

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

CRIMINAL WRIT PETITION NO.1228 OF 2023

Shri Aniket Raosaheb Hiwale
Age 24 years, Occ. Labourer,
R/o Jai Bhawani Nagar,
Mukundwadi, Aurangabad,
through his wife
Ujwala Anil Gade
Age 27 years, Occu. Household,
R/o Vivare Khurd, Tal. Saver,
Vivare Bk., Dist. Jalgaon

... PETITIONER

VERSUS

- 1) The State of Maharashtra
through its Additional Chief Secretary,
Home department (Special),
Mantralaya, Mumbai – 400 032
- 2) The Commissioner of Police,
Aurangabad

... RESPONDENTS

.....
Mr. A.R. Shaikh, Advocate for petitioner
Mr. R.D. Sanap, A.P.P. for respondents
.....

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

Date of reserving judgment : 17th October, 2023

Date of pronouncing judgment : 2nd November, 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 an order of the petitioner's detention, 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). The order of detention has been passed by the respondent No.2 - Commissioner of Police, Aurangabad on 28/4/2023. The said order of detention has been confirmed by the respondent No.1 - State of Maharashtra in Home Department. The period of detention is for 12 months. The petitioner is detained on the ground of his activities to have been found prejudicial to maintenance of public order, as he being a "dangerous person".

3. The challenge to the order of detention is is mainly on the ground of non-subjective satisfaction of the detaining authority in view of there being inadequate material. Whatever crimes have been registered against the petitioner were individual centric. His activities by no stretch of imagination could be termed to have potential to cause or likely to cause disturbance to maintenance of public order. The another ground of challenge is of delay in passing the order impugned herein.

4. The learned A.P.P. would, on the other hand, relied on the detention order itself. He read out certain paragraphs therefrom to suggest the detaining authority to have arrived at a subjective satisfaction based on cogent and reliable material. According to

him, the Court cannot sit in appeal over an order of detention. The Court cannot assess whether material is sufficient or insufficient. Subjective satisfaction of the detaining authority cannot be subject of judicial review.

5. The learned A.P.P. took us through the affidavit-in-reply of the detaining authority. Our attention has been drawn to the facts and circumstances of the criminal cases registered against the petitioner. According to him, it is a case of ascending graph of the petitioner's such activities. The crimes which have been relied on were committed by the petitioner in breach of the order of externment passed against him. He was externed from Aurangabad. During the continuance of externment order, he came to the limits out of which he was externed and committed the offences. The crimes committed by him were not in his individual capacity. All the while, he was assisted by his Associates/ accomplices. The learned A.P.P. justified the order of detention on the ground of the petitioner's criminal activities as a dangerous person were found to be causing disturbance to maintenance of public order.

6. On the question of delay is concerned, the learned A.P.P. would submit that, there is no delay at all. Proximity of the offences committed by the petitioner and the in-camera statements of the witnesses coupled with the date of detention order would indicate that, everything happened within a proximity inter-se. It,

therefore, could not be said that the order of detention has been passed belatedly. The learned A.P.P. would further submit that, the Apex Court time and again has observed that, period of three months is a reasonable time where there is no time prescribed by any Statute.

7. Considered the submissions advanced. Perused the order of detention, affidavit-in-reply and the authorities relied on. The order of detention records :-

**List of offences committed by the petitioner and his associates
and prevention action taken against them**

Sr. No.	Police Station	C.R. No. & Under Sections	Date of Registration	Present status
1.	Mukundwadi	111/2018 u/s 454, 457, 380, 34 IPC	23/04/2018	Pending Trial
2	Mukundwadi	320/2018 u/s 399, 402 IPC	13/10/2018	Pending Trial
3	Satara	521/2018 u/s 395 IPC, 4/25 Arms Act, 1959	11/12/2018	Pending Trial
4	Mukundwadi	273/2019 u/s 394, 34 IPC	07/07/2019	Pending Trial
5	Pundaliknagar	326/2020 u/s 392, 34 IPC	24/10/2020	Pending Trial
6	Mukundwadi	435/2022 u/s 392, 34 IPC	17/12/2022	Pending Trial
7	Mukundwadi	538/2022 u/s 142 Maharashtra Police Act, 1951	26/12/2022	Pending Trial
8	Mukundwadi	27/2023 u/s 392, 34 IPC	24/01/2023	Pending Trial

Preventive action

Sr. No.	Police Station	Chapter Case No. & U/s	Disposal
1	Satara	03/2019 U/s 110(e)(g) Cr.P.C.	Final bond of Rs.50,000/- was taken

Externment Proceeding

Sr. No.	Police Station	Chapter Case No. & U/s	Disposal
1	Mukundwadi	No.DCP/Zone-II/ Externment/14-02/2020- 3263 Office of the Dy. Commissioner of Police, Zone-II, Aurangabad, Dated 17/08/2021	As action taken under MPDA Act, 1981, the said Externment order was dropped.

8. Then, the facts of the last three crimes registered against the petitioner have been narrated besides two in-camera statements of witnesses. Then the detaining authority records in paragraphs No.6 to 8 as under :

“6. From the above facts, I am satisfied that you are a “Dangerous Person” within the meaning of Section 2(b-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” respectively. You are also a weapon wielding desperado, dreaded criminal striking terror in the mind of peace loving and law abiding citizens residing in the localities of Mukundwadi Police Station and adjoining areas, by your criminal activities. The action taken against you under the normal law of

the land is found to be insufficient and ineffective to deter you from indulging in criminal activities prejudicial to the maintenance of public order. The public is under constant shadow of you and your associate's fear. Your above described criminal activities are disturbing the normal tempo of life of citizens of the said localities and areas, which can be seen from grounds 4 & 5.

7. Preventive action under Code of Criminal Procedure, Externment proceeding under Maharashtra Police Act, 1951 taken against you, proved to be futile to prevent you from indulging in such activities. You are not gainfully employed, and as such you are likely to continue your criminal and dangerous activities in future in spite of action taken against you by the Police from time to time. Your criminal activities are likely to disturb public order in Mukundwadi and adjoining areas in Aurangabad city.

8. Therefore, I am subjectively satisfied that, with a view to prevent you from acting in any manner prejudicial to the maintenance of public order it is necessary to detain you under the provisions of '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'.

9. 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.

.....

(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.”

10. Although the criminal activities of the petitioner during the period from 2018 to 2020 have not been relied on for passing the order of detention, those have, however, been referred to as a prelude. The detaining authority has specifically recorded in his order that 3 crimes have been considered. Crime No.538/2022 is for an offence punishable under Section 142 of the Maharashtra Police Act. It is in respect of breach of an externment order. The said crime not being under Chapter XVI & XVII of the Indian Penal Code, ought not to have been considered as a basis for passing the order impugned herein. The same suggests non-application of mind. One of the other two crimes relied on pertain to a case of chain snatching, wherein the applicant along with his associate was involved. The other one pertain to intercepting a victim and robbing him of cash amount. The victim therein was made to transfer Rs.6000/- in the Bank account of the petitioner on phone pay. The

victim was made to state to have transferred the said amount towards the compensation on account of damage suffered due to dash given by him with his motorbike to the bike of the petitioner. Then there are two in-camera statements, one is of the victim and the other one is a witness to an incident of chain snatching. Both the witnesses do not give date of the incidents. According to them, those two incidents took place in second and third week of January 2023. Such a vagueness necessarily constitutes prejudice to the petitioner to meet the material relied on by the sponsoring authority for soliciting the petitioner's order of detention. The petitioner would thus be unable to make out his defence of alibi, if any. Had the witnesses given a specific date/ day of the incident, the petitioner would have been in a best position to defend himself. He could have been in a position to state where he was at the material time at which those two alleged incidents did take place. Even we ignore the two in-camera statements, the other two criminal activities of the petitioner coupled with his history of similar crimes may be sufficient for the detaining authority to arrive at a subjective satisfaction to pass the order of detention. We, therefore, do not propose to dwell at length on the first ground of challenge.

11. So far as delay in passing the order impugned herein is concerned, it is to be stated that, first crime relied on took place on 17/12/2022. The second one is dated 24/1/2023. The incidents covered by the in-camera statements are alleged to have taken

place in the second and third week of January 2023. As such, the last incident relied on is of the last week of January 2023, while the order of detention has been passed on 28/4/2023. As such, the impugned order has been passed little over three months after the last crime.

12. The affidavit-in-reply records that there is no delay in passing the order of detention. According to learned A.P.P., there is proximity inter-se the criminal activities of the petitioner considered for the passing of the impugned order and date of the order itself. According to him, the Statute does not prescribe a time limit within which an order of detention is to be passed. Learned A.P.P. would further submit that, when there is no time line prescribed, judicial or quasi-judicial authorities are expected to pass orders within reasonable time. He would further submit that, the Apex Court many a time observed that, a period of three months would be a reasonable time. Learned A.P.P. would further submit that, this Court may give certain directions in this regard. Learned A.P.P. solicits directions in this regard so as to fix a time limit for the detaining authority to pass orders on a proposal for detention under the M.P.D.A. Act. He relied on the following authorities :-

- (1) Abdul Karim Mohd. Shaban Khan Vs. Shri R.H. Mendonca & ors. (1999 ALL MR (Cri) 1801)
- (2) Priyanka Pandit Fulore V. State of Maharashtra 2002(9) SCC 714

- (3) Kakkovayal Kuhbi Hamja V. State of Maharashtra & anr.
1991 (4) BOM.C.R. 509

13. In Abdul Karim (supra), a Division Bench of the
Bombay High Court held,

“Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, Section 3 – Detention order – Delay of three months in passing detention order – Detention order challenged on the ground of delay – Activities of detenu disclosed in C.R. and in-camera statement showing propensity and potentiality of a very grave nature – Held, live link between prejudicial activities and rationale of passing the order was not snapped – Delay not fatal.”

14. In Priyanka Pandit (supra), the Hon'ble Supreme Court
held,

“Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act (55 of 1981), S.3 – Preventive detention – Order challenged on ground of delay in passing the order and that in-camera statements recorded by subordinate officials were accepted by competent authority without verifying the truth – High Court on perusal of the pleading and record of the case giving finding that detention order was neither vitiated due to delay nor on ground of illegality in accepting in-camera statements – Order of High Court proper in view of facts of case appearing from record, nature of activities alleged against detenu – Materials for subjective satisfaction of the authority is unexceptionable – Cogent reasons given by High Court in support of its finding.”

15. In Kakkovayal Kuhbi Hamja (supra), the Division Bench of the Bombay High Court held,

“Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (52 of 1974), S.3 – Delayed detention – Unexplained delay of about eight months in passing detention order – No live-link snapped between the grounds of detention and purpose of detention – Mere unexplained delay not ipso facto fatal to the detention order.”

16. First of the criminal activities relied on is dated 17/12/2022. The second one is of 24th January 2023. A gap between the two criminal activities is of little over 1 month. Both the crimes have been committed by the petitioner while he was under order of externment. He committed breach thereof and entered the vicinity from which he was externed and committed both the offences. The in-camera statements pertain to the incidents of second and third week of January 2023. As such, there is proximity inter-se the criminal activities of the petitioner. Admittedly, the sponsoring authority had put up a proposal before the detaining authority on 13/2/2023 itself. The order of detention has, however, been passed on 28/4/2023 i.e. two and half months (75 days) after receipt of the proposal. There is material to indicate that the sponsoring authority had to request (remind) the detaining authority to consider the proposal. It was a communication dated 24/4/2023 made by Police Inspector, Mukundwadi Police Station to the detaining authority, only thereafter the detaining authority appears

to have taken up the proposal for consideration. The affidavit-in-reply is conspicuously silent to offer any explanation as to why the detaining authority sat on the proposal for little over 70 days. In case of **Pradeep Nilkanth Paturkar Vs. S. Ramamurthi & ors. (1993 AIR SCW 4066)**, it has been observed by the Apex Court that, the delay, whether short or long, has to be explained. In case of **Smt. Hemlata Kantilal Shah Vs. State of Maharashtra & anr. (AIR 1982 SC 8)**, it has been observed that,

“Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily examined by the detaining authority, who is under an obligation to satisfy the Court as to the causes of the delay to show that there was no infraction of Article 22(5) of the Constitution. The authority is, however, in no legal liability to tell or satisfy the detinue as to the causes of the delay.”

17. In case of **Sushanta Kumar Banik Vs. State of Tripura (AIR 2022 SC 4715)**, the Hon'ble Supreme Court observed :-

13. There is indeed a plethora of authorities explaining the purpose and the avowed object of preventive detention in express and explicit language. We think that all those decisions of this Court on this aspect need not be recapitulated and recited. But it would suffice to refer to the decision of this Court in **Ashok Kumar v. Delhi Administration and Ors., (1982) 2 SCC 403**, wherein the following observation is made:

“Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from doing.”

14. In view of the above object of the preventive detention, it becomes very imperative on the part of the detaining authority as well as the executing authorities to remain vigilant and keep their eyes skinned but not to turn a blind eye in passing the detention order at the earliest from the date of the proposal and executing the detention order because any indifferent attitude on the part of the detaining authority or executing authority would defeat the very purpose of the preventive action and turn the detention order as a dead letter and frustrate the entire proceedings.

17. A similar contention was raised in *Suresh Mahato v. The District Magistrate, Burdwan, and Ors.*, (1975) 3 SCC 554, on the basis of the dictum laid down in two decisions of this Court, namely, *SK. Serajul v. State of West Bengal*, (1975) 2 SCC 78, and *Sk. Nizamuddin (supra)* contending that the delay of the arrest of the detenu in that case showed that the detaining authority was not really and genuinely satisfied as regards the necessity for detention of the detenu for otherwise he would have tried to secure the arrest of the detenu promptly and not left him free to carry on his nefarious activities. Bhagwati, J. (as the learned Chief Justice then was) while dealing with this submission, made the following observation:

“Now, there can be no doubt--and the law on this point must be regarded as well settled by these two decisions--that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective

satisfaction of the District Magistrate and it would be a legitimate inference to draw that the District Magistrate was not really and genuinely satisfied as regards the necessity for detaining the petitioner.”

18. Chinnappa Reddy, J. speaking for the Bench in *Bhawarlal Ganeshmalji v. State of Tamil Nadu*, (1979) 1 SCC 465, has explained as follow:

“It is further true that there must be a “live and proximate link” between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is “snapped” if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case, we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the “link” not snapped but strengthened.”

(Emphasis supplied)

19. Sabyasachi Mukharji, J. (as the learned Chief Justice then was) in *Shafiq Ahmed v. District Magistrate, Meerut and Ors.*, (1989) 4 SCC 556, having regard to the fact that there was a delay of two and a half months in detaining the petitioner (detenu) therein, pursuant to the order of detention has concluded that "there was undue delay, delay not commensurate with the facts situation in that case and the conduct of the respondent authorities betrayed that there was no real and genuine apprehension that the detenu was likely to act in any manner prejudicial to public order. The order,

therefore is bad and must go". However, the learned Judge observed that "whether the delay was unreasonable depends on the facts and circumstances of each case."

18. It is reiterated that, the detaining authority sat over the proposal for little over 70 days. It took up the proposal for consideration only after he was requested again on 24/4/2023. The affidavit-in-reply is silent to offer any explanation much less reasonable, of about the delay in passing the order of detention post receipt of the proposal. On this count alone, we are inclined to set aside the order impugned herein.

19. So far as regards submissions of learned A.P.P., urging this Court to issue certain guidelines regarding time frame within which the orders of detention need to be passed by the authorities concerned, it needs to be observed that no such time frame can be prescribed. More so, when the Apex Court has time and again observed that, "Delay ipso facto in passing an order of detention is not fatal for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority."

20. In case of **T.A. Abdul Rahman Vs. State of Kerala & ors., (AIR 1990 SC 225)**, the Hon'ble Supreme Court held :-

"No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in

that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner.”

21. According to us, the detaining authority is expected to take up the proposal for consideration no sooner it is received. Although a period of three months is considered to be a reasonable period, for other matters are concerned, a period of three months cannot be considered to be a reasonable to pass an order of detention post receipt of the proposal in that regard. If there occasions delay of even more than 8 days, the authority concerned is required to explain the same. There may be variety of reasons, resulting into justifiable delay in passing orders. Each case will have to be decided on its peculiar facts and circumstances. If the

delay is found to have been explained, the order of detention would not fail on that ground. It is, therefore, not justifiable to give a time-frame for the detaining authority to pass an order once the proposal for detention is received. Suffice to say that, the detaining authority is expected to pass an order within a period of 8 days from the date of receipt of the proposal in that regard.

22. It is reiterated, since the detaining authority has passed the detention order 75 days after the receipt of the proposal for detention, and the affidavit-in-reply being silent to offer any explanation much less reasonable, we are inclined to set aside the impugned order.

23. In the result, the Criminal Writ Petition is allowed 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/-