

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.807 OF 2021

PETITIONER:- Ajay @ Golu Shyam Solanki
aged about 25 years, Occu.Labour,
R/o Amaraipura, Yavatmal at Present
District Prison, Yavatmal.

...VERSUS...

RESPONDENTS :- 1. State of Maharashtra, through its
Secretary, Home Department, (Special)
Mantralaya, Mumbai.

2. The Collector, Yavatmal, dist.Yavatmal.

Mr.M.N.Ali,counsel for the petitioner.
Mr.S.S.Doifode, APP for respondent Nos.1 and 2.

**CORAM : SUNIL B.SHUKRE &
G.A.SANAP, JJ.**
DATE : 27.06.2022.

O R A L J U D G M E N T (Per :Sunil B.Shukre, J.)

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally by
consent of the learned counsel appearing for the parties.

3. On going through the impugned order, and as rightly submitted by learned counsel for the petitioner, the last of the offences, which was registered against the petitioner and which was considered by the detaining authority was the one, which was registered on 12.04.2021. There is no dispute about this fact. The detention order has been passed on 07.10.2021 almost after a period of five and half months from the date on which the last offence was registered against the petitioner. So, the question would be as to whether or not there is a live link between the alleged prejudicial activity of the petitioner and the need for passing of the detention order?

4. In the opinion of learned counsel for the petitioner, live link is absent and that there is no explanation given for belated passing of the detention order and therefore, the view taken by this Court in the Case of **Niyazzudin @ Sonu Sirajuddin Ansari Vs. State of Maharashtra and anr.**, reported in **2013 ALL MR (Cri.) 3870** would apply to the facts of the present case rendering the impugned order of detention as illegal.

5. Learned APP, however, disagrees and submits that although there is a delay in passing of the detention order, the delay is well explained by the facts and circumstances of this case which are to be seen from recording of the statements of the confidential witnesses 'A' and 'B' in the month of July 2021, delay in collection of necessary documents and preparation of the proposals in the months of August and September 2021. He submits that the explanation so provided by these facts and circumstances of the case, is sufficient to justify the delay which has occurred in this case and then it would mean that the impugned order cannot be held to be illegal on this ground.

6. There is no doubt about the fact that the statements of confidential witnesses were recorded respectively on 06.07.2021 and 08.07.2021 and that the first proposal recommending detention of the petitioner was sent on 19.08.2021 by Police Station Awdhutwadi, District Yavatmal and the second proposal endorsing the first proposal of the Police Station was sent on 08.09.2021 by S.D.P.O. Yavatmal. Both these proposals take into consideration the crime record of the petitioner and in particular,

the last of the crimes which was registered against him, that was on 12.04.2021. After the registration of this crime in April 2021, it appears that there was a complete lull at the end of the police and also at the end of the petitioner as there has been no further crime recorded against the petitioner. This silence of three months between 12.04.2021 and July 2021, when statements of confidential witnesses were recorded, has not been explained by the police authorities or even by the facts and circumstances of the case. The impugned order of detention in fact does not discuss in any manner the aspect of delay. Learned APP has pointed out to us that certified copy of the First Information Report in Crime No.339 of 2021 registered on 12.04.2021 has been received by the police from the concerned Court on 19.06.2021. On going through the certified copy of this First Information Report (Page No.206 to 208), one can see that certified copy has been issued on 19.06.2021. However, in our considered view, this fact of issuance of certified copy on 19.06.2021 of the last crime by the concerned Court cannot be taken into consideration for explaining the delay for the reason that copy of the First Information Report must be presumed to be available with police Station Awdhutwadi, which

has sent the initial proposal of preventive detention of the petitioner to the S.D.P.O. on 19.08.2021, for the reason that this crime has been registered not at different police station but, at Police Station Awdhutwadi itself. It is inconceivable that Police Station Awdhutwadi did not have any access to its own record and therefore, issuance of certified copy of the First Information Report of this crime by the concerned Court in June 2021 would not help the case of the police in explaining the delay which has occurred in the present case.

7. The effect of the discussion thus far held is that there is an unexplained delay of about four months between 12.04.2021, the date on which last crime was registered against the applicant, which was actually considered by the authority and 19.08.2021, the date on which initial proposal of preventive detention of the petitioner was sent by the Police Station Awdhutwadi. Of course, on 6th and 8th July 2021, statements of confidential witnesses were recorded, but even in between 12.04.2021 and these dates of July 2021, there is delay of almost three months, which has not been explained in any matter by the

Police Authorities. The inevitable conclusion would be that there is no live link between the last crime registered against the applicant and the object sought to be achieved by the order of preventive detention of the petitioner, which is of preventing illegal activities of the petitioner having prejudicial impact on maintenance of public order. This is also the view taken by the Co-ordinate Division Bench of this Court in the case **Niyazuddin @ Sonu Sirajuddin Ansari Vs.State of Maharashtra** (supra).

8. In the result, the Criminal Writ Petition is allowed. The impugned order of detention is hereby quashed and set aside.

9. Rule is made absolute in the above terms. No costs.

(G.A.SANAP, J)

(SUNIL B. SHUKRE,J)