



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

**Criminal Writ Petition No. 651 / 2024**

Asif Shamshuddin Tandel

Age : 30 years,

R/o Tandel Lane, Padegaon,

Tal. Shrigonda, District Ahmednagar.

**...Petitioner**

**Versus**

1. The District Magistrate,  
Ahmednagar.

2. State of Maharashtra  
Through its Secretary,  
Home Department (Special),  
Mantralaya, Mumbai.

3. The Superintendent,  
Nashik Central Prison,  
Nashik.

**..Respondents**

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Advocate for the Petitioner : Mr. Rupesh A. Jaiswal

A.P.P. for Respondents /State : Ms. Priya B. Bharaswadkar

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

**RESERVED ON : 8 MAY 2024**

**PRONOUNCED ON : 10 MAY 2024**

**JUDGMENT** [Per Shailesh P. Brahme, J.] :

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

2. By way of present petition, jurisdiction under Article 226 of the Constitution of India is invoked for challenging the order of detention dated 22.02.2024, passed by the respondent no.1/detaining authority under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience). The detaining authority has branded the petitioner as 'dangerous person' as well as 'sand smuggler' considering C.R. No.817/2023 punishable under Sections 379, 34 of the Indian Penal Code with 3/15 of the Environment Act, two preventive actions under Sections 107 and 110 of the Code of Criminal Procedure and two in-camera statements.

3. Learned Counsel for the petitioner Mr. Rupesh Jaiswal formulates following submissions on the grounds raised in the petition :

- (i) The subjective satisfaction is vulnerable for non-consideration of order of bail.
- (ii) Non-consideration of representation and communication of its decision.
- (iii) Delay of five months in passing impugned order of detention.
- (iv) The subjective satisfaction is perverse.

4. He has placed on record written submission alongwith judgments to be cited to support the submissions. Besides that a set of papers served upon the petitioner is also placed on record.

5. Per-contra, learned APP Ms. Priya Bharaswadkar supports impugned order. She would oppose the submissions of the petitioner on the basis of affidavit-in-reply. She submits that relevant material has been considered by the detaining authority. The subjective satisfaction is plausible and reasonable. There is no delay in passing the impugned order. It is further submitted that representation has been decided on 04.04.2024 and communicated as well. To support her submission she would rely on the judgments rendered by the Supreme Court in the matters of Smt. Phulwari Jagadambaprasad Pathak Vs. R.H. Mendonca and Others, 2000 AIR SCW 2727 and Harish Patil Vs. State of Maharashtra and Ors., Criminal Writ Petition No.1398/2016.

6. We have considered rival submissions of the parties as well as relevant papers produced by them. Solitary offence considered by the detaining authority is C.R. No.817/2023 registered on 21.09.2023. Action under Section 107 of Cr.P.C. was taken against the petitioner in Chapter Case No.122/2017 on 03.07.2017. Another action under Section 110 of Cr.P.C. was taken in Chapter Case No.31/2022 on 19.08.2022. In-

camera statements were recorded on 03.01.2024 and 05.01.2024. Petitioner submitted representation on 13.03.2024 to the Superintendent of Central Prison, Nashik.

7. Petitioner was apprehending arrest in furtherance of C.R. No.817/2023. Application for bail was submitted by him before the Additional Sessions Judge, Shrigonda and order was passed on 03.10.2023. This order of bail was placed before the detaining authority. It emerges from record that order dated 03.10.2023 in fact is not an order. It is a communication by the Court to the concerned police station disclosing operative part of interim order. It does not contain any reasons. Petitioner has annexed final order passed on 10.10.2023 by the Additional Sessions Judge, Shrigonda allowing his application for bail. We have gone through the order which contains reasons in its paragraph no.7 and 8. This reasoned order was not before the detaining authority and obviously reasons for bail have escaped from the consideration. This fact demonstrates non-application of mind, which is a serious flaw in the subjective satisfaction. The relevant material has been overlooked by the detaining authority which offends the parameters laid down by the Supreme Court in the latest judgment of **Nenavath Bujji Etc. Vs. State of Telangana**, AIR 2024 SC 1610 in its paragraph no.43.

8. Learned Counsel for the petitioner relies on following judgments to buttress that the reasons for enlarging bail are relevant consideration to be gone into by the detaining authority :

- (i) Rushikesh Tanaji Bhoite Vs. State of Maharashtra & Ors. 2012 CJ(SC) 945
- (ii) Digambar @ Digambar Vitthal Dagdade Vs. District Magistrate Latur & Ors., Criminal Writ Petition No.1736/2023.
- (iii) Nilesh Sunil Pendulkar Vs. District Magistrate, Ahmednagar and Ors. Criminal Writ Petition No.1820/2023

. We propose to follow ratio laid down in above authorities. As this is settled legal position, we do not reiterate relevant paragraphs of above judgment, here.

9. It is a case of the petitioner that he made representation on 13.03.2024 which is not attended to by the respondents. We are shown paragraph no.12 of reply filed by respondent no.1 wherein he states that no comments need be offered as it pertains to the State of Government. Learned APP during the course of arguments placed on record communication dated 04.04.2024 to contend that the representation is rejected on 04.04.2024 and it was duly communicated on 05.04.2024. We are shown the communication bearing endorsement of various authorities and a copy of which was forwarded to the Superintendent of Prison as well as the

District Magistrate. If the rejection of representation was communicated to respondent no.1/District Magistrate on 05.04.2024 then it is difficult to comprehend that the same District Magistrate chosen not to offer any comment to the plea of the petitioner and shows his obliviousness. We do not approve the plea taken by the learned APP that representation was decided and communicated to the petitioner.

**10.** Learned Counsel for the petitioner has cited multiple judgments to buttress submission pertaining to right of making a representation. We do not wish to burden the judgments by reproducing ratio laid down in the judgments. We propose to follow law laid down in following judgments :

- a. Rajammal Vs. State of Tamil Nadu  
1998 CJ(SC) 700
- b. Prakash Chandra Yadav @ Mungeri Yadav Vs. State of Jharkhand and Ors., 2023 LiveLaw (SC) 529.
- c. Digambar @ Digambar Vitthal Dagdade Vs. District Magistrate Latur & Ors.,(supra)
- d. Nilesh Sunil Pendulkar Vs. District Magistrate, Ahmednagar and Ors. (supra)
- e. Yogesh Devidas Tayade Vs. District Magistrate, Jalgaon & Ors., Criminal Writ Petition No.546/2024.

**11.** A solitary offence was registered against the petitioner on 21.09.2023. The impugned order was passed on 22.02.2024 after five months. In order to ascertain the

consumption of time and the manner in which the proposal was processed, we have gone through paragraph no.7 of the affidavit-in-reply. It reveals that in-camera statements were recorded on 03.01.2024 and 05.01.2024. Those were verified by Sub-Divisional Officer on 09.01.2024. The proposal reached detaining authority on 13.02.2024. Impugned order was passed on 22.02.2024. There is no satisfactory explanation for not recording statements immediately after 21.09.2023. After verification of the statements on 09.01.2024, it is not clarified as to why time was consumed in reaching the proposal. If the proposal reached detaining authority on 13.02.2024 further nine days were taken for passing impugned order. We find substance in the submission of the petitioner that there is unexplained delay of five months, which is fatal. The laches and indifferent attitude in processing proposal would indicate that there is no real urgency was shown in passing order of detention if the petitioner being at large was detrimental to the public order.

**12.** Learned Counsel for the petitioner seeks to rely on judgments to buttress that unexplained delay vitiates order of detention. We are bound by the ratio and we follow the same. Following judgments are cited by him :

- a. Pradeep Nilkanth Paturkar Vs. S. Ramamurthi  
1992 CJ(SC) 513
- b. Austin William Luis Pinto Vs. Commissioner of Police,  
Greater Mumbai and Ors. 2005 ALL MR (Cri.) 28

c. Nilesh Sunil Pendulkar Vs. District Magistrate,  
Ahmednagar and Ors. (supra)

**13.** The subjective satisfaction arrived at by the detaining authority is criticized by learned Counsel by referring to the F.I.R. and the papers of investigation. We do not feel it necessary to consider the allegations and the papers of investigation to their hilt. It is not permissible for the detaining authority or this Court to examine niceties in the investigation. We are not with learned Counsel for the petitioner in this regard. However, we do not propose to mean that the subjective satisfaction is intelligible one.

**14.** We have already recorded findings that the subjective satisfaction is perverse for non-consideration of reasons assigned in final order of bail. While examining the grounds of detention, we noticed that reasoning part commences from paragraph no.8. No finding that the petitioner is dangerous person or sand smuggler is expressly recorded, as an outcome of analysis of the material pitted against him. The detaining authority is expected to arrive at conclusion and expressly record findings. Only highlighting of the words 'dangerous person' and 'sand smuggler' from the title of the MPDA Act would reflect abdication of the duty. There is room to infer that the detaining authority has not applied mind.

15. Learned APP refers to law laid down by the Supreme Court in the paragraph no.16 of judgment in the matter of Phulwari (supra). It pertains to appreciation of in-camera statements. In the case in hand, no specific submissions have been made about in-camera statements on behalf of the petitioner. Hence ratio is not applicable to the present case. Another judgment rendered in the matter of Harish Patil (supra) is cited. In that matter also, the detenue was held to be sand smuggler and four offences were pitted against him. Ratio pertains to appreciation of material in the case of sand smuggler. We have considered paragraph no.36. The case in hand is not exclusively that of the sand smuggler. In the present case, only one offence is pitted. We find utter lack of material as it was in the case cited. We are of the considered opinion that this judgment is also not helpful.

16. For the reasons stated above we pass following order :

### ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause 'B'.
- (ii) Rule is made absolute in the above terms.

**SHAILESH P. BRAHME**  
JUDGE

**MANGESH S. PATIL**  
JUDGE