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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1210 OF 2023**

Vishal Vijay Chaphalkar
Age: 32 years,
R/o Pendharkar Colony,
Behind Mahajan Hospital,
Slum Area, Jailroad, Nashik
Road, Nashik.

...Petitioner

Versus

1. State of Maharashtra
(Through Commissioner of Police, Nashik)
2. Section Officer, Home
Government of Maharashtra
Home Department (Special)
Mantralaya, Mumbai.
3. The Jail Superintendent
Nashik Central Prison, Nashik

...Respondents

Mr. Raviraj Paramane Advocate for the petitioner
Ms. S. D. Shinde, APP for the State

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 14th JULY 2023.

JUDGMENT : (PER: GAURI GODSE, J.)

1. Heard. By this petition, the petitioner prays for quashing and setting aside the order of detention dated 20th September 2022 issued by

respondent no. 1- Commissioner of Police, Nashik, against the petitioner under sub-section (2) of 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 ('MPDA' Act).

2. In the order of detention, the detaining authority has relied upon two recent offences registered against the petitioner vide C.R. No. 170 of 2022 registered with Nashik Road Police Station for offence punishable under section 142 of the Maharashtra Police Act and C.R. No. 118 of 2022 registered with Upnagar Police Station for offence punishable under sections 326, 323, 504, 143, 147, 148, 149 of the Indian Penal Code read with sections 135, 142 of Maharashtra Police Act read with section 4/25 of Arms Act and two confidential in-camera statements. The detaining authority has taken into consideration the date of arrest of the petitioner as well as his date of release on bail and the chargesheet filed against the petitioner. The detaining authority has reproduced the gist of in-camera statements referring to the incidents of 2nd June 2022 and 3rd June 2022. Thus, by relying upon two C.R.'s

registered against the petitioner as well as the allegations made in the in-camera statements, the detaining authority has arrived at a subjective satisfaction that the criminal activities of the petitioner are prejudicial to the maintenance of public order and hence, issued the order for detaining the petitioner.

3. The petitioner has raised various grounds to challenge the order of detention; however, has pressed into service grounds raised in clause (n) of paragraph 5 of the petition, which reads as under:

“n. The alleged act of assault took place in the month of May 2022, witnesses were threatened and robbed on 02nd and 3rd of June 2022 and in-camera statements were belatedly recorded on 25th and 27th June 2022, with only motive to fill up the gap and pass the detention order. If the alleged activities of the petitioner were so prejudicial to the maintenance of public order the concerned authorities should have acted promptly without any loss of time. Hence the order of detention passed belatedly shows the casual and cavalier attitude of the authorities to take prompt and immediate action. The order of detention is illegal and bad in law for delay in passing order of detention, liable to be quashed and set aside.”

4. Learned counsel for the petitioner submitted that C.R. registered against the petitioner are stale incidents, and the allegations made in the C.R., as well as in-camera statements, do not fulfill the ingredients of public disorder. He further submitted that there is no live link between the allegations against the petitioner as per both the CRs and the order of detention. He further submitted that there is no material to show that the acts of the petitioner in the alleged crimes and the in-camera statements of the witnesses have any relevance or proximity with the maintenance of public order. The learned counsel submitted that the alleged assault took place in the month of May 2022, and as per in-camera statements, the witnesses were threatened and robbed on 2nd June 2022 and 3rd June 2022. The learned counsel submitted that the in-camera statements were belatedly recorded on 25th June 2022 and 28th June 2022 only to fill up the lacuna for issuing the detention order. The learned counsel thus submitted that the concerned authority has not acted promptly and has issued the detention order belatedly in a casual manner, and thus, the delay in issuing the detention order has rendered the continued detention of the petitioner illegal and impermissible.

5. In support of his submissions, the learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of *Austin William Luis Pinto Vs. Commissioner of Police, Greater Mumbai & Ors*,¹ *Ahmed Mohaideen Zabbar Vs. State of T.N. and others*² and *Pradeep Nilkanth Paturkar Vs. Ramamurthi and others*³.

6. Learned counsel for the petitioner, by relying upon the aforesaid decisions, submitted that the unexplained delay in issuing the detention order after around more than three months shows that there is no live link between the allegations against the petitioner and the date of issuance of the detention order. He, therefore, submitted that the detention order is illegal and continued detention of the petitioner is impermissible, and hence, the order of detention be set aside, and he be released forthwith.

7. Learned APP relied upon an affidavit dated 25th May 2023 of Mr. Ankush Shinde, Commissioner of Police, Nashik City-the detaining authority, as well as an affidavit dated 13th June 2023 of Mr. Anil Eknath

1 2005 ALL MR (Cri) 28

2 (1999) 4 Supreme Court Cases 417

3 AIR 1994 Supreme Court 656

Kulkarni, Joint Secretary, Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai in support of the order of detention. Learned APP submitted that the in-camera statements of two witnesses were recorded by Senior Police Inspector, Upnagar Police Station, Nashik City, on 25th June 2022 and 28th June 2022. In the said statements, witnesses narrated the incident taken place on 2nd June 2022 and 3rd June 2022, respectively. She submitted that thereafter proposal dated 20th July 2022 was submitted by the sponsoring authority for the issuance of an order of detention. The office of Assistant Commissioner of Police, Division-IV, Nashik City, received the same on 21st July 2022, and after verifying the truthfulness and genuineness of the said statements by the Assistant Commissioner of Police on 22nd July 2022, the proposal, along with the compilation of documents was further submitted to the Deputy Commissioner of Police Zone – II on 27th July 2022. She further submitted that the Deputy Commissioner of Police Zone-III Nashik City thereafter proceeded to scrutinise and consider the proposal and an endorsement on the same and forwarded it to the detaining authority on the same day. She submitted that the said

proposal, along with the compilation of the documents, was submitted to the Assistant Commissioner of Police (Crime) Nashik City on 28th July 2022, and after scrutiny, it was sent to the sponsoring authority on 22nd August 2022. Learned APP further submitted that the proposal was submitted back to the Senior Police Inspector, Central Crime Branch, who again scrutinised the said proposal and made an endorsement on the same and forwarded it to the Assistant Commissioner of Police (Crime) on 5th September 2022. The learned APP further referred to the affidavit and submitted that the Assistant Commissioner of Police (Crime) Nashik City made an endorsement on the proposal after scrutiny and forwarded it to the Deputy Commissioner of Police (Crime) on 13th September 2022. She submitted that the Deputy Commissioner of Police (Crime), after perusal, scrutiny and endorsement, forwarded the said proposal along with documents to the detaining authority on 20th September 2022. Thereafter, the detaining authority, after again considering the material placed before him, issued the order of detention against the petitioner.

8. Learned APP relied upon the various dates mentioned in the

affidavit, thereby showing that approximately 20 dates had gone into holidays from the date of receipt of the proposal from the sponsoring authority and issuance of the detention order. Learned APP thus submitted that there was no delay in issuing the detention order and that the entire period has been well explained in the affidavit and the steps taken for the purpose of scrutiny of documents and issuance of detention order as per the proposal submitted by the sponsoring authority. Learned APP in support of her submissions relied upon the following decisions:

- I. *Vishal Ananda Mahabal Vs. The State of Maharashtra and others*⁴.
- II. *Deepak Govind Murudkar Vs. S R H Mendonca, Commissioner of Police*⁵.
- III. *Shri. Nagnarayan Saryu Singh Vs. Shri. A. N. Roy & Ors.*⁶
- IV. *Mr. Manzoor @ Mansoor @ Manoj Ahmed Sayed Ahmed Vs. Shri. R. H. Mendonca, Commissioner of Police and others.*⁷

4 Writ Petition No. 2702 of 2021

5 2000 LawSuit (Bom) 147

6 2006 ALL MR (Cri.) 2147

7 2000(5) Bom.C.R. 632

V. Amar alias Amarsingh Gulabsingh Rathod Vs. State of Maharashtra and another.⁸

9. Thus, by relying upon the aforesaid decisions, the learned APP submitted that there was no delay in issuing the detention order and that prompt action was taken by all the concerned authorities after receipt of the proposal from the sponsoring authority.

10. We have considered the submissions made by both parties. For considering the ground raised on behalf of the petitioner to challenge the order of detention, it is necessary to note the following dates:

- 1st May 2022: Incident and registration of CR 118/2022 for the offences punishable under the offences punishable under sections 326, 323, 504, 143, 147, 148, 149 of the Indian Penal Code read with sections 135, 142 of Maharashtra Police Act read with section 4/25 of Arms Act
- 2nd and 3rd June 2022: Incidents of in-camera statements
- 3rd June 2022: C.R. No. 170 of 2022 was registered for offence punishable under section 142 of the

⁸ 2003 ALL MR (Cri.) 1671

Maharashtra Police Act

- 4th June 2022: petitioner was arrested
- 10th June 2022: petitioner was released on bail
- 25th and 28th June 2022: in-camera statements of two witnesses were recorded
- 20th July 2022: the proposal was submitted by the sponsoring authority
- 20th September 2022: order of detention was issued

11. Perusal of the affidavit filed on behalf of the detaining authority refers to various dates and steps taken by the concerned authorities on the proposal submitted by the sponsoring authority. The affidavit also refers to various dates, thereby contending that 20 days had gone in holidays from the date of receipt of the proposal and issuance of the detention order. It is pertinent to note that after the petitioner was released on bail on 10th June 2022, in-camera statements are recorded referring to incidents prior to his arrest. However, there is no explanation given in the affidavit to show the live link of the allegations against the petitioner with respect to the C.R. registered on 1st May 2022 and 3rd June 2022 and the date of detention order dated 20th

September 2022.

12. This Court, in the case of *Austin Pinto*, had held that delay in recording in-camera statements and absence of any explanation for not recording the statements when the detenu was in custody vitiated the order of detention. Even in the case of *Austin Pinto*, the in-camera statements referred to the incidents that occurred prior to the arrest of the detenu and the in-camera statements were recorded after the detenu was released on bail. In the decision in the case of *Austin William Pinto* this Court has held that the delay in recording statements has an adverse impact on the detention order, more so when the delay has not been explained properly. This Court held that the cumulative effect of the delay is that the detention order has been vitiated on account of the delay in issuing the order. Thus, the principles laid down in the case of *Austin Pinto* squarely apply to the facts of the present case.

13. The Hon'ble Supreme Court, in the case of *Ahmed Mohaideen Zabbar*, has held that in the absence of any satisfactory explanation for issuing the detention order in time, it has to be held that passing the

order of detention is unreasonable. In the said case detention order was passed by exercising powers under the COFEPOSA Act 11 months and 15 days after the adjudication proceedings before the customs authority was completed. In the case of ***Pradeep Nilkanth Paturkar***, the detention order was passed by exercising powers under the MPDA Act after 5 months and 8 days from the date of the registration of the last case and more than 4 months from submission of the proposal and the statements of the witnesses were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him. Thus, the Hon'ble Supreme Court, by taking into consideration the unexplained delay, quashed the detention order.

14. So far, reliance placed by the learned APP on the decision of this Court, in the case of ***Vishal Mahabal***, is concerned; this Court was dealing with a ground of challenge raised on behalf of the detenu that there is no live link between the last incident and the order of detention and that the period should be computed from the date of registration of CR and not from the dates of incidents referred to in the in-camera statements. Unlike the facts of the present case, in the said case of ***Vishal***

Mahabal, the date of the incident referred to in the in-camera statements as well as the date of recording the in-camera statements is after the detenu was released on bail. Thus, the nature of the ground of challenge raised in the present case was not under consideration in the case of ***Vishal Mahabal***. Thus, in our view, even the principles laid down in the case of ***Vishal Mahabal***, will not apply to the facts of the present case.

15. This Court, in the case of ***Deepak Murudkar***, has held that the delay has to be computed from the date of the last in-camera statement and not from the date of CR. This Court, in the case of ***Nagnarayan Saryu Singh***, considered the facts of that case that the detaining authority, after considering all the aspects of the matter, was subjectively satisfied with the genuineness of the material placed before it and thus, held that verification of statements by the officer of the level of Assistant Commissioner of Police is a sufficient check to hold that the statements are genuine. On perusal of facts in the case of ***Nagnarayan Saryu Singh***, it reveals that the incidents referred to in the in-camera statements had occurred after the detenu was released on bail, and thus the in-camera statements were also recorded after the detenu was set free.

16. However, in the case at hand, the incident referred to in one of the two in-camera statements is one day prior to the date of arrest of the detenu, and in another statement, the incident is of the same day when the second CR was registered, and the Petitioner was arrested on the next day of registration of FIR. The in-camera statements are recorded 15 days after the detenu is released on bail. More so, there is no objectionable activity attributed against the detenu after he is released on bail; thus, in our view, the principles laid down by this Court in the case of *Deepak Murudkar* as well in the case of *Nagnarayan Saryu Singh* will not apply in the present case.

17. In the case of *Amar alias Amarsingh Gulabsingh Rathod*, this Court negated the ground of challenge of the detenu that there is no live link between the criminal activity of the detenu and the order of detention. In the said case, the incidents of the in-camera statements had taken place after the detenu was released on bail. Thus, having regard to the fact that after the detenu was released on bail, he had indulged in activities prejudicial to the maintenance of public order, it was held that there was no merit in the ground of challenge. Thus, even this decision is

not applicable to the facts of the present case.

18. Thus, the principles laid down in the decisions relied upon by the learned APP are not applicable to the facts of the present case. The decisions relied upon by the learned counsel for the petitioner squarely apply to the facts of the present case. In the present case, the detention order is passed after more than four and half months after the registration of the first CR, and the in-camera statements recorded 15 days after the Petitioner was released on bail refer to the incidents that occurred prior to the arrest of the Petitioner. The second CR registered was for the alleged offence punishable under section 142 of the Maharashtra Police Act, which is a bailable offence and the date of registration of CR is prior to more than three months of the order of detention.

19. In the case of **Pranali Yogesh Karkhandis Vs. The State of Maharashtra and others**⁹, having similar facts, we (Coram: Revati Mohite Dere and Gauri Godse, JJ), by relying on the principles of law laid down by the Hon'ble Supreme Court in the decisions of *Pradeep*

9 Cri. Writ Petition St. No. 6657 of 2023 dt. 1st August 2023

*Paturkar, Sama Aruna Vs. State of Telangana and Ors*¹⁰ and *Banka Sneha Sheela Vs The State of Telangana and Others*¹¹ and this Court, in the case of *Austin Pinto*, as well as in the case of *Shivkumar Madeshwaran Devendra Vs The State of Maharashtra and others*¹² have held in paragraph 13 as under:

“31. In view of the facts of the present case, we find it necessary to take note of the well-settled principles of law on preventive detention, which holds that all the laws on preventive detention are necessarily harsh, which curtails the personal liberty of a person guaranteed by the Constitution, without a trial; hence, the court has a duty to enquire about the genuineness of the decision of the executive. Considering the aforesaid, we find that in the present case, since the in-camera statements are not recorded when the detenu was in custody raises doubt on its credibility in as much as the incidents referred to in the in-camera statements are prior to the date of arrest of the detenu and the in-camera statements are recorded only fifteen days after the detenu is released on bail; and there are no efforts taken by the police to challenge the

¹⁰ (2018) 12 SCC 150

¹¹ (2021) 9 SCC 415

¹² Cri. Writ Petition No. 3309 of 2021 dt. 15.6.2022

order granting bail or apply for cancellation of bail by taking recourse to the well-known remedies of ordinary law. Hence, if the in-camera statements are ignored, the order of detention stands based only on one CR, which is registered more than 4 months prior to the date of the detention order. It is important to note that no case is made out that after the detenu was released on bail, he has indulged in any objectionable activity till the date of proposal or even till the date of order of detention. Hence, the stale and solitary case relied upon by the Detaining Authority fails to show any live link with the order of detention and is not sufficient to hold the petitioner as a habitual offender. Thus, we see no reason to invoke the provisions under the preventive detention statute instead of taking recourse to the well-known remedies under ordinary law.”

20. Thus, in view of the aforesaid, the unexplained delay in the issuance of the detention order has vitiated the order of detention and rendered the continued detention of the petitioner illegal and impermissible. Hence, in view of the aforesaid reasons, the following order is passed:

ORDER

I. Petition is allowed and Rule is made absolute in terms of prayer clause 'b', which reads as under:-

“b. The Order of Detention bearing dated 20th September 2022 issued against the Petitioner under Section 3 of M.P.D.A. Act 1981 by the Respondent No.1 be quashed and set aside and on quashing the same the Petitioner be ordered for release forthwith;”

II. The detenue is set at liberty forthwith, if not required in any other case.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.