

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2672 OF 2022

Ram @ Pappu Arun Kore,
Age : 33 years, Occu. : Nil,
R/o. Hause Wasti,
Amraai, Solapur

...Petitioner

Versus

1. The State of Maharashtra,
(Through the Additional Chief Secretary,
Home Department having office at Mantralaya
Mumbai.)
2. Commissioner of Police, Solapur,
having office at New Administrative Building,
Gandhi Nagar, Solapur.
3. The Superintendent,
Yerwada Central Prison, Pune

...Respondents

Mr. Satyavrat Joshi i/by Mr. Sumant Deshpande, Advocate for
Petitioner.

Mrs. M.H. Mhatre, APP for the Respondent–State.

**CORAM : A.S. GADKARI AND
PRAKASH D. NAIK, JJ.**

RESERVED ON : 5th JANUARY, 2023.

PRONOUNCED ON : 20th JANUARY, 2023.

JUDGMENT – (PER : PRAKASH D. NAIK, J.) :-

1. Petitioner has invoked writ jurisdiction of this Court under Article 226 of Constitution of India and assailed the Order of Detention dated 27th April, 2022 issued by the Respondent No.2 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 (for short 'M.P.D.A. Act'), directing that, the Petitioner be detained with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. The grounds of detention dated 27th April, 2022 on the basis of which the Impugned Order of Detention was issued and the documents relied upon by the Detaining Authority were supplied to the Petitioner / detenu.

2. The grounds of detention stipulate that the Impugned Order of Detention is based on the offence registered against the Petitioner vide C.R. No.138 of 2022 with Faujdar Chawadi Police Station on 7th March, 2022 under Sections 143, 144, 147, 148, 149, 336, 327, 354, 452, 323, 324 of Indian Penal Code (for short 'IPC') r/w Sections 4 and 25 of Indian Arms Act. The Detention Order is also based on statements of two witnesses recorded in camera on 19th March, 2022 and 22nd March, 2022. The Detaining Authority was subjectively satisfied that the Petitioner is acting in manner prejudicial to the maintenance of public order.

3. The first ground urged by learned Advocate for Petitioner is that the incidents in question considered by Detaining Authority for issuing Order of Detention would at the most affect the law and order situation and not maintenance of public order. The incident

in C.R. No.138 of 2022 had occurred in the house of complainant. It is between individuals and has no connection with society at large. The statements of witnesses A and B were recorded on 19th March, 2022 and 22nd March, 2022 respectively. These witnesses have referred to the alleged incident which had occurred in second week of February-2022 and fourth week of February-2022. The subjective satisfaction as to how and what manner the acts of the Petitioner are prejudicial to the maintenance of public order is not found in the grounds of detention. It is nowhere mentioned in the grounds of detention as to how the acts and conduct attributed to the Petitioner has caused breach of public order or it had disturbed the even tempo of public life. The acts attributed to the Petitioner were mostly individualistic in nature. The statements of said witnesses 'A' and 'B' were recorded after the Petitioner was granted bail in C.R. No.138 of 2022. While the Petitioner was in custody the said witnesses did not come forward to depose against the Petitioner. The statements do not inspire confidence.

4. Learned Advocate for the Petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of *Rameshwar Shaw V/s. District Magistrate, Burdwan And Another, (1964) 4 SCR 921* and decision of this Court in *Shivkumar Dadeshwaran Devendra V/s. The State of Maharashtra and Ors., dated 15th June,*

2022 delivered in Criminal Writ Petition No.3309 of 2021.

5. Learned APP submitted that the facts reflected in C.R. No.138 of 2022 and the incidents referred to by witnesses A and B clearly indicate that the incidents were affecting maintenance of public order and not merely law and order situation. On the basis of material related to C.R. No. 138 of 2022 and the statements of witnesses A and B which were verified as true the Detaining Authority came to the conclusion that the Petitioner is dangerous person within the meaning of Section 2(b-1) of the M.P.D.A. Act and that his activities are prejudicial to the maintenance of public order.

6. The second ground urged by the learned Advocate for the Petitioner is that the Detaining Authority has considered past criminal cases of the Petitioner. Those are stale cases which lacks the proximity with the impugned Order of Detention. The satisfaction to be arrived at by the Detaining Authority must be based on relevant material and not stale. It should have a live link with satisfaction of Detaining Authority. In three cases referred to therein the Petitioner is acquitted. In the Paragraph No.4 of ground of detention the Detaining Authority has referred to eight cases registered against the Petitioner. In Paragraph No.4.2 the Detaining Authority has referred to detention of Sachin @ Bobby Sambhaji

Shinde under M.P.D.A. Act vide Order dated 27th January, 2017 and described him as associate of the Petitioner. There is no material to show that he is associate of Petitioner. The copy of said Order of Detention has not been supplied to Petitioner.

7. Learned Counsel for the Petitioner has relied upon the decision of the Supreme Court in the case of *Khaja Bilal Ahmed V/s. State of Telangana And Others*, (2020) 13 SCC 632.

8. Learned APP submitted that in first para of the grounds of detention it is stated that the detenu is communicated with the grounds as mentioned in Paragraph No.5 on which detention order has been issued. Thus the Detaining Authority has relied upon one incident mentioned in Paragraph No.5 of the grounds of detention and two in camera statements of witnesses A and B. The list of offences in Paragraph No.4 of the grounds of detention was the past history of the detenu. The Detaining Authority has not considered past cases or detention order of Sachin @ Bobby Sambhaji Shinde for forming subjective satisfaction for issuing Order of Detention.

9. Learned APP has relied upon the decision of this Court in the case of *Shital alias Nitin Bhimrao Kharat V/s. The District Magistrate, Satara and Others in Criminal Writ Petition No.1816 of 2021 on 16th November, 2021*.

10. The third ground urged by the learned counsel for the Petitioner is that there is delay in reporting the Order of Detention to the State Government. As per Section 3(3) of the M.P.D.A. Act, when any order is made under the said Section, by an officer mentioned in Sub-Sectin (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter. In the affidavit of Deputy Secretary, Government of Maharashtra, it is disclosed that the report under Section 3(3) of Act was received from the Detaining Authority by the Government on 29th April, 2022. The Detention Order was issued on 27th April, 2022. Thus, the report was not communicated forthwith which violates Section 3(3) of the Act.

11. Learned Advocate for the Petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of *Hetchin Haokip V/s. State of Manipur And Others*, (2018) 9 SCC 562 and decision of this Court in the case of *Sachin Parshuram Mane V/s. The Commissioner of Police, Pune City & Ors.*, 2022 ALL MR (Cri.) 2566.

12. Learned APP submitted that there is no delay in reporting the detention to the State Government. The Order of Detention was issued by the Commissioner of Police, Solapur on 27th April,

2022. The Order of Detention with requisite documents was dispatched from Solapur on the same day, through special messenger and reported to State Government on 29th April, 2022. Section 3(3) of M.P.D.A. Act has been complied.

13. The first ground advanced at the instance of the Petitioner is that there was no material to come to the conclusion that the Petitioner in indulging in activities prejudicial to the maintenance of public order. C.R. No.138 of 2022 was registered with Faujdar Chawadi Police Station for the offence referred to hereinabove. The Petitioner and his associates entered into the house of complainant and assaulted her son and dragged him out of house. The complainant shouted for help. The Petitioner and his associates were holding swords in their hands and assaulted complainant's son with iron rods. The Petitioner and co-accused snatched gold ornaments of complainant. The accused pelted stones on the house of complainant and created terror by raising swords and iron rods. Fear was created in the minds of surrounding people and they started running towards their houses and shut doors. Witness A has stated that the Petitioner and his associates demanded hafta. He was assaulted. The Petitioner and his associates threatened members of public and pelted stones on houses. People started running helter skelter. The Petitioner

threatened the witness with knife. He was assaulted. Witness B has stated that the Petitioner and his associates came to his shop holding sword, iron pipe, lathis and demanded money. Shopkeepers closed shops. People started running. No one came for the help of witness. The statements were verified by Assistant Commissioner of Police. All these incidents certainly disturbs the even tempo of society and are prejudicial to maintenance of public order. Assuming that one of the ground does not fall within purview of public order, the detention order would sustain on other ground in view of Section 5-A of the M.P.D.A. Act. In the case of Rameshwar Shaw V/s. District Magistrate, Burdwan And Another (Supra) the Apex Court has explained concept of public order and law and order. It was observed that the Detaining Authority must be satisfied that the detention of person is necessary in order to prevent him from acting in any prejudicial manner affecting maintenance of public order. In the present case the Petitioner and his associates created terror amongst people. They were armed with dangerous weapons. Fear was created in the minds of surrounding people and shopkeepers. Hence, the submission of learned counsel for Petitioner deserves to be rejected.

14. The second submission urged on behalf of the Petitioner relates to past cases referred in Paragraph No.4 of grounds of

detention and detention order of Sachin @Bobby Sambhaji Shinde. The grounds of detention does make reference to the cases registered against the Petitioner in the past. The contention of Petitioner is that stale cases are relied upon for issuing detention order. In the introductory paragraph of grounds of detention it is specifically stated that the detenu is communicated with the grounds mentioned in Paragraph No.5, below on the basis of which a detention order has been issued against him under Section 3(2) of the Act. Paragraph No.5 clarifies that detention order is based on offence registered against Petitioner and in camera statements. Thus, the Impugned Order is made on the basis of C.R. No. 138 of 2022 and two in camera statements of witnesses A and B. In Paragraph No.6 it is categorically stated that the Detaining Authority has carefully gone through the relied C.R. as mentioned in Paragraph No.5.1 and in-camera statements mentioned in Paragraph Nos.5.3 and 5.4 placed before him and he is subjectively satisfied that the Petitioner is acting in a manner prejudicial to the maintenance of public order. Thus, the cases referred to in Paragraph No.4 and the Detention Order of Sachin Shinde referred to in Paragraph No.4.2 are not the basis of Order of Detention. In the case of Khaja Bilal Ahmed V/s. State of Telangana And Others (Supra) relied upon by the learned counsel for the Petitioner in

Paragraph No.23 it was observed that the Order of Detention may refer to the previous criminal antecedents only if they have a direct nexus or link with immediate need to detain an individual. If the previous criminal activities of detenu could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the Detaining Authority. In the absence of a clear indication of a causal connection a mere reference to pending criminal cases cannot account for the requirement of Section 3. In the present case the grounds specifically refers to material on which Order of Detention is issued. There is no indication of causal connection. The aforesaid Judgment of the Supreme Court was placed for consideration before this Court in the case of Shital alias Nitin Bhimrao Kharat V/s. The District Magistrate, Satara and Others passed in Criminal Writ Petition No.1816 of 2021 (Supra). While considering the said decision of Apex Court it was observed by this Court that the Supreme Court, has observed that the Order of Detention may refer to the previous criminal antecedents only if they have direct nexus or link with the immediate need to detain an individual. If the previous criminal activities could indicate the detenu's tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the

subjective satisfaction of the Detaining Authority. However, in the absence of clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the necessary requirement. It was not open to the Detaining Authority to simply refer to stale incidents and hold them a basis of Order of Detention. This Court then observed that offences referred to in the said case in Paragraph No.5 of the ground of detention does not show the live link with detenu's past activities. The same observations are applicable in the present case. The antecedents referred to in Paragraph No.5 does not show the live link with detenu's past activities. The subjective satisfaction of the Detaining Authority in the present case does not indicate that the cases referred to in Paragraph No.4 of the grounds of detention and the Detention Order of Sachin Shinde has bearing in arriving at the subjective satisfaction for issuing Order of Detention against the detenu. Hence the submission is devoid of merits and deserves to be rejected.

15. The third ground pertains to compliance of Section 3(3) of M.P.D.A. Act. The Detention Order was issued by the Commissioner of Police, Solapur on 27th April, 2022. Vide special messenger sent from Solapur on the same day report contemplated under Section 3(3) of M.P.D.A. Act was sent and it was received by State

Government at Mantralaya, Mumbai on 29th April, 2022.

16. Section 3(3) of the M.P.D.A. Act reads as follows :-

When any order is made under this Section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and so such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

17. In the case of Hetchin Haokip V/s. State of Manipur and Others (Supra) the Order of Detention was reported to the State Government, after five days. The High Court dismissed the Petition holding that the scope of Section 3(4) National Security Act, 1980 has to be understood according to the scheme of the Act and not in isolation. The Apex Court made reference to its previous decision in the case of *Keshav Nilkanth Joglekar V/s. Commissioner of Police, AIR 1957 SC 28*, wherein the Court has examined the meaning of “forthwith” in the context of statutes providing for preventive detention. Section 3(3) of the Preventive Detention Act, 1950 which was similar to Section 3(4) of the N.S.A. was

interpreted. The Court compared the text of Section 3(3) with Section 7 (equivalent to Section 8 of N.S.A.). It was observed that “forthwith” is different from “as soon as may be” in that, under Section 7 the time permitted is “what is reasonably convenient”. Whereas under Section 3(3), only that period of time is allowed, where the authority could not, without its own fault, send the report. The Court laid down the following test for determining whether the action of the authority was compliant with the “forthwith” requirement.

“10. Under Section 3(3) it is whether the report has been sent at the earliest point of time possible and when there is an interval of time between the date of the order of the date of the report, what has to be considered is whether the delay in sending the report could have been avoided.”

The Apex Court also referred to another decision of the Constitution Bench in the case of *Bidya Deb Barma V/s. Distt. Magistrate, Agartala, AIR 1969 SC 323*, wherein it was held that, when a statute requires something to be done “forthwith” or “immediately” or even “instantly”, it should probably be understood as allowing a reasonable time for doing it”. Reference is also made to another decision of Supreme Court in the case of *Salim V/s. State of W.B. 1976 SCC (Cri) 290*, wherein it is observed that laws

of preventive detention must be construed with the greatest strictness. However, the rule of strict interpretation does not mean that the act has to be done instantaneously, or simultaneously with the other act, without any interval of time. The Court was dealing with Section 3(3) of the maintenance of Internal Security Act, 1971 which is equivalent to Section 3(4) of N.S.A. After analyzing the observations in aforesaid decisions, it was held that, from the above cases, the position that emerges is that “forthwith” under Section 3(4) of National Security Act, does not mean instantaneously, 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 facts of the case. In Keshav Nilkanth Joglekar V/s. Commissioner of Police (Supra) case 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. It was further observed that the expression “forthwith” under Section 3(4), must be interpreted to mean within reasonable time and without any undue delay. This would not mean that the Detaining Authority has a period of

twelve days to submit the report to the State Government from the date of detention. The Detaining Authority must furnish the report at the earliest possible. Any delay between the date of detention and the date of submitting the report to the State Government, must be due to unavoidable circumstances beyond the control of the authority and not because of administrative laxity. Applying the principles enunciated in aforesaid decisions and interpretation of word “forthwith” to the case before us, we do not find that there was any delay in reporting the detention order to State Government. This Court in the case of Sachin Parshuram Mane V/s. The Commissioner of Police, Pune City and Ors. (Supra) has observed that the justification given for the delay in submitting the report to the State Government is contrary to Section 3 of M.P.D.A. Act. It is mandated that the Act provides that when a detention order is made, it shall be “forthwith” reported to the State Government alongwith the grounds on which the order is made and any other relevant facts. It is not clear how much was the delay in sending report to State Government and what explanation was tendered by authority. Thus, in the case before us there was a gap of one day in reporting the Order of Detention to State Government and in the circumstances stated above it would not violate Section 3(3) of the Act. We do not find any substance in the

submission of learned Advocate for Petitioner.

18. In the light of the aforesaid observations, we do not find any merits in the grounds of challenge urged by the Petitioner and the Petition is required to be dismissed.

ORDER

i. Criminal Writ Petition No.2672 of 2022 stands dismissed.

ii. Rule is discharged.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]