

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 154 OF 2023

Krushna Sitaram Potdukhe

..PETITIONER

VERSUS

1. State of Maharashtra
2. The Section Officer,
Home Department, Mantralaya, Mumbai
3. The Commissioner of Police, Aurangabad

..RESPONDENTS

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Mr. A.K. Bhosle, Advocate for petitioner
Mr. A.R. Kale, A.P.P. for respondents

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 21st JUNE, 2023**

PER COURT :

1. Heard.

2. The challenge in this petition is to an order of detention dated 12th August, 2022 passed by Respondent No.3 – Commissioner of Police, Aurangabad and confirmed by State Government. Vide the order impugned herein, the petitioner has been detained for a period of twelve months under Section 3(1) 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 ('the Act'). The challenge herein is mainly on following two grounds :-

- (i) Delay in reporting the State Government of the order of detention;
- (ii) A criminal case in which the petitioner has been acquitted was not taken into consideration for passing the impugned order.

3. Mr. Bhosle, learned counsel for the petitioner states that Section 3(3) of the Act mandates that when any order is passed under Section 3 of the Act by the officer mentioned in sub-section (2) thereof, he shall forthwith report the said fact to the State Government together with the grounds on which the order has been made. In support of his submission, learned counsel relied on a judgment of the Apex Court in case of ***Hetchin Haokip Vs. State of Manipur and Ors., (2018) 9 SCC 562*** has observed thus :-

“12. From the above cases, the position that emerges is that “forthwith”, under Section 3(4), does not mean instantaneous, but without undue delay and within reasonable time. Whether the authority passing the detention order reported the detention to the State Government within reasonable time and without undue delay, is to be ascertained from the facts of the case. In Keshav Nilkanth Joglekar Vs. Commissioner of Police, AIR 1957 SC 28, there was a delay of eight days by the Police Commissioner, in sending the report to the State Government. However, the court found that the reasons for the delay were reasonable, since the Commissioner and his team were occupied in maintaining law and order during a particularly tense time in Mumbai.”

He also relied on the judgment of this Court in *Dharani Raja Padyachi Vs. The State of Maharashtra and Ors., 2019 All M.R. (Cri.) 3504* to submit that delay of even four days in non-responding the order of detention to the State Government is held to be fatal. The facts of the said case would indicate that the detaining authority took a stand that the detention order was first implemented and then was communicated to the State Government.

4. The order of detention impugned herein was passed on 12th August, 2022. It was served on the petitioner the same day. The detaining authority reported the said order to the State Government on 17th August, 2022. As such, there was a delay of five days in reporting the impugned order to the State Government. The detaining authority has filed his affidavit stating therein there were three consecutive holidays from 13th to 15th August and the order was therefore sent through messenger on 16th August. It was received by the Department of Home, State of Maharashtra on 17th August. It is a matter of common knowledge that government offices do not function on holidays. Had the impugned order been even sent through messenger on the day on which it was passed i.e. on 12th August, it would have been in the hands of the responsible officer only on 16th August. In our view, therefore, the delay of one day in reporting the impugned order to the State Government would in no way be fatal. We are, therefore, not inclined to grant the petitioner relief on this ground.

5. Turning to the second ground of challenge, it is to be stated that the detaining authority although in the order of detention referred twelve criminal cases registered against the petitioner under the Maharashtra Prohibition Act, 1949, only last two crimes viz. Crime Nos. 45 of 2022 and 103 of 2022 coupled with the statements of the witnesses have been taken into consideration for passing the order of detention on the ground of petitioner being bootlegger and acting in a manner prejudicial to the public order. Therefore, enlisting the crime in the impugned order, of which the petitioner was acquitted, would be of little consequence. Needless to mention, reference of past criminal record only as a foreword in the order of detention does not detract such order of its legal efficacy. The petition, therefore, fails on this ground as well.

6. In the result, criminal writ petition fails. Same is, therefore, dismissed.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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