

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

CRIMINAL WRIT PETITION NO. 4470 OF 2022

Hira @ Purushottam Mallinath
@ Malppa Gunjale, Age : 31 years,
R/o. Byagehalli Road, Akkalkot,
Tal. North Solapur

...Petitioner

Versus

1. The District Magistrate,
Solapur.
2. The State of Maharashtra,
(Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department
Mandtrayalya, Mumbai)

3. The Superintendent,
Yerwada Central Prison, Pune

...Respondents

Ms. Jayashree Tripathi, Advocate for Petitioner.

Mrs. M.H. Mhatre, APP for the Respondent–State.

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

DATE : 13th FEBRUARY, 2023.

JUDGMENT – (PER : PRAKASH D. NAIK, J.) :-

1. Petitioner has challenged the Order of Detention issued by Respondent No.1 on 12th October, 2022 under Section 3(1) of 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 ‘M.P.D.A. Act’). The

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order was issued with a view to prevent the Petitioner from acting in any manner prejudicial to the maintenance of public order. Petitioner was served upon the Detention Order, grounds of detention and documents relied upon by the Detaining Authority.

2. Learned Advocate for Petitioner Ms. Tripathi submitted that there is delay in issuing Order of Detention. C.R. No.229 of 2022 was registered on 26th May, 2022. Petitioner was arrested on 2nd June, 2022. Petitioner was released on bail on 3rd June, 2022. Statements of two witnesses were recorded in camera on 21st July, 2022 and 22nd July, 2022. They have referred to incidents dated 9th May, 2022 and 29th April, 2022. However, impugned Order of Detention was issued on 12th October, 2022. Thus there is gross delay in passing the Order of Detention.

3. Learned APP submitted that prompt action was initiated against detenu by issuing Order of Detention. Petitioner was involved in C.R. No.229 of 2022, dated 27th May, 2022 and the incidence occurred on 9th May, 2022 and 29th April, 2022. The time consumed in issuing Order of Detention has been explained in the affidavit-in-reply. Thus there is no delay in issuing Order of Detention.

4. We have perused the counter filed by the Respondent No.1 dealing with the aforesaid contention of Petitioner. The Detaining

Authority has stated that the prejudicial activity of the detenu was noticed on 22nd July, 2022. The Superintendent of Police appointed Verification Officer to verify in camera statements. On 4th August, 2022, SDPO has verified the genuineness of the statements made by in camera witness and submitted report on 9th August, 2022. Thereafter, the proposal was submitted on 12th August, 2022 to SDPO, Akkalkot Division who in turn endorsed the proposal on 20th August, 2022 and forwarded it to Superintendent of Police, Solapur on 22nd August, 2022. Proposal was finally placed before the Detaining Authority on 5th September, 2022 and the impugned Order of Detention was issued on 12th October, 2022. We are of the considered opinion that there is gross unexplained delay in issuing Order of Detention. The Detaining Authority has relied upon C.R. No.229 of 2022 registered with Akkalkot North Police Station on 26th May, 2022 for offences under Sections 324, 323, 504, 506 r/w Section 34 of Indian Penal Code. Petitioner was arrested on 2nd June, 2022. Statement of Witness-A was recorded on 21st July, 2022. He has referred to incident dated 9th May, 2022. Statement of Witness-B was recorded on 22nd July, 2022. He has referred to incident dated 29th April, 2022. However, Detention Order was issued on 12th October, 2022. Thus, the live link between the alleged activities and the need for detention has been snapped. On

perusal of affidavit-in-reply we do not find any satisfactory explanation offered therein for the time consumed in issuing Order of Detention. The delay in issuing the Detention Order would certainly affect the validity of the said Order which deserves to be quashed and set aside.

ORDER

- i. Criminal Writ Petition No.4470 of 2022 is allowed.
- ii. Detention Order dated 12th October, 2022 issued by Respondent No.1 is set aside.
- iii. Petitioner be released from jail forthwith, if not required in any other crime.
- iv. Rule is made absolute in the aforesaid terms.
- v. All the concerned to act on the basis of an authenticated copy of present Order.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]