



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 873 OF 2024

Sagar Bhagwat Bharaskar

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mr. S.S. Gangakhedkar, Advocate for petitioner
Mrs. A.S. Deshmukh, A.P.P. for respondents
....

CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 23rd JULY, 2024

ORDER (PER : R.G. AVACHAT, J.) :

1. This petition, under Article 226 of the Constitution of India, has been filed mainly for the following reliefs :-

- “B) *By issuing writ of certiorari or any other appropriate order or direction in the nature of writ, kindly quash and set aside and/or revoked the impugned order dated 05.10.2023 passed by the respondent No.2 and consequently the respondent No.3 may kindly be directed to release the petitioner.*
- C) *By issuing writ of certiorari or any other appropriate order or direction in the nature of writ, kindly quash and set aside and/or revoked the impugned order dated 13.10.2023 passed by the respondent No.1 and consequently the representation filed by the petitioner may kindly be allowed.*
- C-1) *By issuing writ of certiorari or any other appropriate order or direction in the nature of writ, kindly quash and set aside*

and/or revoke the impugned order dated 08.05.2024 passed by the respondent No.1.”

2. Without going into merits of the matter, the petition could be disposed of for non-adherence of timeline/time-frame given in 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 ('MPDA Act').

3. Needless to mention, the petitioner has been detained vide order dated 05th October, 2023 for a period of twelve months as his past criminal activities were found to treat him a dangerous person and with a view to prevent him from reverting back to such activities and mainly for preventing him from disturbing the maintenance of public order.

4. According to learned counsel for the petitioner, the State Government on receipt of the order of detention passed by Respondent No.2 - Commissioner of Police, did not place it before the Advisory Board within the time frame. He would further submit that the Advisory Board also took some more time than prescribed to submit its report to the State Government, in Department of Home. The same material caused prejudice to the petitioner's fundamental right under Article 22(5) of the Constitution of India.

5. Learned A.P.P. would, on the other hand, tried to justify the order on the ground of subjective satisfaction of the detaining authority. According to him, delay of a day or two would be of little consequence. He would further submit that after all it was a question of maintenance of public order. He, therefore, urged for dismissal of the petition.

6. For addressing the issue raised in the petition, reference to the relevant provisions of MPDA Act is necessary. We, therefore, first advert to Sections 9, 10 and 11 of the said Act, as follows :-

“9. (1) The State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of a Chairman and two other members, who are, or have been, Judges of any High Court or who are qualified under the Constitution of India to be appointed as Judges of a High Court.

10. In every case where a detention order has been made under this Act, the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of section 3.

11. (1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State Government or from the person concerned, and if, in any particular case, the Advisory

Board considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the State Government, within seven weeks from the date of detention of the person concerned.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) The proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

(5) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board.”

7. The order of detention challenged in this writ petition is dated 05th October, 2023. The petitioner has, however been detained with effect from 26th February, 2024. On the very day on which the order was passed, it was transmitted to the State Government, in Department of Home. The State Government approved the order on 13th October, 2023 i.e. within the statutory period of twelve days. Then, the State Government placed the order of detention before the Advisory Board on 19th March, 2024. It ought to have been placed before the Advisory Board within three weeks from the date of detention of the petitioner. The period of three weeks from the date of detention i.e. from 26th February, 2024 ends on 18th March, 2024. Same

indicates that the matter was referred to the Advisory Board after the statutory time frame of three weeks.

8. Moreover, the Advisory Board was expected to submit its report within seven weeks from the date of detention of the petitioner. In the case in hand, the Advisory Board submitted its report on 15th April, 2024 i.e. on the last day of completion of seven weeks from the petitioner's detention dated 26th February, 2024. The same is, therefore, not of assistance to the petitioner.

9. The Apex Court, in case of ***Ameena Begum Vs. State of Telangana & Ors. 2023 LiveLaw (SC) 743***, the Apex Court in its judgment has observed as below :-

“19. We may also refer to the decision of a Constitution Bench of this Court in Sunil Fulchand Shah Vs. Union of India, (2000) 3 SCC 409 wherein the need to strictly adhere to the timelines, provided as procedural safeguards, was stress upon. It was held thus :-

*“11. *** The safeguards available to a person against whom an order of detention has been passed are limited and, therefore, the courts have always held that all the procedural safeguards provided by the law should be strictly complied with. Any default in maintaining the time-limit has been regarded as having the effect of rendering the detention order or the continued detention, as the case may be, illegal. The justification for preventive detention being necessity a person can be detained only so long as it is found necessary to detain him. If his detention is found unnecessary, even during the maximum period permissible under the law then he has to be released from detention forthwith. It is really in this context that Section 10 and particularly the words 'may be detained' shall have to be interpreted.”*

10. In view of above, order impugned in this petition is liable to be set aside. Hence, the following order :-

Impugned order of detention dated 05th October, 2023 passed by Respondent No.2 – Commissioner of Police, Chhatrapati Sambhajanagar in file no. D.O.2023/MPDA/DET-12/CB-137 and orders dated 13th October, 2023 and 08th May, 2024 passed by Respondent No.1 – Home Department, (Special), Government of Maharashtra in file no. MPDA-1023/CR-523/Spl-3B thereby approving and confirming the order of detention are hereby set aside. Petitioner be released forthwith, if not required in any other case.

(NEERAJ P. DHOTE, J.)

SSD

(R.G. AVACHAT, J.)