

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

CRIMINAL WRIT PETITION NO.894 OF 2023

Sudhir Hanumant @ Hanuman
Waghmare, Age 21 years,
R/o Ambika chowk, Pangri Road,
Beed

... PETITIONER

VERSUS

- 1) District Magistrate,
Beed
- 2) The State of Maharashtra
through the Secretary,
Home Department (Spl.)
Mantralaya, Mumbai
- 3) The Superintendent,
Aurangabad Central Prison
Aurangabad

... RESPONDENT

.....
Mr. R.A. Jaiswal, Advocate for petitioner
Mr. A.R. Kale, A.P.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

Date of reserving judgment : 22nd August, 2023

Date of pronouncing judgment : 12th September, 2023

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith and taken up for
final hearing at admission stage with the consent of learned counsel

for the parties.

2. The challenge in this petition under Article 226 of the Constitution of India is to the order dated of detention, dated 24/4/2023, passed under Section 3 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 (M.P.D.A. Act for short), by the District Magistrate, Beed (respondent No.1) and confirmed by the State of Maharashtra in Ministry of Home Department (respondent No.2). Vide order impugned herein, the petitioner has been detained for a period of 12 months w.e.f. 26/4/2023 on account of his activities as a dangerous person, were prejudicial to the maintenance of public order.

3. Heard. The challenge is mainly on the following three grounds :

- (1) The detaining authority has not forwarded the State Government the order of detention forthwith for approval
- (2) There is delay of two months in passing the order of detention post registration of the last crime against the petitioner and recording of in-camera statements.
- (3) Failure to place before the detaining authority an

application for bail and order granting the same in favour of the petitioner in connection with C.R. No.562/2022.

4. Learned counsel appearing for the petitioner would submit that, Section 3(3) of the M.P.D.A. Act mandates the detaining authority to forward the detention order to the State Government forthwith for approval. The order impugned herein was passed on 25/4/2023. The state Government has approved the same on 4th May. The affidavits-in-reply filed by the detaining authority are silent to state day and date on which the impugned order was forwarded to the State Government. Delay, short or long, ought to have been explained. No such explanation is forthcoming.

5. The learned counsel would further submit that, there is a gap of little over two months in passing the order post registration of the last crime against the petitioner. According to him, if the activities of the petitioner were really so prejudicial to the maintenance of public order, the detaining authority should not have lost any time in passing the order of detention. Delay of two months undoubtedly indicates that the case of the petitioner was not warranting passing of detention order. The delay is sought to be explained by filing additional affidavit. The same suggests the so called explanation offered by the detaining authority was afterthought. The respondent No.1 ought to have given priority to

such matters instead of whiling away a time in less important matters. On the third ground of challenge, the learned counsel would submit that, non-placing of application for bail and order granting the same caused the petitioner prejudice in making effective representation against the order of detention to the concerned authority. The same has caused violation of petitioner's fundamental right under Article 20(5) of the Constitution of India. In support of his contentions, the learned counsel has relied on the following host of authorities.

- (1) Rushikesh Tanaji Bhoite Vs. State of Maharashtra & ors.
2012 Cri.L.J. 1334 (SC)
- (2) Lakhan Rohidas Jagtap Vs. Commissioner of Police
2019 ALL MR (Cri) 5261
- (3) Abdul Sathar Ibrahim Manik Vs. Union of India & ors.
1991 CRI.L.J. 3291
- (4) Vishal Waman Mhatre Vs. Commissioner of Police & ors.
2013 ALL MR (Cri) 42
- (5) Shri Amin Mahboob Shaikh Vs. District Magistrate, Pune & ors. [2012 ALL MR (Cri) 3977]
- (6) Anil Tukaram Mohite Vs. Commissioner of Pimpri Chinchwad
2021 ALL MR (Cri) 3794
- (7) Pradeep Nilkant Paturkar Vs. Ramamurthi & ors.
1993 Supp (2) SCC 61
- (8) Sanjeev @ Sanjay @ T.N. Upade Vs. Commissioner of Police, Solapur (Criminal W.P. No.3035 of 2021)
- (9) Niyazuddin @ Sonu Sirajuddin Ansari Vs.
State of Maharashtra [2013 ALL MR (Cri) 3870]

- (10) Mohsin Ahmed s/o Mushtaque Ahmed Vs.
State of Maharashtra [2014 ALL MR (Cri) 2409]
- (11) Austin William Luis Pinto Vs. Commissioner of Police & anr.
2005 ALL MR (Cri) 28

6. The learned A.P.P. would, on the other hand, submit that the order of detention indicates subjective satisfaction of the detaining authority. All the crimes registered against the petitioner find place in the order of detention. Police papers of the crime registered against the petitioner and taken into consideration along with two in-camera statements do find reference thereto in the order of detention. He would further submit that, the petitioner does not take exception to the subjective satisfaction of the detaining authority. On the ground of delay, he would submit that, there were 14 public holidays between the receipt of proposal on 24/3/2023 till passing of order dated 25/4/2023. The detaining authority was engaged in passing certain orders as regards maintenance of law and order. since festivities like Ram Navami, Bhagvan Mahavir Jayanti, Good Friday, Bharatratna Dr. Babasaheb Ambedkar Jayanti were there in the month of March and April, the Superintendent had requested the detaining authority for promulgation of orders under Section 37(1)(3) of the Maharashtra Police Act. Copies of such orders have been placed on record along with the affidavit-in-reply. According to learned A.P.P., the delay has thus been explained. The petitioner has failed to make

out a case of prejudice. According to him, the order of detention itself would indicate the detaining authority was justified in passing the same. Public interest should have paramount consideration. The learned A.P.P. relied on the following authorities and ultimately urged for dismissal of the petition :-

- (11) Rameshwar Lal Patwari Vs. State of Bihar
1968 AIR (SC) 1303
- (15) Bidya Deb Barma Etc. Vs. District Magistrate,
Tripura, Agartala [1969 AIR (SC) 323]
- (10) Mohd. Salim Khan Vs. Shri C.C. Bose, Deputy Secretary to
the Government of West Bengal & anr.
1972 AIR 9SC) 1670
- (5) Lakshman Khatik Vs. The State of W.B.
1974 AIR (SC) 1264
- (14) Gora Vs. State of W.B. [1975 AIR (SC) 473
- (9) State of Gujarat Vs. Adam Kasam Bhaya
1981 AIR (SC) 2005
- (1) Ashok Kumar Vs. Delhi Administration & ors.
1982 AIR (SC) 1143
- (12) Fitrat Raza Khan Vs. State of U.P. & ors.
1982 AIR (SC) 146
- (13) Raisuddin alias Babu Tamchi Vs. State of U.P. & anr.
1984 AIR (SC) 46
- (6) Phulwari Jagdambaprasad Pathak Vs. R.H. Mendonca
2000(3) Crimes 112
- (2) Istiyak Ahmed Siddiqui Vs. A.N. Roy & ors.
2005 ALL MR (Cri) 2367
- (3) The Collector & District Magistrate, W.G. Dist. Eluru, Andhra
Pradesh Vs. Sangala Kondamma [2005(1) ALL MR (Cri) 772]

- (4) Santosh Bhagwan Patil Vs. State of Maharashtra & ors.
2013 ALL MR (Cri) 3846
- (7) Santosh Kashinath Kamble Vs. State of Maharashtra & ors.
(2016) 4 BOM CR (Cri) 733
- (8) Ramesh Balu Chavan Vs. Commissioner of Police, Solapur
& ors. [2017 ALL MR (Cri) 3683]
- (16) Subramanian Vs. State of Tamil Nadu & anr.
2012(4) SCC 699

7. Considered the submissions advanced. Perused the order of detention and the documents relied on in support thereof. Also perused the affidavits-in-reply and the authorities relied on. Before advertng to the factual matrix of the case, it would be apposite to refer to relevant provisions of the M.P.D.A. Act.

8. Section 2(a) of the M.P.D.A. Act reads as under :

“2. In this Act, unless the context otherwise requires, –

(a) “acting in any manner prejudicial to the maintenance of public order” means –

(i) to (iii)

(iv) in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.

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(b-1) “dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.”

9. The detaining authority has referred to 9 crimes registered against the petitioner besides preventive action taken against him under Section 110(e) (g) of the Code of Criminal Procedure and 2 in-camera statement of the witnesses. 6 out of 9 crimes registered against the petitioner have simply been referred to as the petitioner’s criminal history. Those crimes have not been relied on for passing the impugned order.

10. The following is the material relied on for passing the detention order :

1. Crime No.562/2022, registered at Shivaji Nagar Police Station, Beed for the offences punishable under Sections 3, 25 of the Indian Arms Act, which was under investigation.
2. Crime No.73/2023, registered at Shivaji Nagar Police Station, Beed for the offences punishable under Sections 341, 323, 504, 506 read with Section 34 of the Indian

Penal Code, which was under investigation.

and two in-camera statements. We are not much concerned about the potential of the material relied on as a basis for the order of detention. As stated above, the order has been challenged on three grounds. First one being the detaining authority to have not forwarded the State Government order of detention forthwith for approval. Although this ground has not been responded to in affidavit-in-reply, the learned A.P.P. has placed on record all the original papers. The order of detention is dated 25th April 2023. The same has been forwarded to the Additional Chief Secretary, Department of Home, State of Maharashtra on 28th April. He received the same on the very next day i.e. on 29th. As such, the order of detention has been forwarded to the State Government on the fourth day. Moreover, the detaining authority has filed additional affidavit, suggesting that she was busy in other important official work and maintenance of law and order since in the said month there were religious festivities like Hanuman Jayanti, Ram Navami, Dr. Babasaheb Ambedkar Jayanti etc. Forwarding the impugned order to State Government on fourth day of its passing could, therefore, not be said to have not been sent forthwith. This ground of challenge, therefore, fails.

11. The two crimes registered against the petitioners and

equal number of in-camera statements given against him have been relied on for passing the order impugned herein. The first of the crimes relied on was committed on 20/12/2022. The second one was of February 2023. The in-camera statements have been recorded on 22nd and 27th of February in respect of the incidents dated 20th and 24th February respectively. The detention order has been passed on 25th of April i.e. two months after recording of last in-camera statement. The affidavit-in-reply indicates the sponsoring authority put up a proposal on 14th of March. It was routed through the concerned Dy. Superintendent of Police, District Superintendent of Police to ultimately receive the same on 24th of March 2023. The order of detention has been passed exactly one month after the receipt of the proposal.

12. The delay in passing the order has been sought to be explained with the reasons that in the month of April, there were 14 Government holidays. The detaining authority was even engaged in equally or more important matters regarding maintenance of law and order in District of Beed. She has placed on record certain documents in that regard indicating the Superintendent of Police, Beed had requested her thrice in the said month for issuance of orders in terms of Section 37(1)(3) of the Maharashtra Police Act.

13. There is no question of the petitioner to make out a

case of prejudice by him on account of delay in passing the order. The Apex Court, in case of Pradeep Paturkar (supra), , held, the delay, long or short, has to be satisfactorily explained. In this case, the same is sought to be explained accordingly. We do not propose to dwell at length on this ground since the petition is being allowed on the third ground of challenge. We, however, observe that the detaining authority, being a District Magistrate for 24 X 7, ought to have taken up the proposal of detention for her consideration at the earliest. As per her affidavit-in-reply, the proposal was put up before or only on 24th of April and on the following day she passed the order. The same suggests the concerned staff members assisting her in her official business were not diligent. The same suggests there was no urgency of passing an order of detention on the ground of the petitioner's activities being prejudicial to the maintenance of public order.

14. We have carefully perused the authorities relied on by the learned A.P.P. Needless to mention, each case has to be decided on its own facts and circumstances. In the case in hand, the officials sat on the proposal for not less than 29 days and then put up the same before the detaining authority.

15. In respect of the the third ground of challenge, the petitioner was a free man when the order of detention came to be

passed against him. The crime being C.R. No.562/2022 was registered against him in December 2022, while the next crime was registered in February 2023. While the order of detention was passed, he had already been granted bail in both the crimes. In case of Rushikesh Bhoite (supra), the Apex Court has observed in paragraph No.9 and 10 as under :

“9. In a case where detenu is released on bail and is enjoying his freedom under the order of the Court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

16. Moreover, in case of Abdul Sattar Ibrahim Manik (supra), it has been observed thus :

In a very recent judgment of this Court in Kamarunnissa v. Union of India, AIR 1991 SC 1640 : (1991 Cri..J 2058), all the above mentioned decisions dealing with the detention of a person in custody have been reviewed and it is finally held as under (para 13):

“From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on

being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court.”

Having regard to the various above cited decisions on the points often raised we find it appropriate to set down our conclusions as under :

- (1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detainee was already in custody.
- (2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity, then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher Court.
- (3) If the detainee has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant

material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

(4) Accordingly the non-supply of the copies of bail application of the order refusing bail to the detenu cannot affect the detenu's right of being afforded a reasonable opportunity guaranteed under Article 22(5) when it is clear that the authority has not relied or referred to the same.

(5) When the detaining authority has merely referred to them in the narration of events and has not relied upon them, failure to supply bail application and order refusing bail will not cause any prejudice to the detenu in making an affective representation. Only when the detaining authority has not only referred to but also relied upon them in arriving at the necessary satisfaction then failure to supply these documents, may, in certain cases depending upon the facts and circumstances amount to violation of Article 22(5) of the Constitution of India. Whether in a given case the detaining authority has casually or passingly referred to these documents or also relied upon them depends upon the facts and the grounds, which aspect can be examined by the Court.

(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

17. The sponsoring authority did not place before the detaining authority the bail applications moved by the petitioner in those two crimes and order passed thereon. There is no question of a prejudice being caused to the petitioner thereby. The Apex Court, in case of Rushikesh Bhoite (supra), has observed in paragraph No.10 as under :

10. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective decision of the detaining authority.”

18. The learned A.P.P. has relied on a judgment of this Court in case of **Istiyak Ahmed Siddiqui Vs. A.N. Roy & ors. [2005 ALL MR (Cri) 2367]**, to submit that, in spite of there being no papers accompanying bail application of the detenu having been placed before the detaining authority, the order of detention came to be upheld.

19. Close reading of the facts in Istiyak Siddiqui's case (supra) would indicate that copies of application for bail and order passed thereon were necessarily placed before the detaining authority. The question was, the documents filed in support of

application for bail were not forming part of the proposal submitted by the sponsoring authority. Those documents were marked A, B, C and the Court found them to have not been vital and would not have influenced the detaining authority to make up its mind whether or not to issue the impugned order of detention. These facts made all the difference.

20. The petition thus succeeds on Grounds No.3. We therefore, allow the petition in terms of prayer clause (b). The petitioner be set at liberty forthwith, if not required in any other case. Rule made absolute in above terms.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-