicable to the facts in the case in hand.

8. We are therefore satisfied that, there is no delay at all at any stage of processing and/or in recording in-camera statements, till passing of the impugned Order.

9. We find that, there are no merits in the Petition. Petition is accordingly dismissed.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)

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