



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 320 OF 2024

Divakar @ Pintu S/o Topalu Tayde,
Age : 43 years, Occu. : Labour,
R/o Atrawal, Tq. Yawal,
Dist. Jalgaon. .. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai – 32.
2. The District Magistrate,
Jalgaon, Dist. Jalgaon. .. Respondents

Shri P. P. More, Advocate h/f Shri Kailas B. Jadhav, Advocate for
the Petitioner.

Shri S. S. Dande, A.P.P. for the Respondent Nos. 1 and 2.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

DATE : 06 MAY 2024.

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. We have heard
both the sides finally at the admission stage.

2. Petitioner is assailing order of detention dated 12.12.2023
passed by the respondent No. 2/District Magistrate, Jalgaon
U/Sec. 3(1) 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 the sake of convenience and brevity hereinafter referred as to the “M.P.D.A. Act”) and order dated 22.12.2023 passed by the respondent No. 1 confirming the order of detention. Petitioner is held to be dangerous person on the basis of three offences, a preventive action and two in camera statements.

3. Learned counsel for the petitioner Mr. P. P. More holding for Mr. Kailas B. Jadhav submits that subjective satisfaction is defective because petitioner is not involved in any serious offence. He was granted default bail in the last offence. That order has not been challenged. It is further submitted that only petitioner is targeted amongst others for proceeding under the M.P.D.A. Act. It is further submitted that considering material pitted against the petitioner, there is no danger to the public order. The offences are politically motivated. He would further submit that in camera statements are not reliable. There is violation of timeline provided by Section 10 of the M.P.D.A. Act. Delay in obtaining approval as well as delay in passing impugned order vitiates impugned order.

4. Learned Assistant Public Prosecutor Mr. S. S. Dande supports impugned order on the basis of affidavit in reply of the respondent No. 2. He would submit that the petitioner is a history sheeter. Material placed on record would indicate that he is habitual offender and undeterred by preventive action also. It is further submitted that detaining authority has rightly arrived

at subjective satisfaction by considering relevant material. It is further submitted that there is no delay either in passing impugned order or securing approval. Lastly, it is submitted that due procedure of law has been followed by the respondent authorities.

5. We have considered rival submissions of the parties and also gone through the relevant papers. Three offences namely CR No. 130/2023, CR No. 131/2023 and CR No. 420/2023 are considered by the detaining authority along with preventive action taken U/Sec. 110 of the Code of Criminal Procedure, coupled with two in camera statements. We have also gone through first information reports of above referred offences. It reveals that first two offences are registered against 59 and 94 accused persons respectively. Last offence is registered against six persons. Few accused persons are common in all the offences. Common thread of all the offences is communal discord. The detaining authority is not expected to go into the hilt of the offences. Therefore, we are not impressed by the submission of the learned counsel for the petitioner regarding nature of the offences as well as selective tendency of respondent authorities as against the petitioner.

6. It reveals from record that the petitioner was released on default bail U/Sec. 167(2)(a) of the Criminal Procedure Code vide order dated 20.11.2023. No charge sheet was filed within stipulated period and the benefit was given to the petitioner. This aspect has not been dealt with by the detaining authority,

although cursorily his release on bail is mentioned in the ground of detention. Relevant inputs appear to be escaped from the consideration of the detaining authority. In view of settled legal position as laid down by the Supreme Court in the matter of Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others reported in *(2012) 1 SCC (Cri) 693*, the subjective satisfaction appears to be defective.

7. They were verified on 22.09.2023. Petitioner was arrested in the last offence on 15.08.2023 and released on bail on 20.08.2023. Our attention is invited to two in camera statements which were recorded on 06.09.2023. The witnesses were not ready to come forward. It is submitted that during the arrest of the petitioner, statements could have been recorded. That cannot be a ground to discard in camera statements. There can not be any timeline to record statements. We are unable to approve this submission of the petitioner.

8. Last offence was registered against the petitioner on 15.08.2023. In camera statements were recorded on 06.09.2023. Proposal was prepared and reached the detaining authority on 07.12.2023. Impugned order was passed on 12.12.2023, which is after 02 months and 27 days. Learned A. P. P. has invited our attention to paragraph No. 15 of the affidavit in reply to buttress that there was every promptitude in processing the proposal. It is not made clear as to why so much of time was taken for recording in camera statements and their verification on 22.09.2022. Further there is no satisfactory explanation for not

sending proposal from 22.09.2023 upto 07.12.2023. This delay could have been avoided. We are of the considered view that delay has vitiated impugned order.

9. We have examined the matter to ascertain promptitude in securing approval U/Sec. 3(3) of the M.P.D.A. Act. Our attention is invited to paragraph No. 9 of the affidavit in reply. It shows that impugned order was passed on 12.12.2023. Thereafter, immediately there were holidays for five days. Proposal was forwarded on 18.12.2023 seeking approval. Approval was granted by the State Government on 22.12.2023 U/Sec. 3(3) of the M. P. D. A. Act. For securing approval period of ten days was consumed. It is not made clear by the respondent No. 2 as to how there were consecutive holidays for five days after 12.12.2023. Though outer limit for approval is 12 days as per Sec. 8 of the M. P. D. A. Act, but the authorities have to explain consumption of time.

10. We find that there is delay and present case is squarely covered by the law laid down by the Supreme Court in the matter of Pradeep Nilkant Paturkar Vs. S. Ramamurthi and others reported in *AIR 1994 SCC 656* and by the Division Bench of this Court in the matters of **Nilesh Sunil Pendulkar Vs. The District Magistrate, Ahmednagar and others** vide judgment dated **29.02.2024 in Criminal Writ Petition No. 1820 of 2023** and Austin William Luis Pinto Vs. Commissioner of Police, Greater Mumbai and others reported in *2005 All MR (Cri) 28*.

11. Learned counsel for the petitioner has submitted that there is violation of timeline provided by Section 10 of the M.P.D.A. Act. After physical detention of the petitioner, the proposal was not placed before the Advisory Board within a period of three weeks. Learned A. P. P. would point out that paragraph No. 9 of the affidavit in reply to show that after approval of the impugned order, papers were forwarded to the Advisory Board. Petitioner was heard on 17.01.2024. Advisory Board recommended for detention. State Government accepted recommendation and confirmed order on 30.01.2024. According to the petitioner papers were placed before the Advisory Board on 17.01.2024, which is beyond three weeks from the date of detention. Affidavit in reply does not clarify as to when actually proposal was placed before the Advisory Board.

12. Learned A. P. P. would point out that petitioner has not taken specific ground in memo of writ petition. Therefore, specific clarification on facts could not be incorporated in the reply. However, during the course of hearing, learned A. P. P. places on record a photo copy of minutes of meeting which shows that proposal of the petitioner was received on 26.12.2023. The petitioner was actually detained on 14.12.2023. We find no reason to discard the particulars provided by the learned A. P. P. Resultantly, we reject the submission of the learned counsel for the petitioner.

13. Net result of our reasoning is that the unexplained delay vitiates the impugned order. Subjective satisfaction is defective.

The ground of objection on delay is fundamental and goes to the root of the matter. We do not find Section 5(A) of the M.P.D.A. Act would be an impediment for that. We therefore pass following order.

O R D E R

- a) The criminal writ petition is allowed.
- b) The impugned order dated 12.12.2023 passed by the respondent No. 2/District Magistrate, Jalgaon, and confirmed by the respondent No. 1 by order dated 22.12.2023 are quashed and set aside.
- c) The petitioner shall be set at liberty.
- d) Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb/May 24