

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

CRIMINAL WRIT PETITION NO. 3604 OF 2022

Sou. Seema Madhukar Waghmare,
(Mother of Rushikesh@Shubham Madhukar Waghmare)
Age : 55 years, Occ – Housewife,
R/at – Mangwada, Gujrat Colony,
Kothrud, Pune. ... Petitioner

Versus

1. Commissioner of Police, Pune City.
2. State of Maharashtra
Addition Chief Secretary (Home),
Through Section Office (Home Department
Special), 2nd Floor, Main Building,
Mantralya, Mumbai ... Respondents

Mr. Nitin B. Kamble for the Petitioner.
Mrs.M.H. Mhatre, APP for the Respondent–State.

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.**
DATE : APRIL 17, 2023

ORDER - (Per : Sharmila U. Deshmukh, J.):

1. By this petition, filed under Article 226 of the
Constitution of India, the Petitioner– Sou. Seema Madhukar

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Waghmare, who is the mother of the detenu–Rushikesh@Shubham Madhukar Waghmare, has challenged the Detention Order dated 17th June, 2022, bearing OW.NO./CRIME PCB/DET/ WAGMARE/ 188/2022, issued by the respondent no.1–Commissioner of Police, Pune, under Section 3(2) 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 (for short, the “MPDA Act ”).

2. Heard Mr. Nitin Kamble, learned counsel for the Petitioner and Mrs.Mhatre, learned APP for the Respondent–State.

3. The impugned detention order dated 17th June, 2022 is based on two FIR’s i.e. C.R No 28 of 2022 and C.R. No.64 of 2022 and two in-camera statements. FIR vide C.R. No.28 of 2022, was registered on 18th January, 2022 for the alleged offences punishable under Sections 324, 323, 504, 506, 34 of the Indian Penal Code, 1860, and Section 7 of the Criminal Law Amendment Act with the Kothrud Police Station; and FIR vide C.R. No.64 of 2022 was registered on 3rd May, 2022 for the alleged offences

punishable under Sections 324, 323, 504, 506, 34 of the Indian Penal Code, 1860, with the Vishrambagh Police Station. The two in-camera statements of witness “A” and witness “B” were recorded on 30th January, 2022 and 31st January, 2022.

4. On 21st January, 2022, the detenu was arrested in connection with C.R.No. 28 of 2022. On 29th January, 2022, the detenu was released on bail by the learned Magistrate No.1, Pune. On 30th January, 2022, the statement of witness “A” in connection with the incident which is alleged to have taken place on 15th January, 2022 came to be recorded and on 30th January, 2022, the statement of witness “B” in connection with an incident which is alleged to have taken place on 11th January, 2022 came to be recorded. On 1st February, 2022, the detention proposal bearing No.2 of 2022 was forwarded to the Respondent No.1- Commissioner of Police. On 3rd May, 2022, FIR vide C.R.No.64 of 2022 came to be registered at Vishrambagh Police Station for the alleged offences punishable under Sections 324, 323, 504, 506, 34 of the IPC. On 11th May, 2022, the detenu was released on bail by the concerned police station in the said C.R. No.64 of 2022.

5. As regards the C.R.No.28 of 2022 registered with Kothrud Police Station, it is alleged that on 16th January, 2022 at about 7:30 p.m., the complainant alongwith his cousin was

standing at Bhelkenagar at a food-stall and at that time, one Santosh Kanade, stated to be the accomplice of the detenu hit him with kick behind his right ear and slapped him on his face and thereafter, went away on his two-wheeler. Thereafter, the complainant alongwith his brother made inquiry about the detenu and Santosh Kanade and upon finding that he was resident of Gujrat Colony, went to Gujrat Colony and called Santosh Kanade on his mobile.

6. It is alleged that the detenu alongwith Santosh Kanade, and, two other persons came to meet the complainant and abused and slapped the complainant and after abusing thrashed the complainant and his brother with kicks and blows. It is alleged that the detenu hit the complainant on his head with a rod severely injuring the complainant and as such, First Information Report (FIR) bearing C.R No 28 of 2022 came to be lodged on 18th January, 2022 against the detenu.

7. Learned counsel for the Petitioner submits that the FIR vide C.R.No.28 of 2022 was registered on 18th January, 2022, the proposal for detention was forwarded to the Commissioner of Police on 1st February, 2022 and the detention order was passed on 17th June, 2022. As such he would contend that there was no live

and proximate link between the prejudicial activities and purpose of detention. He would further submit that the detention order have been passed after a period of almost four and half months. In support of his contentions, he relies upon the following decisions:

- (i) **Pandurang @ Panda Narayan Garud vs. District Magistrate, Pune and Ors. [2022 DGLS (Bom.) 2380];**
- (ii) **Rushikesh Tanaji Bhoite vs. State of Maharashtra and Others [(2012) 2 SCC 72];**
- (iii) **Abdul Sathar Ibrahim Manik vs. Union of India and others [(1992) 1 SCC 1];**
- (iv) **Ratnamala Mukund Balkhande vs. State of Maharashtra and Ors. [in Criminal Writ Petition No.820 of 2021] decided on 01.07.2022 by Nagpur Bench of this Court;**

8. Per contra, learned APP submits that there is no delay between the alleged criminal activities and passing of the detention order. She would further submit that after the proposal of detention was sent on 1st February, 2022, FIR bearing C.R.No.64 of 2022 came to be registered against the detenu on 3rd May, 2022 with the Vishrambagh Police Station and as such, it cannot be said that there is delay in passing of the detention order. She relies

upon the decision in the case of **Sunila Jain vs. Union of India and Another [(2006) 3 SCC 321]**.

9. Considered the submissions and perused the record and proceedings with the assistance of the learned counsel for the parties.

10. Although several grounds have been raised in the petition assailing the detention order, the learned counsel for the Petitioner has pressed into service Ground 11 (f), which reads as under:

“f) That the Petitioner submits that no fresh cause of action or fresh incidents of crime or criminal activities are observed through the hands of the detenu after the grant bail order dated 11.05.2022 passed by Ld. Magistrate (no.1), Pune. There is undue and long delay between the alleged criminal activities and passing of detention order and detenu authorities has not given any logical satisfactory level reason of detention of the detenu hence as per law laid down in 1994 SC 656 detention order is unfair and unjust and hence required to be set aside by the Hon’ble Court.”

11. The Detention order is assailed on the ground that there is delay in passing of the detention order from the date of

proposal and as such the live and proximate link between the prejudicial activities and the purpose of detention has snapped. For that purpose it will be necessary to refer to the time lines in the present case. C.R No 28 of 2022 was registered on 18th January, 2022; on 28th January, 2022 the detenu was arrested and on 29th January, 2022 the detenu was released on bail; on 1st February, 2022 the proposal for detention was forwarded to the Commissioner of Police and on 17th June, 2022 i.e. after a lapse of almost four months the impugned detention order is passed.

12. Learned APP has submitted that there is no delay in passing the detention order by placing reliance on the FIR bearing C.R No.64 of 2022 which was registered on 3rd May, 2022. It will be apposite to refer to the Affidavit in reply dated 25th November, 2022 filed by the Detaining Authority, where in response to Ground 11 (f), it is stated as under:

“12. With reference to ground 11(f) of the petition, it is denied that there is undue and long delay between the alleged criminal activities and passing the detention order.

It is submitted that the complaint pertaining CR No. 28 of 2022 was registered on 18/01/2022. The detenu

was arrested on 28/01/2022, and thereafter he was released on bail. The Investigation was completed and the charge sheet was filed on 05.05.2022 before the concerned Court.

During the course of confidential enquiry, it was learnt that even though the detenu had committed several offences, the witnesses were not willing to come forward to make any complaint openly against the detenu due to reign of terror which was created by the detenu and his associates. It was only when assurances were given to the witnesses that their names and identifying particulars would not be disclosed that 2 witnesses came forward to give their statements, these statements were recorded on 30/01/2022 and 31/01/2022.

Thereafter the Sponsoring Authority carefully went through all the material they had collected. They then prepared the necessary sets of documents by getting them typed, xeroxed etc. After the necessary sets of documents were ready, they submitted the same alongwith the proposal for the detention of the present detenu.

It is stated that the proposal in this case was submitted on 01/02/2022. This proposal was forwarded through the proper channel. It was carefully considered and scrutinized by various authorities at various levels and thereafter the entire material was placed before me. I say that mean time on 09/06/2022 a letter was received from the Senior Inspector of Police, Kothrud Police Station informing that one more offence vide CR No. 64 of 2022 was registered against the proposed detenu on 03/05/2022 u/s 324, 323, 504, 506, 34 of IPC at Vishrambagh Police

Station and same may be considered as a part of proposal under MPDA Act. I carefully examined all the material placed before me and after arriving at my subjective satisfaction that it was absolutely necessary to detain the Detenu, I passed the Order of Detention on 17/06/2022. I say that the proposal and papers pertaining to the present Detenu was forwarded to the various authorities. Hence, each authority at the different levels had to carefully scrutinize the proposal and papers pertaining to present detenu.

It is submitted that the present proposal alongwith the accompanying papers was submitted as per the usual practice, first to the ACP Kothrud Division, Pune on 01.02.2022, who carefully went through all the papers and after verification of in camera statements gave endorsement and submitted to DCP, Zone III on 03.02.2022. After perusal, securitizing of the proposal with documents the DCP, Zone III made endorsement and forwarded the proposal and documents to the Addl. CP West Region on 18.02.2022. After perusal, securitizing of the proposal Addl. CP West Region made endorsement & forwarded the proposal and documents to PCB, Crime on 21.02.2022. The Senior Inspector of Police, PCB, Crime carefully went through all the papers and gave her endorsement and forwarded proposal to the ACP Crime I on 25.05.2022. After carefully went through all the papers and gave endorsement and forwarded proposal to the DCP Crime on 30.05.2022. The DCP Crime went through all the papers. He gave his endorsement and forwarded proposal to the Jt. CP Pune on 06.06.2022. The Jt. CP Pune gave his endorsement, thereafter all the

papers were put up before me on 13.06.2022.

I say that the proposal and papers of the present detenu alongwith one other committal order-detenu were perused by me and considered by me and I was of the opinion that it is a fit case for detaining the detenu hence I gave approval to the said proposal on 15.06.2022. All the papers were then forwarded to the Senior Inspector of Police, P.C.B. Crime for the purpose of fair typing, for preparing the translation of the documents in the languages known to the Detenu for preparing the necessary sets of documents etc. After completing all the necessary work in the matters i.e typing, translation in Marathi language, etc. the Senior Inspector of Police, P.C.B. Crime., put the papers before me.

I once again carefully went through the proposal and the papers accompanying the same and finalized the grounds of detention and contemporaneously issued the Order of Detention on 17.06.2022.

I further say that there were closed holidays on 4 Saturday, 4 Sunday. I further say that there were 5 proposals were pending for consideration before the authorities.

Hence, time taken for considering the present proposal and issuing the order is reasonable. In view of the facts and circumstances of this case, it is denied that there is any delay in issuing the Order of Detention.

Looking to the facts of this case, it cannot be said that the live link between the prejudicial activities and the

Order of Detention is snapped. So also it cannot be said that the incidents are stale and remote in point of time and/or the detention and grounds of detention are not proximate to the prejudicial activities of the detenu. In any event looking to the propensity and the potentiality of the Detenu to indulge in similar prejudicial activities in future, it cannot be said that the live link is snapped or that the incidents have become stale. It is denied that the Order of Detention is illegal and the said order is issued belatedly. It is further denied that the Order of Detention be quashed and set aside.”

13. Perusal of the above pleadings reproduced from the Affidavit in reply reveals that after the proposal was submitted on 1st February, 2022, the proposal was processed through various authorities and on 21st February, 2022 the proposal was sent to PCB, Crime and the Senior Inspector of PCB Crime forwarded the proposal to the ACP Crime I on 25th May, 2022. There is no explanation tendered in the Affidavit in reply as regards the delay of about three months from 21st February, 2022 to 25th May, 2022.

14. The reliance on the C.R. No. 64 of 2022 registered on 3rd May, 2022 does not support the detention order for the reason that the communication in that respect was addressed by the proposing authority on 9th June, 2022 to the Commissioner of

Police, whereas there is an unexplained delay of three months in the processing of the proposal the period from 21st February, 2022 till 25th May, 2022.

15. The purpose of preventive detention is to prevent the dangerous activities of the detenu prejudicial to the public order and the purpose stands defeated in event of an unexplained delay between the date of the proposal and the order of the Detention Authority, inasmuch as in that case there is no real and genuine apprehension that the detenu was likely to act as a manner prejudicial to the public order. In other words, the live and proximate link between the prejudicial activities and the purpose of detention is snapped.

16. In that context, it may be beneficial to refer to the decision of the Apex Court in the case of **Sushanta Kumar Banik vs State of Tripura reported in 2022 SCC Online 1333**, where the Apex Court has held thus:

“21. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order

of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.”

17. Applying the law laid down by the Apex Court as aforesaid to the facts of the present case, we find that there is no explanation tendered in the Affidavit in reply of the Detaining Authority for the delay of three months from 21st February, 2022 to 25th May, 2022 caused in processing the proposal and resultantly there is delay of about four months from the date of the proposal i.e. 1st February, 2022 till the detention order passed on 17th June, 2022.

18. Hence, the following order.

ORDER

- i) The Petition is allowed;
- ii) The Detention Order dated 17th June 2022 passed by the Commissioner of Police, Pune City, as against the petitioner under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing Essential Commodities Act, 1981 ('MPDA Act'), is quashed and set aside;
- iii) The petitioner be released forthwith, if not required in any other case.

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

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.