



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

CRIMINAL WRIT PETITION NO. 1794 OF 2023

Aatish s/o Ravindra Kharat,
Age : 27 Years, Occu. : Labour,
R/o Samta Nagar, Bhusawal,
Dist. Jalgaon, Presently in
Yerwada Central Jail,
Pune, Through his mother
Smt. Rajani w/o Ravindra Kharat,
Age : 54 Years, Occu. : Housewife,
R/o Samta Nagar, Bhusawal,
Dist. Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra,
(Through Additional Chief Secretary)
Govt. of Maharashtra,
Home Department, Mantralaya,
Mumbai – 32.

2. The District Magistrate,
Jalgaon.

3. The Superintendent,
Pune Yerwada, Pune.

.. Respondents

Shri Rupesh Jaiswal, Advocate h/f Ms. Jyoti Sadawarte, Advocate
for the Petitioner.

Shri G. A. Kulkarni, A.P.P. for the Respondent Nos. 1 to 3.

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

**RESERVED FOR JUDGMENT ON : 28.02.2024
JUDGMENT PRONOUNCED ON : 07.03.2024**

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

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

2. The petitioner is challenging order of detention dated 31.07.2023 passed U/Sec. 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred as to the 'M.P.D.A. Act' for the sake of brevity and convenience), order of rejection of his representation dated 16.11.2023 and order dated 17.10.2023 confirming order of detention. He is committed to prison on 25.08.2023.

3. For arriving at the subjective satisfaction the respondent No. 2/District Magistrate, Jalgaon considered following criminal antecedents :

Sr. No.	Police Station	CR No. & Date	Under Section	Present Status
01.	Bhusawal City	377/2020 Dt. 10.07.2020	307, 395, 120-B, 143, 147, 148, 149, 323, 504 of I. P. Code.	Pending Trial
02.	Bhusawal City	52/2022 Dt. 21.04.2022	307, 452, 341, 323, 504, 506, 34 of the I. P. Code.	Police Investigation
03.	Bhusawal City	179/2022 Dt. 07.12.2022	Sec. 3 and 25 Arms Act	Police Investigation

Preventive Action

Sr. No.	Police Station	Registration No. & Date	Section	Present Status
01.	Bhusawal City	21/2020 Dt. 14.12.2020	U/Sec. 110(e)(g) of the Criminal Procedure Code, 1973.	
02.	Bhusawal City	03/2021 Dt. 11.01.2021	U/Sec. 55 of the Maharashtra Police Act.	

Cognizable offences registered against the petitioner

Sr. No.	Police Station	Registration No. & Date	Section	Present Status
01.	Bhusawal City	134/2021 Dt. 17.04.2021	U/Sec. 504 and 506 of I. P. Code.	
02.	Bhusawal City	139/2021 Dt. 20.04.2021	U/Sec. 323, 504 and 510 of I. P. Code.	

The offences registered recently within six months

Sr. No.	Police Station	CR No. & Date	Under Section	Present Status
01.	Bhusawal City	81/2023 Dt. 24.02.2023	U/Sec. 400, 401, 341, 324, 323, 504, 506, 34, 188 of I. P. Code r/w Sec. 3/25, 6, 7, 8 of Arms Act r/w Sec. 135 for breach of Section 37(1)(3) of Mumbai Police Act, 1951.	Police Investigation
02.	Bhusawal City	118/2023 Dt. 15.03.2023	Sec. 4/25 of Arms Act r/w Sec. 135	Police investigation

			for breach of Section 37(1)(3) of Mumbai Police Act, 1951.	
--	--	--	---	--

4. Additionally, in camera statements of two witnesses have also been considered. The petitioner is found to be a dangerous person who is undeterred by regular penal laws. His activities are found to be detrimental to the public order by the detaining authority.

5. It is transpired from the record that last offence was registered on 15.03.2023. The statements were recorded on 24.04.2023. They were verified by the Sub Divisional Police Officer on 05.05.2023. The proposal reached the respondent No. 2/Detaining Authority on 12.07.2023. On 31.07.2023, impugned order was passed. It was approved on 10.08.2023 by the respondent No. 1. A reference to the advisory board was made on 06.09.2023. Order was confirmed on 17.10.2023 by the respondent No. 1.

6. The petitioner submitted representation against the impugned order of detention on 04.10.2023. By order dated 16.11.2023, it was rejected by the respondent No. 1.

7. The learned counsel for the petitioner tenders on record written submissions along with judgments relied by him. He would formulate submissions on following grounds :

I. Delay of seven days in forwarding report to the respondent

No. 1/State Government U/Sec. 3(3) of the M. P. D. A. Act, is fatal.

- II. Representation dated 04.10.2023 was not decided promptly and it was not communicated.
- III. Old and stale cases are pitted against the petitioner.
- IV. Offences considered by the detaining authority do not indicate an activity prejudicial to the public order.
- V. Delay of 04 Months 15 days from last registered offence till impugned order, vitiates impugned order.

8. The learned Assistant Public Prosecutor supports the impugned orders by relying upon affidavit in replies filed on record on 17.01.2024 and 16.02.2024. To repel the submissions of the petitioner, he would submit that there is no delay in forwarding the report and there is due explanation. Representation has been decided without any delay and there is adequate explanation tendered in the reply.

9. It is further submitted by the learned A. P. P. that the petitioner is a habitual offender. Subjective satisfaction has been arrived at considering all aspects of the matter. It is further contended that the activities are against the public order. Lastly, the delay of four months and fifteen days has been explained in the affidavit in reply.

10. We have considered rival submissions of the parties. Written submissions and affidavits in reply have also been considered. The detaining authority considered five offences

registered against the petitioner, two preventive actions, two non cognizable offences and in camera statements of the witnesses. First preventive action was taken against the petitioner U/Sec. 110(e)(g) of the Criminal Procedure Code by order dated 14.12.2020. Another action was taken U/Sec. 55 of the Maharashtra Police Act on 05.08.2021, externing him from Jalgaon district for two years. It was challenged by the petitioner in Criminal Writ petition No. 439 of 2022. By order dated 05.01.2023 order of externment dated 05.08.2021 was quashed.

11. The respondent No. 2 passed order of detention U/Sec. 3(1) of the M. P. D. A. Act on 31.07.2023. Report U/Sec. 3(3) of the Act was forwarded by the respondent No. 2/District Magistrate to the State Government on 07.08.2023. Learned counsel for the petitioner submits that this delay of seven days is fatal. Learned A. P. P. would submit that Sec. 3(3) of the M. P. D. A. Act contemplates period of twelve days to report an action to the State Government, which is followed. We have gone through both the affidavits in reply. No explanation has been tendered though in paragraph No. 8 of the reply dated 17.01.2024 it is admitted that by special messenger the proposal was forwarded to the State Government on 07.08.2023.

12. In this regard reliance is placed on the judgment of the Supreme Court in the matter of Hetchin Haokip Vs. State of Manipur and others reported in *2018 All SCR (Cri) 1240*. In that matter Supreme Court was dealing with Sec. 3(4) of the National Security Act, which is *pari materia* with Section 3(3) of the M. P.

D. A. Act. In paragraph No. 7 it is recorded that there was delay of five days in reporting an order of detention passed by the Magistrate to the State Government. The Supreme Court quashed order of detention, though there was outer limit of twelve days and the matter was reported after five days. Following are relevant paragraphs :

“10. This Court has examined the meaning of “forthwith,” in the context of statutes providing for preventive detention. In **Keshav Nilkanth Joglekar v The Commissioner of Police, Greater Bombay, 1956(1) SCR 653**, a Constitution Bench of this court interpreted Section 3(3) of Preventive Detention Act, 1950 [now repealed], which was similar to Section 3(4) of the Act. The court compared the text of Section 3(3) with Section 7 (equivalent to Section 8 of the Act). It observed that “forthwith” is different from “as soon as may be” in that, under Section 7 the time permitted is “what is reasonably convenient,” whereas under Section 3(3), only that period of time is allowed, where the authority could not, without its own fault, send the report. The court laid down the following test for determining whether the action of the authority was compliant with the “forthwith” requirement:

“Under section 3(3) it is whether the report has been sent at the earliest point of time possible, and when there is an interval of time between the date of the order and the date of the report, what has to be considered is whether the delay in sending the report could have been avoided.” (emphasis supplied)

11. In **Bidya Deb Barma v D.M. Tripura, Agartala, 1969(1) SCR 562**, a Constitution Bench of this court held that:

“When a statute requires something to be done ‘forthwith,’ or ‘immediately’ or even ‘instantly,’ it should probably be understood as allowing a reasonable time for doing it.”

12. In **S.K. Salim v State of West Bengal, (1975) 1 SCC 653**, a two judge Bench of this court observed that laws of preventive detention must be construed with the greatest strictness. However,

the rule of strict interpretation does not mean that the act has to be done instantaneously, or simultaneously with the other act, without any interval of time. Here, the court was dealing with Section 3(3) of the Maintenance of Internal Security Act, 1971 (which is equivalent to Section 3(4) of the Act). The Court held that:

“...the mandate that the report should be made forthwith does not require for its compliance a follow-up action at the split-second when the order of detention is made. There ought to be no laxity and laxity cannot be condoned in face of the command that the report shall be made forthwith. The legislative mandate, however, cannot be measured mathematically in terms of seconds, minutes and hours in order to find whether the report was made forthwith. Administrative exigencies may on occasions render a post-haste compliance impossible and therefore a reasonable allowance has to be made for unavoidable delays.”

13. Reliance is also placed on the judgment of the Division Bench of this Court **in the matter of Akash Annasaheb Hodade Vs. District Magistrate Latur and others in Cri. W. P. No. 391 of 2023**, which was case under self same act decided by this Court on 06.06.2023. Placing reliance upon the law laid down by the Supreme Court in the above matter of Hetchin Haokip Vs. State of Manipur and others (supra), the order of detention was quashed on the ground of delay of six days. To avoid repetition, we would not reiterate relevant paragraph Nos. 12 and 13 of the judgment. Suffice to mention that delay of six days was found to be unexplained in the affidavit in reply and was held to be fatal.

14. Next judgment cited on this point is of the Division Bench of this Court delivered at Principal Seat at Bombay in the matter

of Dharani Raja Padyachi Vs. State of Maharashtra and others reported in *2019 CJ (Bom.) 1658*, wherein there was delay of two days in reporting the detention order. Relying upon the judgment of the Supreme Court in the matter of Hetchin Haokip Vs. State of Manipur and others (supra), the delay was found to be avoidable and order of detention was quashed.

15. We are of the considered view that all three judgments cited by the petitioner on the point of delay are applicable to the present case. There is no explanation for reporting the matter to the State Government after seven days. This delay could have been avoided. We find substance in first submission of the petitioner.

16. The petitioner made representation on 04.10.2023 and it was rejected after 42 days on 16.11.2023. We have considered reply of the respondents. In paragraph No. 2 of the reply dated 16.02.2024, the sequence of events from 04.10.2023 till rejection has been explained. There is nothing on record to doubt the explanation tendered by the responsible authority. We do not find any indifferent attitude of the officers. We do not find merit in the submissions of the learned counsel for the petitioner that there is deliberate delay in this regard.

17. An endeavour is made by the petitioner by referring to the judgment of the Supreme Court in the matter of Harish Pahwa Vs. State of Uttar Pradesh reported in *(1981) 2 SCC 710*. In paragraph No. 3 Supreme Court dealt with the manner in which the

authorities dealt with the representation. The explanation tendered in that matter was found to be unsatisfactory. The facts in the matter in hand are distinguishable.

18. Next judgment of **Mahesh Kumar @ Banti Vs. Union of India and others** reported in *(1990) 3 SCC 148* delivered by the Supreme Court, is cited on this point. We have gone through the relevant paragraphs of the judgment. There cannot be any dispute about the proposition that a detenu has valuable right under Article 22(5) of the Constitution of India when his liberty would be in peril. It is relevant to reproduce paragraph No. 16 of the judgment, which heads as follows :

“16. Now the unchallengeable legal proposition that emerges from a host of decisions, a few of which we have referred to above, is that a representation of a detenu whose liberty is in peril and depraved should be considered and disposed of as expeditiously as possible; otherwise the continued detention will ‘render itself impermissible and invalid as being violative of the constitutional obligation enshrined in Article 22(5) of the Constitution and if any delay is occurred in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfaction of the Court.”

19. The Supreme Court has cautioned that if the delay is not explained by the appropriate authority, then it is fatal. In subsequent paragraph No. 17 of the judgment it is expected that there shall be an attempt to explain such delay. We have already recorded, in the case in hand there is proper explanation by the respondent No. 2. Hence this judgment may not help the petitioner.

20. Next judgment cited by the petitioner is of the Supreme Court in the matter of Rajammal Vs. State of Tamil Nadu reported in *1998 CJ (SC) 700*. It is distinguishable on the facts because case in hand discloses due explanation of delay.

21. Similar is the position with the judgment of the Division Bench of this Court in the matter of Akash Annasaheb Hodade Vs. District Magistrate Latur and others (supra) and **judgment dated 08.02.2024 in the matter of Digambar @ Digambar Vitthal Dagdade Vs. The District Magistrate, Latur and others in Cri. W. P. No. 1736 of 2023**. We cannot rely upon the judgments because we find that there is due explanation for delay in case in hand. We are not with the petitioner on this point.

22. It is argued that old and stale cases are pitted against the petitioner. Out of five criminal cases CR. No. 377/2020 registered on 10.07.2020 is the first case. CR. No. 81/2023 registered on 24.02.2023 and CR. No. 118/2023 registered on 15.03.2023 were considered. On 24.04.2023 in camera statements were recorded. Though first case was registered on 10.07.2020 that in our view would not mean that old and stale cases are considered. Last four offences are of 2022 and 2023. We do not find any merit in the submissions of the petitioner in this regard.

23. The petitioner has also relied on judgment of the Supreme Court in the matter of Khaja Bilal Ahmed Vs. State of Telangana and others reported in *2019 CJ (SC) 1393*. We have considered

paragraph Nos. 9, 15 and 20 of the judgment. In that case though there were fifteen cases only one case was considered. In the grounds of detention cases from 2007 to 2016 were considered under the pretext of criminal background which approach was deprecated. Considering the facts of the case in hand, the ratio is not applicable. Similarly, the judgment of the Division Bench of this Court in the matter of Amol @ Guddu Sevakar Khorgade Vs. Commissioner of Police, Nagpur and others reported in *2023 All MR (Cri.) 1549* is also not made applicable on facts.

24. If we consider five cases pitted against the petitioner, we find that petitioner is involved in serious offences which are falling under Chapter XVI and XVII of the Indian Penal Code. All offences are punishable under the provisions of the Arms Act, besides the offences punishable under I. P. Code. We have considered in camera statements of both the witnesses. We have no hesitation to confirm the finding of the detaining authority that activities of the petitioner are detrimental to the public order.

25. The learned counsel for the petitioner refers to the judgment of the Supreme Court in the matter of Ameena Begum Vs. The State of Telangana and others reported in *2023 LiveLaw (SC) 743*. The discussion of the difference between law and order and public order cannot be disputed. We have consciously applied the parameters laid down to the case in hand. Similar is the **judgment dated 02.08.2021 of the Supreme Court in the**

matter of Banka Sneha Sheela Vs. The State of Telangana and others in Criminal Appeal No. 733 of 2021. We have considered its paragraph Nos. 13 and 14. We cannot accept the submission that there is no disturbance to the public order in the present matter.

26. Last offence bearing CR. No. 118/2023 was registered against the petitioner on 15.03.2023. After period of four months and 15 days order of detention was passed on 31.07.2023. According to the petitioner the delay is fatal. The learned A. P. P. has invited our attention to the paragraph No. 6 of the affidavit in reply dated 17.01.2024 to impress that there is proper explanation.

27. It reveals that confidential statements were recorded on 24.04.2023. There was verification by the Sub Divisional Police Officer on 05.05.2023. On 11.05.2023 concerned police station officer forwarded the proposal through the Superintendent of Police, Jalgaon. The proposal was further remitted by the Superintendent of Police, Jalgaon and errors were rectified. Finally proposal reached the respondent No. 2/detaining authority on 12.07.2023.

28. After 15.03.2023 (registration of last offence) statements of two witnesses were recorded after thirty nine days. Verification of the statements was done after ten days by the Sub Divisional Police Officer, which also could have been avoided. The Superintendent of Police, Jalgaon found errors, which were

brought to the notice of the Police Inspector of the concerned police station on 26.05.2023. For rectifying errors and resubmitting the report time of about one month was consumed. There is no explanation for this one month. Thereafter proposal finally reached the respondent No. 2/detaining authority on 12.07.2023. There is no explanation for delay of fifteen days from 12.07.2023 till 31.07.2023. These intermittent lapses on the part of the officers in the process are startling.

29. When an action is proposed under the M.P.D.A. Act, which is punishment without trial, the detaining authority and all the officers involved in the process are expected to be diligent and sensible. Any indifferent attitude is fatal. We find substance in the submissions of the learned counsel for the petitioner in this regard. He has rightly referred to the judgment of the Supreme Court in the matter of Pradeep Nilkanth Paturkar Vs. S. Ramanurthi reported in *1992 CJ (SC) 513*. We have considered paragraph Nos. 9 to 13. This proposition has been followed by the Division Benches of this Court in **judgment dated 06.11.2023 in the matter of Jaggu Sardar @ Jagdish Tiratsingh Labana Vs. Commissioner of Police, Thane and others in Cri. W. P. (St) No. 15876 of 2023** as well as in the matter of Austin William Luis Pinto Vs. Commissioner of Police, Greater Mumbai and others reported in *2005 ALL MR (Cri) 28*. We are of the considered view that delay in the matter vitiates the impugned orders.

30. We have already recorded that there is unexplained delay of seven days in reporting detention order to the State Government

U/Sec. 3(3) of the M. P. D. A. Act. We have also recorded that there is delay of four months and fifteen days from registration of last offence till passing of the impugned order, which is not properly explained. Though we have not approved the submission of the petitioner on the point of delay in deciding representation, old and stale cases being pitted against him and want of disturbance to public order, in view of our findings on the submission of delay we are inclined to quash the impugned orders. We have already taken a view in the **judgment dated 04.03.2024 in the matter of Santosh Koli Vs. State of Maharashtra in Cri. W. P. No. 1858 of 2023** that delay is a jurisdictional issue which goes to the root of the matter. We find that Section 5A of the M. P. D. A. Act is not an impediment for quashing the impugned order. We therefore pass following order :

ORDER

- (i) The criminal writ petition is allowed.
- (ii) The impugned order of detention dated 31.07.2023 passed U/Sec. 3(1) of the M.P.D.A. Act passed by the respondent No. 2/District Magistrate, Jalgaon, order of rejection of his representation dated 16.11.2023 passed by the respondent No. 1 and order dated 17.10.2023 confirming order of detention passed by the respondent No. 1/State of Maharashtra are quashed and set aside.

(iii) The petitioner shall be set at liberty forthwith.

(iv) Rule is made absolute in above terms.

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

bsb/Feb. 24