

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

CRIMINAL WRIT PETITION NO. 3364 OF 2022

Shubham Sachin Uphale,

Age-21 years,

R/o. Hingne Khurd, Sai Nagar,

Near Sai Temple, Pune

...Petitioner

Versus

1. The Commissioner of Police,
Pune City

2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra)
Mantralaya, Home Department
Mantralaya, Mumbai

3. The Superintendent
Aurangabad Central Prison
Aurangabad.

...Respondents

Ms. Jayashree Tripathi, Advocate for the Petitioner.

Ms. M.H. Mhatre, APP for the Respondent - State.

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

DATE : 3rd JANUARY, 2023.

ORAL JUDGMENT (Per: Prakash D. Naik, J.)

1. The petitioner has invoked the writ jurisdiction of this Court under Article 226 of Constitution of India challenging Order of Detention dated 9th June, 2022 issued by Commissioner of Police, Pune City under Section 3(2) of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons

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engaged in Black-marketing Essential Commodities Act, 1981. (for short “M.P.D. Act”). The impugned Order of Detention has been issued with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public Order. Alongwith the Order of Detention, committal Order dated 9th June, 2022, grounds of detention dated 9th June, 2022 and the documents relied upon by the Detaining Authority, were served upon the petitioner.

2. The Order of Detention is based on C.R. No.537 of 2021 registered with Sinhagad Road, Pune Police Station for offences under Sections 307, 143, 147, 148, 149, 427 and 506 of Indian Penal Code (for short ‘IPC’). On completing investigation charge-sheet is filed and the case is pending before the competent Court. The Detaining Authority has also relied upon statements of two witnesses recorded in camera viz. Witness-A and Witness-B. These statements were recorded on 1st February, 2022 and 5th February, 2022. They have referred to alleged incidents dated 20th December, 2021 and 22nd December, 2021 respectively. The Detaining Authority has arrived at a subjective satisfaction that, the petitioner is a “dangerous person” within the meaning of the M.P.D. Act and his activities are prejudicial to the maintenance public Order and hence it is necessary to detain him to prevent him from acting in such prejudicial manner in future.

3. Learned Advocate Ms. Tripathi for petitioner submitted that, the Order of Detention can be set aside on the sole ground that there has been inordinate delay in issuing the impugned Order of Detention. It is submitted that the Detaining Authority has relied upon C.R. No.537 of 2021 dated 27th December, 2021. The petitioner was arrested on 28th December, 2021 and he had availed bail on 1st April, 2022. In camera statements of witnesses A and B refers to incidents dated 20th December, 2021 and 22nd December, 2021. These statements were recorded on 1st February, 2022 and 5th February, 2022. However, the detention Order was passed on 9th June, 2022. There is gross delay in passing Order of Detention. If the alleged activities of the petitioner were so prejudicial to the maintenance of the public Order, the concerned authority should have acted promptly. The Detaining Authority had not explained the delay caused in issuing Order of Detention.

4. Learned Advocate for the petitioner had relied upon the decision of this Court dated 20th December, 2022 in Criminal Writ Petition No.2675 of 2022, in the case of Majahar @Majju Firoz Shaikh V/s. The State of Maharashtra and Anr. and submitted that, in similar circumstances this Court had set aside the Order of Detention on the ground that there was delay in issuing the detention Order and that the delay was unexplained.

5. Learned APP Ms. Mhatre appearing for respondents submitted that the time taken for issuing the impugned Order has been explained by the Detaining Authority. She relied on the contents of Affidavit-in-reply filed by Detaining Authority. It is submitted that the proposal was submitted on 18th February, 2022. It was forwarded through proper channel. It was scrutinized by various authorities and placed before the Detaining Authority and thereafter, Order of Detention was issued on 9th June, 2022. The proposal was firstly submitted to ACP Sinhagad Raod, Pune who went through the documents and verified the in camera statements and submitted it to DCP, Zone-III of 26th February, 2022. The DCP, Zone-III made endorsement and forwarded the documents to Additional Commissioner of Police, West Region on 3rd March, 2022. The Additional Commissioner of Police, West Region made endorsement and forwarded the proposal and documents to PCB, Crime on 9th March, 2022. The Senior Inspector of Police PCB, Crime gave endorsement and forwarded proposal to ACP, Crime-I on 18th March, 2022. After going through all the papers the ACP, Crime-I gave endorsement and forwarded it to DCP, Crime on 4th April, 2022. The DCP, Crime went through the papers and gave his endorsement on 26th April, 2022 and thereafter all the papers were forwarded to Additional Commissioner of Police, Crime who gave his endorsement

and forwarded the proposal to Joint Commissioner of Police on 17th May, 2022. The Joint Commissioner of Police gave endorsement and thereafter all the papers were put up before Detaining Authority on 3rd June, 2022 and immediately thereafter the Order of Detention was issued. Hence, there was no delay in issuing Order of Detention.

6. The object of preventive detention in the case of present nature is to prevent the detenu from indulging in activities prejudicial to the maintenance of public Order. The Detaining Authority has arrived at subjective satisfaction that the petitioner is indulging in activities which are affecting maintenance of public Order and that he is a “dangerous person” within the meaning of M.P.D. Act. It is expected that prompt action is initiated to adopt preventive measures or else the livelink between the alleged prejudicial activities and need for preventive detention would be snapped. It is settled law that keeping in mind the objective of preventive detention it becomes imperative on the part of Detaining Authority as well as executing authorities to remain vigilant while passing detention Order at the earliest. Any indifferent attitude on the part of the authorities while issuing Order of Detention would defeat the purpose of preventive detention. In the case of *Majahar @ Majju Firoz Sahikh V/s. The State of Maharashtra and Anr.*, we have set aside the Order of Detention on the ground that there was

unexplained delay in issuing the said Order.

7. In the Affidavit-in Reply filed by Detaining Authority the explanation given therein would indicate that proposal was moved from one authority to another delaying the action of preventive detention. The proposal was submitted on 18th February, 2022 and it was firstly forwarded to ACP Sinhagad Road, Pune and than forwarded to DCP, Zone-III on 26th February, 2022. Second authority made endorsement and forwarded the proposal with documents to Additional Commissioner of Police, West Region on 3rd March, 2022. The third authority scrutinized the proposal and forwarded it to PCB, Crime on 9th March, 2022. The Senior Inspector of Police took 9 days to go through the papers and make an endorsement and forwarded it to ACP Crime-I on 18th March, 2022. Thereafter, the proposal was forwarded to DCP Crime after a period of about 15 days. The DCP Crime gave an endorsement on 26th April, 2022, after a gap of about 22 days and thereafter the papers were forwarded to Additional Commissioner of Police, Crime who gave an endorsement and forwarded papers to Joint Commissioner of Police, Pune on 17th May, 2022 i.e. after a period of about 21 days. The Joint Commissioner of Police then gave his endorsement and put up the papers before the Detaining Authority on 3rd June, 2022, which reflects that, the proposal and the documents were moved from one

authority to another who had taken enormous time in forwarding them to another authority. It is pertinent to note that the Detaining Authority has relied upon C.R. No.537 of 2021 registered with Sinhagad Road Police Station. The incident relating to the said case allegedly had occurred on 26th December, 2021. The applicant was granted bail on 1st April, 2022 and he was accordingly released on bail. Statement of Witness-A was recorded on 1st February, 2022 and he had referred to alleged incident dated 20th December, 2021. The statement of Witness-B was recorded on 5th February, 2022 and he has referred to incident dated 22nd December, 2021. The impugned Order of Detention is issued on 9th June, 2022. Considering the aforesaid factual aspects, we are of the considered opinion that there is delay in issuing the Order of Detention which defeats the purpose of preventive detention. Hence, the impugned Order of Detention is required to be set aside.

ORDER

- i. The impugned Order dated 9th June, 2022, bearing OW No./CRIME PCB/DET/UPHALE/176/2022, passed by Respondent No.1 is quashed and set aside.
- ii. Petitioner be set at liberty, if not required in any other case.

- iii. Petition is accordingly allowed in terms of Prayer Clause 'b'. Rule is made absolute.
- iv. All the concerned to act on an authenticated copy of this Order.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]