

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5951 OF 2021

Smt.Fatimabi Saifuddin Pathan,
Age: 52 years, Mother of Arif Saifuddin
Pathan @ Arif Mulla,
Res. At Room No.21, Slaughter House
Compound, Maharashtra Nagar No.2,
Behind Usman Patel Garden,
Bandra (West), Mumbai- 400 050. ... Petitioner.

V/s.

1. The State of Maharashtra
Through the Secretary (Special),
Home Department, Mantralaya,
Mumbai.
2. The Commissioner of Police,
Crawford Market, Mumbai. ... Respondents.

Mr.Musif Khan for the Petitioner.
Ms.S.D.Shinde, Assistant Public Prosecutor for the Respondents.

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CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.
DATE : 29 August 2022.

JUDGMENT : (Nitin Jamdar, J.)

This writ petition is filed challenging the order dated 26 October 2021 whereby Arif Saifuddin Pathan @ Arif Mulla, the son of the Petitioner, is placed under preventive detention. The impugned detention order is passed under section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drugoffenders, Dangerous Persons and Video Pirates Act, 1981. Since the detenu is taken in custody pursuant to the detention order, prayer is also made to set him at liberty.

2. Along with the order of detention dated 26 October 2021, the committal order and the reasons for the detention of the same date were supplied to the detenu. The Detaining Authority, as can be seen from the reasons for detention, has noted the offences against the detenu for the last five years from 2017 to 2021. It was also noted that preventive actions were taken against the detenu on four occasions. In the years 2010, 2014 and 2018, the detenu was externed under section 56(1)(a)(b) of the Maharashtra Police Act, 1951 and in the year 2017, a chapter case was also instituted against

the detenu. According to the Detaining Authority, the detenu had created a reign of terror in the society. These were mentioned as the criminal history of the detenu. The Detaining Authority relied upon an offence in CR No.330/2021 registered with Bandra Police Station and the statements of two witnesses recorded in camera. The offence was registered against the detenu on 22 May 2021 under sections 326, 509, 323, 504, 506(ii) read with section 34 of the Indian Penal Code and sections 4, 25 of the Arms Act, 1959 read with section 37(1)(a) of the Maharashtra Police Act. The witnesses whose statements were recorded in-camera narrated the incidents whereby the detenu caused terror in the locality. The statement of witness 'A' was recorded on 9 August 2021, and the statement of witness 'B' was recorded on 11 August 2021. Based upon the material before it, the Detaining Authority arrived at subjective satisfaction that the activities of the detenu were prejudicial to the maintenance of public order and could not be contained under the ordinary law, and it was necessary to place the detenu under preventive detention. Accordingly, by the impugned order dated 26 October 2021, the Detaining Authority placed the detenu under preventive detention. The detenu did not make any representation,

and the Petitioner is before us by this present Petition.

3. We have heard Mr.Khan for the Petitioner and Ms.Shinde, learned Assistant Public Prosecutor for the Respondent-State.

4. The learned counsel for the Petitioner firstly contended that there is no live link between the incidents taken into consideration by the Detaining Authority and the order of detention, and there is a gross delay between the two. The learned APP relied upon the replies filed by the Respondents setting out relevant dates. CR No.330/2021 was taken into consideration by the Detaining Authority related to the incident of 22 May 2021. The statement of witness 'A' was recorded on 9 August 2021. The statement was verified on 12 August 2021 by the Assistant Commissioner of Police, Bandra Division, Mumbai. The witness 'B' statement was recorded on 11 August 2021 and verified on 13 August 2021. In the reply filed by the Detaining Authority, it is stated that the proposal was forwarded under the MPAD Act to the Assistant Commissioner of Police, Bandra Division, who forwarded it to the Deputy

Commissioner of Police on 13 August 2021. The Deputy Commissioner endorsed it on 17 August 2021 and forwarded it to the Deputy Commissioner of Police (Preventive) on 18 August 2021. The DCP (Preventive) was endorsed after perusal on 8 September 2021, and the proposal was placed before the Detaining Authority on 15 September 2021. A legal opinion was sought and was received on 4 October 2021. The proposal was approved on 13 October 2021. Thereafter the work of typing, translating and checking the documents had to be undertaken, and the order of detention was issued on 26 October 2021. It was stated that from the submission of the proposal till the issuance of the detention order, there were public holidays and Bandobast on 31 August 2021 for Dahi Handi; after that, from 10 September 2021 to 19 September 2021 for Ganesh Utsav; from 7 October 2021 to 15 October 2021 for Navratri; and the Bandobast for Eid-e-Milad on 19 October 2021. It was also stated that there were twenty other proposals under process.

5. The above explanation, according to us, is satisfactory. Firstly, the live link is not to be seen from the date of offence taken into consideration but from the recording and verification of in-

camera statements and subsequent submission of the proposal. After the proposal is submitted, it has been processed in the manner narrated above, and we do not find any undue delay. The time taken was due to legitimate reasons, and there is no merit in this contention.

6. The second contention advanced by the Petitioner was that the witnesses whose statements were recorded in-camera had not signed those statements and, therefore, the said statements could not have formed the material for subjective satisfaction by the Detaining Authority. This submission is factually incorrect, and it is out of a misconception. The copy given to the detenu does not contain the signatures of the witnesses since, as pointed out by the learned APP, it is usually done to mask the identity of the witnesses. The original record shown to us contains the signatures of the witnesses on their statements. Furthermore, the statements have been duly verified by the Authorities.

7. Thirdly, it was contended that the detention order and the grounds in support of the detention are given to the detenu in

Urdu and English, and the detenu does not understand Urdu. It is submitted that, therefore, the right of the detenu to make a representation is infringed. The Detaining Authority, in the affidavit-in-reply, has stated that the detenu has studied up to ^{the fourth} standard in Urdu Medium School at Bazar Road Municipal Urdu School No.1, Bandra (W) and has also admitted in his statement recorded on 27 October 2021 that he has studied in Urdu Medium School.

8. As stated earlier, the detenu has not filed any representation. In the Petition, the Petitioner only stated that the detenu does not know Urdu. Once it is brought on record that the detenu has studied in Urdu Medium School, the Petitioner ought to have explained the same, at least in this Petition. The signatures of the detenu, which appear to be in English, is below the statement of the detenu that the order of detention and the grounds of detention were explained to him in English, Hindi and Marathi. It is true that if the grounds of detention and the material in support thereof are given to the detenu in a language which he does not understand, then his right to make an effective representation is vitiated.

However, in this case, once the detenu himself admitted that he had studied in a school with the Urdu language, it is not enough for the detenu to say that he does not know the Urdu language without anything more. It is not the stand of the Petitioner or the detenu before us that the detenu is illiterate. It is accepted that the detenu has studied in Urdu Medium School. In these circumstances, we cannot accept that the grounds of detention and the material were given to the detenu in a language which the detenu did not understand.

9. No other contention was advanced by the Petitioner. The three contentions advanced above are without any merit.

10. As a result, the Petition is liable to be dismissed and is accordingly dismissed. Rule is discharged.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)