

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1152 OF 2023

Gaurav S/o. Nanasahab Wankhede,
Age- 21 years, Occu- Labour,
R/o. Triveni Nagar, N-7, Cidco,
Aurangabad, Tq. & Dist. Aurangabad.

... **Petitioner**

Versus

- 1] The State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai-32.
- 2] The Commissioner of Police,
Aurangabad, Dist. Aurangabad.
- 3] The Superintendent of Jail,
Central Prison, Aurangabad.

... **Respondents**

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Mr. Sudarshan J. Salunke, Advocate for Petitioner.
Mr. M. M. Nerlikar, APP for Respondents.

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

RESERVED ON : 12th October, 2023.

PRONOUNCED ON : 10th November, 2023.

J U D G M E N T : (Per Sanjay A. Deshmukh, J.)

hearing at the admission stage with the consent of learned counsel for the parties.

2 This petition is filed under Article 226 of the Constitution of India against order of detention dated 16.12.2022 passed by respondent No.2 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 (for short “M.P.D.A. Act”).

3 The challenge in this petition is mainly on the following grounds:-

- i) The reasons for detention were not communicated well in advance in point of time to the petitioner to avail the legal remedies against it.
- ii) Though the petitioner was enlarged on bail in the offences mentioned in the grounds of detention, that fact was not noted in the reasons of the said order.
- iii) The category under which the petitioner fall under the M.P.D.A. Act as dangerous person, is not supported by legal material. At the most petitioner’s acts are prejudicial to the “Law and Order” and not prejudicial to the “Public Order”, which was not considered by the authority.
- iv) The petitioner is neither a gang leader nor member of any gang.

Therefore, he is not dangerous person, which was not considered by the authority.

v) The detaining authority failed to decide the case on subjective satisfaction when the statements of secret witnesses were not showing that he is a dangerous person to prevent him from acting in any manner prejudicial to the public order. There is no threat to the maintenance of public order on the part of the petitioner.

vi) The secret statements of two witnesses were recorded on 03.10.2022 and 06.10.2022. Delay in recording these statements vitiates the subjective satisfaction of the detaining authority. Impugned order requires degree of expediency and promptitude, which is lacking in it.

vii) The order passed on 16.12.2022, almost after two months, after recording of the secret statements of witnesses, shows that there is no element of threat to the maintenance of public order on the part of the petitioner. Thus, he is not a dangerous person. The order passed is, thus, against the guarantees of life and liberty and against the safeguards provided under Article 22(5) of the Constitution of India.

4 To refute the grounds of objections raised by the petitioner in this writ petition, the detaining authority – respondent No.2 by affidavit-in-reply (X-1) contended that the grounds of detention are supported by material on record. It is contended that there is no legal ground in view

of Section 5-A of the M.P.D.A. Act. The petitioner was involved in dangerous activities of voluntarily causing hurt by dangerous weapons, murder, causing disappearance of evidence of the offence committed by him, affray, member of unlawful assembly, riot, robbery, intentional insult to provoke breach of the public peace, criminal intimidation etc. It becomes serious threat to the citizens of Aurangabad city. It has become continuous threat to the public order. The deponent further pointed out the chart of the commission of crime and its details as follows:-

Sr. No.	Police Station	C. R. No. & Under Section	Date of Registration	Present Status
1	Cidco	396/2018 u/s. 324, 323, 504, 34 IPC.	08/09/2018	Pending trial.
2	Cidco	05/2020 u/s. 302, 201, 34 IPC.	03/01/2020	Pending trial.
3	Cidco	101/2022 u/s. 160 IPC.	03/03/2022	Pending trial.
4	Cidco	103/2022, u/s. 324, 143, 147 IPC.	04/03/2022	Pending trial.
5	Cidco	356/2022 u/s. 392, 504, 506, 34 IPC.	26/07/2022	Pending trial.
6	Cidco	428/2022 u/s. 324, 323, 504, 34 IPC.	08/09/2022	Pending trial.

Preventive action

Sr. No.	Police Station	Chapter Case No. & Under Section	Disposal
1	Cidco	03/2022 u/s 110 (e) (g) of Cr. P.C.	As action under MPDA Act 1981, chapter case has been dropped.

5 Respondent No.2 contended in affidavit-in-reply that the statements of secret witnesses 'A' and 'B' were duly recorded and thereafter, confidential inquiry about it was held on 10.10.2022 and those were properly verified by the authority. Considering all these material, the authority found the petitioner is a dangerous person as defined under the M.P.D.A. Act and that he committed offences punishable under Chapter XVI and XVII of the Indian Penal Code, which show that these are the prejudicial activities to the maintenance of public order within the jurisdiction of CIDCO Police Station and adjoining areas of Aurangabad. Accordingly, a reasoned order is passed on 16.12.2022 after having subjective satisfaction. Thereafter, detailed report was sent to the State Government, Additional Chief Secretary, Home Department, Mantralaya, Ministry of Mumbai for approval as per Section 3(3) of the M.P.D.A. Act. It was accordingly, approved by the State Government by its order dated 26.12.2022. The Honourable Advisory Board constituted under the M.P.D.A. Act, heard the petitioner on 16.01.2023 and after that, the order has been confirmed by the State Government on 07.02.2023. Thus, there is no delay in passing the impugned order as contended by the petitioner. All the mandatory provisions are complied with. There is no legal, as well as, factual grounds to set aside the impugned order.

6 The learned counsel for the petitioner submitted that more than two months period had passed away for passing the impugned

order and it is sufficient to infer that the petitioner is not a dangerous person and his activities are not prejudicial to the maintenance of public order.

7 The learned counsel for petitioner lastly submitted that there is unreasonable delay caused by the authority for passing the impugned order, which is strong ground of objection of this petition. He, therefore, submitted to allow the petition by setting aside the impugned order.

8 The learned APP submitted that all the requirements of M.P.D.A. Act alongwith mandatory provisions of Article 22(5) of the Constitution of India are followed by the detaining authority. Opportunity of being heard was given to the petitioner before the Board constituted for the same. The detaining authority has relied upon the crime No. 428 of 2022 registered with CIDCO police station, Aurangabad and other crimes alongwith two secret statements of witnesses. The grounds, reasons and findings of the authority are sound and no interference is warranted in it. The delay is not always fatal. However, it has been explained in the affidavit-in-reply and on account of delay, the impugned order cannot be set aside, as there is no statutory limits of time frame for it. Therefore, reasonable time, would be decisive factor in such cases. He lastly prayed to reject the writ petition.

9 The statements of secret witnesses were recorded on

03.10.2022 and 06.10.2022. Thereafter, those were verified on 10.10.2022. The proposal was sent on 19.10.2022. Thereafter, the detaining authority passed the detention order on 16.12.2022, which was immediately served on the petitioner. Thus, from the forwarding of the proposal by the authority dated 19.10.2022 till 16.12.2022, there was no any action on the part of the authority. It was unreasonable delay caused for passing the impugned order. No doubt all the formalities are complied with, but the authorities could not explain the delay caused for passing the impugned order. There is no justification for it.

10 Learned APP for the State submits that in the absence of statutory provisions as to the time schedule to proceed further at each stage by the different authorities, it would be proper to give direction for passing the order etc. in specific and reasonable time frame.

11 In the absence of specific time schedule of the M.P.D.A. Act, such order must be passed within a reasonable time to show the expediency and necessity of detention of the detainee for maintenance of public order by the authority in its reasons, particularly when there are allegations that petitioner is dangerous person. Delay caused for passing impugned order of about two months shows that there was no subjective satisfaction to draw the inference that the petitioner was dangerous person. Otherwise, the authority would have passed the said

order immediately and detained petitioner immediately.

12 There are catena of authorities pointing out that if unreasonable delay is caused it means detenu is not a dangerous person. Therefore, it is expected that such orders must be passed by the authorities within / reasonable time. We have noticed that unreasonable delay is caused by the authorities concerned particularly, the senior officials of Home Department of State Government of Maharashtra in passing orders and deciding representations of detenu, which are reasons to set aside such detention order. There was no justification for causing delay. However, in view of various judicial pronouncements of Honourable Supreme Court and this Court, we cannot give specific directions regarding time frame as contended by learned APP for the State. But we expect that all the authorities concerned while complying their part on each stage of such proceeding, shall proceed further and pass the necessary orders within a reasonable time of not more than eight days except where statutory period is prescribed by the M.P.D.A. Act itself for particular actions of authorities in this regard, which will be beneficial to achieve the purpose and object of M.P.D.A. Act to protect the society from such persons.

13 We hold that the delay caused for passing the impugned order is fatal and serious lapse on the part of the respondents. The writ

petition, therefore, deserves to be allowed. Thus, the petition succeeds on the ground of unreasonable delay caused for passing impugned order. The argument of learned APP is not acceptable in this regard. Hence, the following order:-

ORDER

- I. The writ petition is allowed in terms of prayer clauses (C) and (D).
- II. The petitioner be released forthwith, if not required in any other crime.
- III. No costs.

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]

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