

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 2965 OF 2022**

Menna Tai Hanif Patel

...Petitioner

Versus

1. Shri Amitabh Gupta,
Commissioner of Police, Pune City.
2. The State of Maharashtra
3. The Superintendent of Jail,
Aurangabad Central Prison, Aurangabad.
4. The Secretary, Advisory Board (MPDA)
Mantralaya, Mumbai.

...Respondents

Mr.Misbaah Solkar with Ms.Neha Thakkar, Advocate for Petitioner.

Mrs. M. H. Mhatre, APP for Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.****RESERVED ON : 6th JANUARY 2023
PRONOUNCED ON : 24th JANUARY 2023****JUDGMENT:- (Per- PRAKASH D. NAIK, J.)**

1. The Petitioner is the mother of detenu Sahil Hanif Patel, who has been detained under the Provisions of “Maharashtra Prevention of Dangerous Activities of Slumlord, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and persons engaged in Black-Marketing of Essential Commodities Act, 1981” (hereinafter referred to M.P.D.A. Act) vide Order dated 22nd April 2022. The Petitioner has

challenged the said Order of detention by preferring this petition under Article 226 of the Constitution of India. The detenu was served with detention Order, committal Order, grounds of detention and the documents relied upon by detaining Authority while issuing the Order of detention.

2. Learned Advocate for the Petitioner submitted that, C.R. No. 247 of 2021 and C.R. No. 293 of 2021 were individualistic in nature having no connection with public at large and the said incidents does not affect the public Order. Witness A and witness B has referred to stale incidents occurred in the first week of December 2021 and second week of December 2021. The incidents referred by witnesses are not proximate. The statements are not genuine. The impugned Order of detention was issued on 22nd April 2022 after a period of four months from the last incident. The affidavit-in-reply filed by the detaining Authority does not explain the delay in issuing Order of detention. Except transferring the file from one table to another, the Authority did not take effective steps for issuing Order of detention. Time gap spent in moving the file from one Authority to another Authority has not been explained. The delay in issuing detention Order has snapped the live link between activities and need for preventive detention. The detaining Authority has relied upon extraneous material to arrive at subjective satisfaction in as much as documents pertaining to past offences of detenu were placed before detaining Authority which has

influenced his subjective satisfaction while issuing Order of detention.

3. Learned Advocate for the Petitioner has relied upon following decisions:-

- (i) Pushkar Mukherjee Vs. The State of West Bengal.¹
- (ii) Anil Tukaram Mohite Vs. The Commissioner of Police Pimpri Chinchwad and Ors.²
- (iii) Pawan Tukaram Kudale Vs. The Commissioner of Police³
- (iv) Pradeep Nikanth Paturkar Vs. S. Ramamurthi and Ors.⁴
- (v) Shamim Makmood Khan Vs. K. Venkateshan and Ors.⁵
- (vi) Santosh Uttam Gaikwad Vs. District Magistrate, Beed and Ors.⁶
- (vii) Rashid Shaukat Husain Sayyed Vs. The State of Maharashtra and Ors.⁷
- (viii) Sanjeev Vs. The Commissioner of Police, Solapur and Ors.⁸
- (xi) Rahul Vs. The State of Maharashtra⁹.

4. Learned APP has submitted that, the incidents referred to by the detaining Authority affect even tempo of society and causing disturbance to public Order. After proposal was submitted immediate steps

1 1969 SCR (2) 635
2 2021ALLMR(Cri)3794
3 2019ALLMR(Cri)503.
4 AIR1994SC656
5 MANU/MH/0284/2020
6 MANU/MH/0004/2022
7 MANU/MH/1286/2018
8 MANU/MH/2888/2021
9 MANU/MH/1120/2014

were taken for issuing Order of detention which has been elaborately explained in the affidavit-in-reply. The past incidents were not subject matter of detention which is evident from the averment in the grounds of detention. Prompt action was initiated against the detenu. Section 5-A of the Act stipulate that, even if, one ground on the basis of which the detention Order is found non-existent or irrelevant, the detention Order would survive on the other grounds of detention.

5. From the contents of grounds of detention, it is apparent that, the detaining Authority in paragraph No.5 has categorically stated that, the offences considered for passing detention Order are mentioned therein. It is evident that C.R. No.247 of 2021 and C.R. No.293 of 2021 were registered with Dattawadi Police Station against the detenu on 1st November 2021 and 18th December 2021. The detenu was arrested on 9th November 2021. C.R. No.247 of 2021 was registered for offences under Sections 452, 323, 504, 506, 427 of IPC. C.R. No.293 of 2021 was registered for offences under Sections 367, 394, 323, 504 and 506 of IPC. The activities reflected in both the cases would clearly indicate that, the incidents would have impact on the mind of the society. It would affect public Order. The statement of witness A and B were recorded on 12th February 2022 and 15th February 2022. They have referred to the incidents occurred in the first week of December 2022 and second week of December

2021. Both these witnesses have referred to the activities of the detenu. The detenu had demanded money and assaulted the witnesses. The detenu was armed with sword which was pointed on the neck of the witness and he was threatened. It is also stated that, the detenu is always armed with sword and threatening people and committing robbery. Witness B has stated that, the detenu had accosted her and demanded money. He was carrying sickle. She was threatened of dire consequences. All these incidents are not simplicitor infraction of law and Order and would affect the maintenance of public Order. The genuineness of in-camera statements was verified by Assistant Commissioner of Police. In the affidavit in reply the detaining Authority has dealt with the ground relating to delay in issuing Order. It is stated that, the complaint pertaining C.R. No. 293 of 2021 was registered on 18th December 2021. The detenu was arrested on 19th December 2021 and released on bail on 7th March 2022. Charge-sheet was filed on 10th February 2022. During the course of enquiry it was learnt that, the witnesses were not willing to come forward to make complaint openly against the detenu due to terror created by him and his associates. When assurances were given to the witnesses that their names and identity would not be disclosed, two witnesses came forward to given their statements. These statements were recorded on 12th February 2022 and 15th February 2022. Proposal was submitted on 19th February 2022 and forwarded through proper channel. It was scrutinized by various authorities and

thereafter placed before the detaining Authority. The Order of detention was issued on 22nd April 2022. The proposal along with documents was first submitted to ACP, Sinhagad Road, Division Pune, who carefully went through all the papers and gave endorsement and after verification of in-camera statements submitted to DCP, Zone-III on 23rd February 2022. After perusal of proposal with documents the DCP, Zone-III made endorsement and forwarded the proposal to Additional CP West Region on 1st March 2022. After scrutinizing the proposal, the Additional CP West Region made endorsement and forwarded the proposal and documents to PCB, Crime on 10th March 2022. The Senior Inspector of Police, PCB, Crime carefully went through all the papers and gave endorsement and forwarded the proposal to the ACP Crime on 12th March 2022. After carefully went through all the papers, the documents were forwarded to DCP Crime on 22nd March 2022. The DCP Crime went through all the papers and gave his endorsement on 30th March 2022. Thereafter all the papers were forwarded to Additional CP Crime. He gave his endorsement on 8th April 2022. All the papers were put up before detaining Authority on 20th April 2022 and the Order of detention was issued on 22nd April 2022. Considering the explanation given by detaining Authority, we do not find that there was any unexplained delay in issuing Order of detention. The stale cases were not considered for issuing Order of detention. In paragraph 5 of grounds of detention, the particulars of offences considered for passing detention Order are given.

The detaining Authority has relied upon C.R. No.247 of 2021 and C.R. No.293 of 2021 registered with Dattawadi Police Station and two in-camera statements. Past cases were not considered for issuing Order of detention. In paragraph 8 of grounds of detention it is stated that, the detaining Authority has relied upon material mentioned in para 5.1, 5.2, 6.1 and 6.2 of the grounds of detention to arrive at subjective satisfaction that the detenu is a dangerous person as defined in Section 2(b-1) of MPDA Act and his criminal activities are prejudicial to maintenance of public Order.

6. In the case of *Pushkar Mukherjee Vs. The State of West Bengal* (supra) it was observed that the expression "public order" does not take in every kind of infraction of law. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In the case of *Anil Tukaram Mohite Vs. The Commissioner of Police Pimpri Chinchwad and Ors.* (supra) it was observed that, public Order is something more than ordinary maintenance of law and Order. Proper test to distinguish between law and Order and public Order is whether the complained acts led to disturbance of the ordinary tempo of life of the community so as to amount a disturbance of public Order or it merely affected an individual leaving the tranquility of the society undisturbed. It was further observed that, the aspect of delay in processing the proposal and passing the detention Order invariably turns

upon the facts of the given case. Mere delay may not be fatal. However, if the delay is unexplained and has the tendency and to snap the live link between the incidents and the resultant action, delay impairs the action of preventative detention. In the case of *Pawan Tukaram Kudale Vs. The Commissioner of Police* (supra) it was observed that, the detaining Authority has looked into the entire material as contained in the index of documents, but has specifically mentioned that the Order of detention is based only on two CR's of recent, past and two in-camera statements would reflect total non-application of mind on the part of detaining Authority and thus vitiate subjective satisfaction reached by it. In the case of *Pradeep Nilkanth Paturkar Vs. S. Ramamurthy and Ors.* (supra) it was held that, the detention Order was passed after five months and eight days from the date of registration of last case and more than four months from submission of the proposal. The unexplained delay in issuing Order of detention is sufficient to quash the said Order. In the case of *Santosh Uttam Gaikwad Vs. District Magistrate, Beed and Ors.* (supra) it was observed that, the crime considered by detaining Authority is relying to solitary assault on one individual can hardly be said to disturb the public peace. Such incident can at the most raise a law and Order problem. In the case of *Shamim Makmood Khan Vs. K. Venkateshan and Ors.* (supra) it was observed that, there was no plausible explanation as to why the proposal was kept pending by the Deputy Commissioner of Police since no plausible

explanation has been offered for delay in passing detention Order. It will have to be held that, there was delay in passing the detention Order. The Respondents were obliged to state proximity and live link between proceedings for detention and the offences registered against the detenu. In the case of *Rashid Shaukat Husain Sayyed Vs. The State of Maharashtra and Ors.* (supra) it was observed that, the detaining Authority was expected to give a reasonable explanation for delay in issuing Order of detention. Similar view was taken in the decision of this Court in the case of *Sanjeev Vs. The Commissioner of Police, Solapur and Ors.* (supra) and *Rahul Vs. The State of Maharashtra* (supra). In the case of *Hemlata Kantilal Shah Vs. State of Maharashtra and Another*¹⁰ it was 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. The detaining Authority is in no legal liability to tell or satisfy the detenu as the causes of delay. It is under an obligation to satisfy the Court as to the causes of delay to show that, there was no infraction of Article 22 (5) of the Constitution.

7. The grounds urged by the Petitioner are devoid of merits. For the reasons stated herein above the issuing Order of detention deserves to be confirmed.

¹⁰ (1981) 4 SCC 647

ORDER

- (i) Criminal Writ Petition No. 2965 of 2022 stands dismissed.
- (ii) Rule is discharged.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)