

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 110 OF 2023

Shubham S/o Suresh More
Age : 22 years, Occu : Nil,
R/o. Renukanagar,
Near Jaibhavani School,
Garkheda Parisar, Aurangabad
At present in Central Jail,
Harsul, Aurangabad

.. Petitioner

Versus

- 1] The State of Maharashtra
Through the Secretary,
Home Department (Special),
2nd Floor, Main Building,
Mantralaya, Mumbai – 32
- 2] The Section Officer,
Home Department (Special),
2nd Floor, Main Building,
Mantralaya, Mumbai – 32
- 3] The Commissioner of Police,
Aurangabad
- 4] The Police Inspector,
Pundlik Nagar Police Station,
Aurangabad

.. Respondents

...
Advocate for petitioner : Mr. Himmatsinh D. Deshmukh
Addl. PP for the respondent – State : Mrs. M.A. Deshpande
...

**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 12 APRIL 2023

ORDER (MANGESH S. PATIL, J.) :

Heard learned advocate for the petitioner and the learned
Addl. Public Prosecutor finally.

2. The petitioner is challenging the order dated 01-06-2022 passed by the respondent no. 3 who is the Commissioner of Police, Aurangabad 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 (hereinafter **MPDA Act**) as confirmed by the respondent no. 1 – State by the order dated 24-11-2022 thereby directing the detention of the petitioner for a period of 12 months.

3. The learned advocate Mr. Deshmukh for the petitioner submits that the petitioner is impugning the order of detention only on the ground that the order dated 01-06-2022 does not stipulate any period of detention which according to the learned advocate is contrary to the decision of the Supreme Court in the matter of ***Cherukuri Mani W/o Narendra Dchowdari Versus Chief Secretary, Government of Andhra Pradesh and others; (2015) 13 SCC 722*** which is followed in ***Lahu Shrirang Gatkhal Vs. State of Maharashtra; (2017) 13 SCC 519***. The learned advocate would submit that proviso to sub-section 2 of section 3 of the MPDA Act particularly the proviso as interpreted in ***Lahu Shrirang Gatkhal*** (supra) expects the authorities to pass the initial order of detention which could be maximum of six months, renewable

by three months on first occasion and another three months on the second occasion.

4. Per contra, learned Additional Public Prosecutor Mrs. Deshpande would submit that the issue is no more *res integra* in view of the decision in the matter of ***Mrs. T. Devaki Vs. Govt. of Tamil Nadu and others; AIR 1990 SC 1086*** which was a larger bench decision rendered on earlier point of time but was not cited in the subsequent matter of ***Lahu Shrirang Gatkal*** (supra).

5. We have carefully considered the rival submissions and minutely perused the judgment in the matter of ***Mrs. T. Devaki*** (supra) and ***Lahu Shrirang Gatkal*** (supra). It is quite apparent that ***Lahu Shrirang Gatkal*** (supra) expressly lays down that in view of the proviso to sub-section 2 of section 3 of the MPDA Act, a period has to be specified in the order with a maximum cap of six months at the first instance and the order passed therein which was a blanket order of detention without specifying the period was held to be unsustainable. In doing so, the decision in the matter of ***Cherukuri Mani*** (supra) was also referred to and relied upon.

6. But then, both these decisions i.e. ***Cherukuri Mani*** (supra) and ***Lahu Shrirang Gatkal*** (supra) have been rendered after the larger bench decided the matter of ***Mrs.T. Devaki*** (supra) and the latter was not cited before the benches which decided the former two.

7. The submissions of the learned advocate for the petitioner can be answered simply by referring to the following observations from

Mrs. T. Devaki (supra) :

“10. Provisions of the aforesaid sections are inbuilt safeguards against the delays that may be caused in considering the representation. If the time frame, as prescribed in the aforesaid provisions is not adhered, the detention order is liable to be struck down and the detenu is entitled to freedom. Once the order of detention is confirmed by the State Government, maximum period for which a detenu shall be detained cannot exceed 12 months from the date of detention. The Act nowhere requires the detaining authority to specify the period for which the detenu is required to be detained. The expression "the State Government are satisfied that it is necessary so to do, they may, by order in writing direct that during such period as may be specified in the order" occurring in subsection (2) of S. 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention. The Legislature has taken care to entrust the power of detention to the State Government, as the detention without trial is a serious encroachment on the fundamental right of a citizen, it has taken further care to avoid a blanket delegation of power, to subordinate authorities for an indefinite period by providing that the delegation in the initial instance will not exceed for a period of three months and it shall be specified in the order of delegation. But if the State Government on consideration of the situation finds it necessary, it may again delegate the power of detention to the aforesaid authorities from time to time but at no time the delegation shall be for a period of more than three months. The period as mentioned in Section 3(2) of the Act refers to the period of delegation and it has no relevance at all to the period for which a person may be detained. Since the Act does not require the detaining authority to specify the period for which a detenu is required to be detained, order of detention is not rendered invalid or illegal in the absence of such specification.

11. Mr. R. K. Garg placed strong reliance on the decision of this Court in Gurbux Bhiryani's case (1988 (supp) SCC 568) (supra) to support his submission. In that case the detenu had been detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act 55 of 1981. The High Court quashed the detention order on the ground that the detenu had been released in criminal prosecution under Section 8(c) read with Section 21 of the

Narcotic Drugs and Psychotropic Substances Act, 1985 and he had been released on bail, but that fact had not been placed before the detaining authority. On appeal by special leave a Division Bench of this Court consisting of two Judges, dismissed the appeal without going into the merits of the case on the sole ground that the detention order was bad as the period of detention was not specified in the detention order. The Court observed as under:

"The order is bad on another ground, namely, the period of detention has not been indicated by the detaining authority. The scheme of this Act differs from the provisions contained in similar Acts by not prescribing a period of detention but as Section 3 of the Act indicates, there is an initial period of detention which can extend upto three months and that can be extended for periods of three months at a time. It was open to the detaining authority to detain the detenu even for a period of lesser duration than three months. That necessitated the period of detention to be specified and unless that was indicated in the order, the order would also be vitiated. In score of decisions this Court has been emphasising the necessity of strict compliance with the requirements of the preventive detention law; yet authorities on whom the power is conferred have not been complying with the requirements and even if there be merit to support the order of detention, the procedural defects lead to quashing thereof as a result of which the purpose of the Act if frustrated and the suffering in the community does not abate."

With great respect we do not agree with the view expressed by the learned Judges.

12. Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords,' Bootleggers and Drug-offenders Act, 1981 is identical in terms to Section 3 of the Tamil Nadu Act. Section 3 of Maharashtra Act does not require the State Government, District Magistrate or a Commissioner of Police to specify period of detention in the order made by them for detaining any person with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. Section 3(1) which confers power on the State Government to make order directing detention of a person, does not require the State Government to specify the period of detention. Similarly, sub-sections (2) or (3) of Section 3 do not require the District Magistrate or the Commissioner of Police to specify period of detention while exercising their powers under sub-section (1) of Section 3. The observations made in Gurbux Bhiryani's case that the scheme of the Maharashtra Act was

different from the provisions contained in other similar Acts and that Section 3 of the Act contemplated initial period of detention for three months at a time are not correct. The scheme as contained in other Acts providing for the detention of a person without trial, is similar. In this connection we have scrutinised, The Preventive Detention Act, 1950, The Maintenance of Internal Security Act, COFEPOSA Act, National Security Act, but in none of these Acts the detaining authority is required to specify the period of detention while making the order of detention against a person."

8. Though the Supreme Court was called upon to consider the provisions of a similar legislation as that of MPDA Act as was operating in Tamil Nadu State, the Supreme Court expressly noticed the similarity in the provisions of both these legislations. Even a similar view was taken by the two Judge bench in the matter of ***Commissioner of Police Vs. Gurbux Anandram Bhiryani; 1988 (Supp) SCC 568***. In ***Mrs. T. Devaki*** (supra) expressly mentioned in paragraph no. 11 that they were unable to agree with the view expressed in ***Commissioner of Police V. Gurbux*** (supra).

9. With utmost respect, the above observations are enough to repel the submissions made by the petitioner's learned advocate seeking to derive benefit from the decision in the matter of ***Lahu Shrirang Gatkal*** (supra).

10. The writ petition is dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/