

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

**CRIMINAL WRIT PETITION NO.3950 OF 2022**

Anil Venkatesh Bhandari

...Petitioner

Versus

1. The State of Maharashtra
2. Commissioner of Police,  
Pune City, District Pune
3. Jail Superintendent,  
Aurangabad Central Prison,  
Aurangabad.

...Respondents

Mr. Nitin Gaware Patil, Advocate for Petitioner.

Mrs. S. D. Shinde, APP for Respondent-State.

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

**RESERVED ON : 13<sup>th</sup> JANUARY, 2023  
PRONOUNCED ON : 25<sup>th</sup> JANUARY 2023**

**JUDGMENT:- (Per- PRAKASH D. NAIK, J.)**

1. Petitioner 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 detention Order dated 21<sup>st</sup> February 2022 issued by the Commissioner of Police, Pune City. The impugned Order of detention has issued with a view to prevent the detenu from acting in any manner dangerous to health and life of people and prejudicial to the maintenance of public Order. Petitioner has preferred this

writ Petition under Article 226 of the Constitution of India challenging the aforesaid order of detention.

2. Learned Advocate for the Petitioner Mr. Gaware has submitted as under:-

(i) The detaining Authority has considered the list of offences registered against the Petitioner by State Excise Department vide C.R. No. 120 of 2020 dated 21<sup>st</sup> November 2020, C.R. No. 65 of 2021 dated 22<sup>nd</sup> May 2021, C.R. No. 87 of 2021 dated 16<sup>th</sup> July 2021 and C.R. No. 110 of 2021 dated 9<sup>th</sup> September 2021. Petitioner was arrested in these cases and was released on bail. However, the Orders granting bail to the Petitioner in all aforesaid cases were neither placed before the detaining Authority and not supplied to the detenu. Non-placement of the Orders granting bail has affected subjective satisfaction of the detaining Authority and non-supplying of said Orders to the Petitioner/detenu has affected the rights of the detenu to make effective representation under Article 22 (5) of the Constitution of India.

(ii) There has been delay in passing the Order of detention. There is unexplained delay of five months in issuing impugned Order of detention. C.R. No. 87 of 2021 was registered on 16<sup>th</sup> July 2021 under Section 65 (e) of the Bombay Prohibition Act, 1949 and the Petitioner was arrested and granted bail on the same day. C.R. No.110 of 2021 was registered on

9<sup>th</sup> September 2021 for offences under Sections 328 and 34 of the IPC and Section 65(a), 65(e) and 83 of the Bombay Prohibition Act, 1949 and section 2(a)(6) of the Poison Act, 1919. Petitioner was arrested on 13<sup>th</sup> September 2021 and granted bail on 14<sup>th</sup> September 2021. The statement of witnesses A, B, C and D were recorded on 11<sup>th</sup> November 2021, 16<sup>th</sup> November 2021, 20<sup>th</sup> November 2021 and 28<sup>th</sup> November 2021 respectively. Witness A has referred to the incident dated 22<sup>nd</sup> September 2021. Witness B has referred to alleged incident of fourth weeks of September 2021. Witness C has not specified exact day of incident. Witness D had referred to incident which had allegedly occurred 4 months prior to date of recording statement. The Order of detention was issued on 21<sup>st</sup> February 2022. The Detaining Authority has not explained the time consumed for issuing the Order of detention. The delay has snapped the live link between the alleged incidents and need for passing Order of detention.

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

(i) *Namrata Avinash Kadu Vs. State of Maharashtra and Another*<sup>1</sup>.

(ii) *Judgment dated 12<sup>th</sup> August 2022 passed in Criminal Writ Petition No. 454 of 2022 in the case of Shri. Pandurang @ Panda Narayan Garud Vs. The District Magistrate, Pune and Ors.*

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(iii) *Alakshit Vs. State of Maharashtra*<sup>2</sup>.

(iv) *Ratnamala Mukund Balkhande Vs. State of Maharashtra*<sup>3</sup>.

(v) *Shivkumar Madeshwaran Devendra Vs. State of Maharashtra*<sup>4</sup>.

(vi) *Sachin Parshuram Mane Vs. Commissioner of Police and Ors*<sup>5</sup>.

4. Learned APP submitted that the grounds urged by Petitioner are devoid of merits. As far as the first ground of challenge is concerned, the detaining Authority has not relied upon the cases reflected in paragraph 3 of grounds of detention. The questions of supplying bail Orders in respect to those cases does not arise. In paragraph 4 of the grounds of detention, the detaining Authority has specified that, he has considered offences mentioned in paragraph 5.1 and 5.2 and confidential statements mentioned at paragraph 6.1, 6.2, 6.3 and 6.4 to issue the Order of detention. Learned APP adverted to list of documents at page 20 of the paper book and submitted that, the bail Orders relating to the C.R. No. 87 of 2021 and C.R. No. 110 of 2021 which were relied upon for issuing Order of detention are supplied to the Petitioner/detenu. There is no delay in issuing Order of detention. The Petitioner was arrested in C.R. No. 87 of 2021 on 16<sup>th</sup> July 2021 and in C.R. No. 110 of 2021 on 13<sup>th</sup> September 2021. The Statement of witness A was recorded on 11<sup>th</sup> November 2021 and he has referred to

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3 2022 SCC OnLine Bom 1386

4 2022 SCC OnLine Bom 1236

5 2022 SCC OnLine Bom 1235

the incident of 22<sup>nd</sup> September 2021. The witness B has referred to the incident of 4<sup>th</sup> week of September 2021. Statement of two other witnesses were recorded in November 2021 and the proposal for issuing the detention Order was forwarded on 16<sup>th</sup> December 2021. The last incident considered for issuing Order of detention was dated 28<sup>th</sup> November 2021 and the Order of detention was issued on 21<sup>st</sup> February 2022. The time spent in issuing Order of detention has been explained in the affidavit in reply filed by the detaining Authority.

5. On perusal of grounds of detention it can be seen that, there is reference to past cases registered against the Petitioner and preventive action initiated against him. This reference is made in paragraph 3 of the grounds of detention. In paragraph 2, it has been stated that, past offences are not considered while formulating this detention Order against the Petitioner. In paragraph 4, it is made clear that, the detaining Authority have considered the offences mentioned in paragraph 5.1 and 5.2 and confidential statements mentioned in paragraph 6.1, 6.2, 6.3 and 6.4 while issuing the Order of detention. Thus, the impugned Order of detention was based on C.R. No. 87 of 2021 and C.R. No. 110 of 2021 and statement of 4 witnesses described as witness A, B, C and D. In the light of aforesaid circumstances, the submission of learned Advocate for the Petitioner that, the bail Orders in respect to the offences referred to in paragraph 3 of the

grounds of detention were not placed before the detaining Authority nor supplied to the Petitioner cannot be accepted and deserves to be turned down on the ground that, the said offences were not considered for issuing the detention Order.

6. While adjudicating the second ground of challenged, we have perused the averments in the affidavit in reply filed by detaining Authority. In the reply it has been stated that, in order to curb the illegal bootlegging activities of the detenu, the proposal dated 16<sup>th</sup> December 2021 was submitted by Senior Police Inspector Chaturshrungi Police Station to initiate action against the detenu. The proposal along with the relevant papers was submitted to Assistant Commissioner of Police, Khadki Division, Pune on 18<sup>th</sup> December 2021, who carefully went through all the papers and after verification of 4 in-camera statements of witnesses on 21<sup>st</sup> December 2021 and 22<sup>nd</sup> December 2021 made endorsement and submitted it to the Deputy Commissioner of Police Zone-IV on 24<sup>th</sup> December 2021. There was holiday on 19<sup>th</sup> December 2021 (Sunday). After scrutinizing the proposal with documents, the Deputy Commissioner of Police Zone-IV made endorsement and forwarded it to the Additional Commissioner of Police, East Region on 30<sup>th</sup> December 2021. On 25<sup>th</sup> and 26<sup>th</sup> December 2021 were holidays. The Additional Commissioner of Police forwarded proposal and documents to Preventive Crime Branch on 5<sup>th</sup> January 2022. There was holiday on 1<sup>st</sup> and

2<sup>nd</sup> January 2022 (Saturday and Sunday). The Senior Inspector of Police, Preventive Crime Branch went through all the documents made endorsement and forwarded the proposal along with compilation of documents to the Assistant Commissioner of Police, Crime-I on 14<sup>th</sup> January 2022. After perusal of all the compilation of documents, the Assistant Commissioner of Police Crime-I forwarded the proposal to Deputy Commissioner of Police Crime on 19<sup>th</sup> January 2022. The Deputy Commissioner of Crime perused all the documents and made endorsement on 27<sup>th</sup> January 2022. On 22<sup>nd</sup> and 23<sup>rd</sup> January 2022 (Saturday and Sunday) were holidays and 26<sup>th</sup> January 2022 was public holiday. Thereafter, all the documents were forwarded to Joint Commissioner of Police on 28<sup>th</sup> January 2022 and the said Authority then made endorsement on the proposal of detenu and compilation of documents were put up before the detaining Authority on 16<sup>th</sup> January 2022. 30<sup>th</sup> January 2022, 6<sup>th</sup> February 2022 and 13<sup>th</sup> February 2022 were holidays. The detaining Authority considered the documents and gave approval to the proposal on 18<sup>th</sup> February 2022. All the documents were forwarded to the sponsoring Authority for the purpose of typing, preparing the translation of documents in the languages known to the detenu and the Order of detention was issued on 21<sup>st</sup> February 2022. Learned Advocate for the Petitioner submitted that, file was forwarded to various Authorities for no reason. The time consumed in perusing the proposal and the documents was

unreasonable and thus, the delay has not been explained.

7. We do not find from the documents on record and affidavit in reply that, there was inordinate delay in issuing the Order of detention. The Petitioner was involved in C.R. No. 87 of 2021 and C.R. No. 110 of 2021. These cases were registered on 16<sup>th</sup> July 2021 and 9<sup>th</sup> September 2021. The Petitioner was granted bail in C.R. No. 110 of 2021 on 14<sup>th</sup> September 2021. Witness A referred to the statement dated 22<sup>nd</sup> September 2021 alleging that, the Petitioner and his associates were indulging in illicit liquor. Witness was assaulted and threatened on dire consequences. Witness B referred to the incident which had occurred in 4<sup>th</sup> weeks of September 2021. The witness was abused and assaulted the amount of Rs.1870/- was extorted. Witness C in his statement dated 20<sup>th</sup> November 2021 has stated that he is a Doctor by profession since last 8 years. He has observed that several persons were suffering from infection and he was treating them. They were consumed toddy from the stall of the Petitioner. He was selling adulterated toddy. Witness D has stated that, the Petitioner and his associates are carrying business of illicit toddy and since last two years he has noticed that there was danger to the life of passer by and security of women and girls passing through the area. About four months ago, the witness was threatened by the Petitioner. He was armed with sickle. He was assaulted. The sponsoring Authority had taken immediate steps to

forward the proposal to the detaining Authority which has been considered after routing it through channel and the Order of detention has been issued against the Petitioner.

8. The decision in the case of *Shri. Pandurang @ Panda Narayan Garud Vs. The District Magistrate, Pune and Ors.* (supra) relates to non-placement and non-supply of bail Orders and applications to the detenu. It was observed that non-consideration of the vital documents would vitiate the subjective satisfaction of the detaining Authority. In the case of *Alakshit Vs. State of Maharashtra* (supra) it was held that, the detaining Authority ought to have considered the Order granting bail on the ground of detention on which the bail was granted. In the case of *Ratnamala Mukund Balkhande Vs. State of Maharashtra* (supra) it was observed that the issue was that although 7 crimes were registered against the detenu formed the material for reaching the subjective satisfaction of the detaining Authority, in five cases in which the detenu was on bail, no bail Orders were placed before detaining Authority. It was observed that, this lacuna has vitiated the subjective satisfaction reached by the detaining Authority. It was submitted at the instance of detaining Authority that, five cases were considered as previous criminal activities and it was not necessary for the detaining Authority to consider the reasons for which the detenu was granted bail in each crime. The Division Bench of this Court however held

that bail application and the Order granting bail must be placed before the Authority and should be supplied to the detenu. Whenever, previous crimes registered against the detenu are considered as indicative of continuous criminal activities of the detenu, the detaining Authority must also consider the reasons for which the detenu was granted bail. In the case before us we have noted that the detaining Authority has categorically stated that Order of detention is based on C.R. No. 87 of 2021 and C.R. No.110 of 2021 and 4 in-camera statements. In the case of *Shivkumar Madeshwaran Devendra Vs. State of Maharashtra* (supra) this Court has taken similar view with regard to non-placement of bail Order before the detaining Authority and non-supply of the Order to the detenu. The other decisions relied upon by the learned advocate for the Petitioner are relating to the delay in issuing Order. The law is well settled that the Order of detention is preventive in nature and prompt action is required to be initiated to meet the purpose of detention. The delay in issuing Order of detention has to be explained by the detaining Authority. All the aforesaid decisions were delivered in the facts of respective cases. In the light of observation made herein above, we do not find any substance in the grounds of challenge urged by Petitioner. The non placement of bail Orders as contended by the learned advocate for the Petitioner and non-supply of said Orders to the detenu would not vitiate the Order of detention nor affect the right of detenu under Article 22(5) of Constitution of India. The time consumed in issuing Order of detention has

been properly explained by detaining Authority. The impugned Order of detention has been issued expeditiously after the occurrence of incidents and the live link for issuing the detention Order has not been snapped. Hence, Petition must fail.

**ORDER**

- (i) Criminal Writ Petition No. 3950 of 2022 stands dismissed.
- (ii) Rule is discharged.

**(PRAKASH D. NAIK, J.)**

**(A. S. GADKARI, J.)**

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