



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 1107 / 2024

Pappu Kacharu Ghorpade,
Age : 30 years, Occu. Labour,
R/o Village Khadgaon, Tq.-Badnapur,
District Jalna.

...Petitioner

Versus

1. State of Maharashtra
Through Section Officer
Home Department (Special),
2nd Floor, Mantralaya, Mumbai.
2. The District Magistrate
Collector Office, Jalna.
3. The Superintendent,
Central Prison,
Harsool, Aurangabad.

..Respondents

— — —
Advocate for the Petitioner : Ms. S.G. Sonawane

A.P.P. for Respondents/State : Mr. A.M. Phule

— — —
CORAM : SMT. VIBHA KANKANWADI &
SHAILESH P. BRAHME, JJ.

RESERVED ON : 16 AUGUST 2024
PRONOUNCED ON : 04 SEPTEMBER 2024

J U D G M E N T [Per Shailesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard both the sides finally with their consent.

2. By resorting to provisions of Articles 226 and 227 of the Constitution of India, the petitioner is challenging the order of detention dated 14.02.2024 passed by the respondent no.2/District Magistrate, passed under Section 3(1) and order dated 08.04.2024 under Section 12 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 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience). The petitioner has been held to be dangerous person on the basis of seven offences pitted, a preventive action, a proceeding of externment and two in-camera statements of anonymous witnesses. It has been recorded that he has been indulging into the activities detrimental to the public order and has not been deterred by regular penal action.

3. Learned Counsel Mrs. S.G. Sonawane appearing for the petitioner submits that there is unexplained delay in passing order of detention from the registration of last offence. It is further submitted that the reasons assigned for extending the petitioner on bail in offences has not been considered by the detaining authority which vitiates the subjective satisfaction. She would further submit that the first offence pitted against the petitioner was registered on 23.04.2020 and the impugned action was taken on 14.02.2024. The live link is snapped. It is further submitted that the subjective satisfaction does not indicate any prejudice to public order. Lastly it is submitted that the material pitted against him is not cogent enough so as to resort to drastic and

draconian action under the MPDA Act.

4. Learned Counsel for the petitioner seeks to rely on the following judgments :

- i. Ameena Begum Vs. the State of Telangana & Ors.
(2023) 9 SCC 587, decided on 04.08.2023
- ii. Nilesh Sunil Pendulkar Vs. District Magistrate & Ors.
Cri. Writ Petition No.1820/2023, Cri. WP No.1820/2023
dated 29.02.2024.
- iii. Alakshit Rajesh Ambade Vs. State of Maharashtra & Ors.
Cri. Writ Petition No.626/2022 dated 20.12.2022
- iv. Ashokrao Uttamrao Pawar Vs. State of Maharashtra & Ors.
Cri. Writ Petition No.738/2022 dated 08.02.2023.

5. Per contra, learned APP would support the impugned order and would rely upon affidavit-in-reply of the respondent no.2. He would submit that a reasonable and plausible view has been taken by the detaining authority, considering material pitted against the petitioner. There was adequate material against the petitioner to indicate that he has created terror in the vicinity Ordinarily, the residents would not dare to lodge complaint against him. It is further submitted that the offence pitted against the petitioner would fall under Chapter XVI of the Indian Penal Code. They are serious in nature and would indicate his habitual tendency.

6. Learned APP further submits that the relevant papers of the proposal and grounds of detention were served on the petitioner. After

passing impugned order with every promptitude, the proposal was forwarded to the higher authorities. Order of detention was approved within the stipulated period. He would submit that the matter was promptly placed before the Advisory Board which recommended in the action of detention and ultimately it was confirmed on 08.04.2024. It is further submitted that the representation dated 27.02.2024 was duly considered and rejected by the respondent no.2. Therefore, he would submit that no interference is called for in the impugned action.

7. Having considered rival submissions of the litigating sides, it is evident that following material is pitted against the petitioner :

Sr. No.	Police Station	C.R. Number	Date of Registration	Nature of Offence
1	Kadim Jalna	186/2020	23.04.2020	Under Sections 457, 380,411 of IPC
2	Chandanjhira Jalna	06/2022	04.01.2022	Under Sections 452, 384, 323, 427, 504, 506, 34 of IPC
3	Chandanjhira Jalna	07/2022	05.01.2022	Under Sections 307, 326, 324, 333, 332, 504, 506, 34 of IPC
4	Chandanjhira Jalna	16/2023	20.01.2023	Under Sections 326, 504, 506, 34 of IPC
5	Chandanjhira Jalna	302/2023	11.08.2023	Under Sections 353, 333, 332, 427, 504, 506, 34 of IPC
6	Chandanjhira Jalna	413/2023	29.10.2023	Under Sections 394, 34 of IPC
7	Chandanjhira Jalna	415/2023	29.10.2023	Under Sections 394, 34 of IPC
PREVENTIVE ACTION				
1	Chandanjhira Jalna	137/2022	19.07.2022	Under Section 107 of Cr.P.C.
DEPORTATION ACTION				
1	Chandanjhira Jalna	1/2023		Under Section 55 of Bombay Police Act

8. There is no dispute that 'in-camera statements' of witnesses

were recorded on 30.10.2023 and 03.11.2023. The proposal was submitted on 27.12.2023. The first offence i.e. C.R. No.186/2020 was registered on 23.04.2020 and the last offence bearing C.R. No.415/2023 was registered on 29.10.2023. The impugned order was passed on 14.02.2024. It was served on the petitioner on 15.02.2024 with grounds of detention. A report was forwarded under Section 3(3) of MPDA Act to the State Government on 20.02.2024. It was approved under Section 3(3) of MPDA Act on 23.02.2024. The representation on 27.02.2024 was rejected on 20.03.2024. The impugned order was confirmed on 08.04.2024 by the respondent no.1.

9. It is explicitly clear from the ground of detention that all seven offences right from C.R. No.186/2020 have been taken into account by the detaining authority. We propose to consider delay caused at two stages of the process. Firstly delay from registration of the first offence and secondly delay from the registration of the last offence. The first offence, C.R. No.186/2020, was registered on 23.04.2020. The impugned order is passed after period of more than three years and nine months from registration of first offence. There is no live link between the grounds of detention and avowed purpose of detention. The affidavit-in-reply falls short to explain this span of three years and nine months. As we are dealing with drastic action under the Act, the material pitted against detainee should unequivocally indicate that the activities of the detainee were of such nature so recourse to the process under the Act was required to be taken.

10. The offences registered against the petitioner on 23.04.2020, 04.01.2022 and 05.01.2022 as can be seen from the chart provided in the above referred paragraph no.7 were pitted against the petitioner by the Sponsoring Authority. Those were part of proposal submitted on 27.12.2023. If the older offences are part of the scrutiny then the proposal of detention loses the gravity. The criminal antecedents of the detainee would indicate threat to the public order and need to resort to drastic action. The live link would be snapped if there is a considerable time gap between the criminal record and the proposed action. The huge span would be indicative of the fact that there is no real threat to the public order.

11. The last offence bearing C.R. No.415/2023 was registered on 29.10.2023. The proposal was submitted on 27.12.2024. The impugned order was passed on 14.02.2024 which is after three and half months from registration of the last offence. We have gone through the affidavit-in-reply. In-camera statements were recorded on 30.10.2023 and 03.11.2023. The proposal was submitted on 27.12.2023. The statements were verified on 02.01.2024. A period of one month was taken for verification of in-camera statements which is incomprehensible. There is no explanation in the reply as to how the time of 3.5 months was consumed. The delay of 3.5 months from registration of the last offence has not been explained satisfactorily. It goes to the root of matter and vitiates impugned action.

12. We are fortified in arriving at the above conclusion in view of the

judgments rendered in the matter of Pradeep Nilkant Paturkar Vs. S. Ramamurthi & Ors., AIR 1994 SCC 656; Digambar Dagdade Vs. State of Maharashtra & Ors., Criminal Writ Petition No. 1736/2023 and Sushanta Kumar Banik Vs. State of Tripura, AIR 2000 SC 4715. We propose to reproduce following paragraphs :

“15. The adverse effect of delay in arresting a detenu has been examined by this Court in a series of decisions and this Court has laid down the rule in clear terms that an unreasonable and unexplained delay in securing a detenu and detaining him vitiates the detention order. In the decisions we shall refer hereinafter, there was a delay in arresting the detenu after the date of passing of the order of detention. However, the same principles would apply even in the case of delay in passing the order of detention from the date of the proposal. The common underlying principle in both situations would be the “live & proximate link” between the grounds of detention & the avowed purpose of detention.

16. In Sk. Nizamuddin v. State of West Bengal, (1975) 3 SCC 395, this Court while examining the necessity of securing the arrest of the detenu immediately after the order of detention has held thus:

“It would be reasonable to assume that if the District Magistrate was really and genuinely satisfied after proper application of mind to the materials before him that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner, he would have acted with greater promptitude in securing the arrest of the petitioner immediately after the making of the order of detention, and the petitioner would not have been allowed to remain at large for such a long period of time to carry on his nefarious activities. Of course when we say this we must not be understood to mean that whenever there is delay in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine.” Having held as above, Bhagwati, J. (as the learned Chief Justice then was) pointed out that if there is any delay in arresting the detenu pursuant to the order of detention which is prima-facie unreasonable, the State must give reasons explaining the delay.

17. A similar contention was raised in Suresh Mahato v. The District Magistrate, Burdwan, and Ors., (1975) 3 SCC 554, on the basis of the dictum laid down in two decisions of this Court, namely, SK. Serajul v. State of West Bengal, (1975) 2 SCC

78, and Sk. Nizamuddin (supra) contending that the delay of the arrest of the detenu in that case showed that the detaining authority was not really and genuinely satisfied as regards the necessity for detention of the detenu for otherwise he would have tried to secure the arrest of the detenu promptly and not left him free to carry on his nefarious activities. Bhagwati, J. (as the learned Chief Justice then was) while dealing with this submission, made the following observation:

“Now, there can be no doubt--and the law on this point must be regarded as well settled by these two decisions--that if there is unreasonable delay between the date of the order of detention and the date of arrest of the detenu, such delay, unless satisfactorily explained, would throw considerable doubt on the genuineness of the subjective satisfaction of the District Magistrate and it would be a legitimate inference to draw that the District Magistrate was not really and genuinely satisfied as regards the necessity for detaining the petitioner.”

18. Chinnappa Reddy, J. speaking for the Bench in Bhawarlal Ganeshmalji v. State of Tamil Nadu, (1979) 1 SCC 465, has explained as follow:

“It is further true that there must be a “live and proximate link” between the grounds of detention alleged by the detaining authority and the avowed purpose of detention namely the prevention of smuggling activities. We may in appropriate cases assume that the link is “snapped” if there is a long and unexplained delay between the date of the order of detention and the arrest of the detenu. In such a case, we may strike down an order of detention unless the grounds indicate a fresh application of the mind of the detaining authority to the new situation and the changed circumstances. But where the delay is not only adequately explained but is found to be the result of the recalcitrant or refractory conduct of the detenu in evading arrest, there is warrant to consider the “link” not snapped but strengthened.” (Emphasis supplied)

13. Learned Counsel Ms. Sonawane would draw our attention to the fact that in all the offences, petitioner was released on bail. The detaining authority has not dealt with the reasons assigned by criminal courts while enlarging the petitioner on bail on different occasions. Though the orders of bail were part of record forwarded by the sponsoring authority. No endeavour has been made by the District Magistrate to apply mind. According to us, this is serious flaw in

conducting objective scrutiny of the material by the detaining authority. Now it is settled law that the reasons assigned for enlarging detainee on bail would form the relevant consideration for the detaining authority while considering proposal for detention. Learned Counsel has rightly referred to judgments in the matter of Alakshit Rajesh Ambade and Nilesh Sunil Pendulkar (supra).

14. In-camera statements were recorded on 30.10.2023 and 03.11.2023. Statement of witness-B discloses that the instance cited by him had occurred in the month of September, 2023 i.e. before one month. Whereas statement of witness-A refers the instance of August, 2023 i.e. prior to two months. It is surprising that the statements were being recorded after considerable period from occurrence of overact against them. We do not find any explanation for this in the affidavit-in-reply. Apparently we find that statements are not reliable. This aspect of the matter has not been dealt with by the District Magistrate. We have reservation for the subjective satisfaction of the detaining authority.

15. Learned Counsel for the petitioner has referred to judgment in the matter of Ameena Begum (supra) to demonstrate the difference between public order and law and order. But no submissions are being made in that regard. A useful reference can be made to the latest judgment of the Supreme Court in the matter of **Nenavath Bujji Etc. Vs. State of Telangana**, AIR 2024 SC 1610 in its paragraph no.43 which is as follows :

“43. We summarize our conclusions as under:-

- (i) The Detaining Authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,
- (ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,
- (iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,
- (iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,
- (v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,
- (vi) The satisfaction cannot be inferred by mere statement in the order that "it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order". Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,
- (vii) Inability on the part of the state's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,
- (viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and
- (ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the

public order in near future unless he is prevented from doing so by passing an order of detention.

For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.”

16. We have no hesitation to hold that the impugned order is unsustainable, as it cuts across the above referred clause nos. (i), (ii), (iii), (v) and (viii). We have already recorded that there is delay in initiating action and non-application of mind for not considered the orders of bail. On these counts, we find that impugned order is unsustainable.

17. The order of detention dated 14.02.2024 passed by the detaining authority was confirmed by the State Government on 08.04.2024 under Section 12 of the MPDA Act after receiving recommendation of the Advisory Board. The Advisory Board should have taken into account the points which we have considered while examining order of detention. Therefore, the order of confirmation dated 08.04.2024 is also liable to be quashed and set aside. We, therefore, pass following order :

ORDER

- (i) The Criminal Writ Petition is allowed.
- (ii) The impugned order of detention dated 14.02.2024 and its confirmation by State Government dated 08.04.2024 are quashed and set aside.

- (iii) The petitioner shall be set at liberty forthwith.
- (iv) Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

SMT. VIBHA KANKANWADI
JUDGE

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