



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

CRIMINAL WRIT PETITION NO. 1810 OF 2023

Akash Bhagwat Chonde,
Age : 35 years, Occu. : Business,
R/o In front of Mohekar College,
Indira Nagar, Kallamb,
Tq. Kallamb, Dist. Osmanabad.

At Present detained in Aurangabad
Central Prison.

.. Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Home Department (Special),
Government of Maharashtra,
Mantralaya, Mumbai – 32.
2. The District Magistrate / District
Collector, Osmanabad,
Dist. Osmanabad.
3. The District Superintendent of
Police, Osmanabad,
Dist. Osmanabad.
4. The Assistant Police Superintendent,
Sub Division Kallamb,
Tq. Kallamb, Dist. Osmanabad.
5. The Police Inspector,
Police Station Kallamb,
Tq. Kallamb, Dist. Osmanabad.
6. The Superintendent,
Aurangabad Central Prison,
Aurangabad-431008.

.. Respondents

Shri S. J. Salunke, Advocate for the Petitioner.

Shri M. M. Nerlikar, Addl. G. P. for the Respondent Nos. 1to6.

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

**CLOSED FOR JUDGMENT ON : 15.01.2024
JUDGMENT PRONOUNCED ON : 31.01.2024**

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

. Rule. Rule is made returnable forthwith. With the consent of parties taken up for final hearing at the admission stage.

2. Heard learned counsel Mr. S. J. Salunke, for the petitioner and learned Additional Public Prosecutor for the respondents/State.

3. The petitioner is challenging order dated 14.09.2023 issued by the respondent No. 2, which is confirmed on 22.09.2023 by the respondent No. 1 detaining him U/Sec. 3(2) 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 as to the “Act” for the sake of brevity and convenience). The impugned order was passed relying upon the following offences registered against the petitioner.

Sr. No.	Crime No.	Offences U/Sec.	Date of registration of offence	Case status
01.	95/2018	307 I. P. Code	20.05.2018	Pending next date 30.05.2023
02.	183/2021	354(A)(iv), 153(A), 294, 504 of the I. P. Code and Sec. 66(A)(D) of the Information and Technology Act.	25.05.2021	Pending next date 06.06.2023
03.	425/2022	324, 327, 323, 504, 506 r/w Sec. 34 of the I. P. Code	15.11.2022	Pending next date 22.06.2023
04.	240/2023	295(A), 504 and 506 of the I. P. Code	29.05.2023	Pending investigation

4. In camera statements of the witnesses A and B and the preventive action taken against the petitioner in (i) Chapter Case No. 02/2018 U/Sec. 56A of the Bombay Police Act, (ii) Case No. 01/2021 U/Sec. 56A and 56B of the Bombay Police Act, (iii) Chapter Case No. 01/2023 U/Sec. 110 of the Criminal Procedure Code and (iv) Chapter Case No. 16/2023 U/Sec. 110 of the Cr. P. C. are sought to be relied upon by the detaining authority. The respondent No. 1 approved the order of detention by its order dated 22.09.2023. The impugned order of detention and proposal dated 04.07.2023 was forwarded to the Advisory Board. After its approval, it was confirmed by order dated 31.10.2023. On 10.11.2023 the petitioner submitted representation. It was rejected on 24.11.2023 by the respondent No. 1.

5. The learned counsel Mr. Salunke advanced following submissions challenging the impugned order and its approval :

A) There is delay of about 14 days in deciding the representation. It has not been explained by the respondent authorities, which vitiates the impugned action.

B) The orders releasing the petitioner on bail have not been placed before the Detaining Authority which is fatal. It casts serious doubt about subjective satisfaction.

C) There is delay of about two months in passing order of detention on 14.09.2023, when the proposal was submitted on 13.07.2023. There is no live link between last offence registered and impugned order.

D) In camera statements of witnesses A and B were not served upon the petitioner. The statements are vague and no offences are registered for the instances stated in the statements.

E) The impugned order is against Article 22(5) of the Constitution of India. The subjective satisfaction is not based on objective consideration/material of the detaining authority for passing the impugned order.

6. The learned counsel for the petitioner seeks to rely upon the following judgments :

- I. Sushanta Kumar Banik Vs. State of Tripura reported in AIR 2022 SC 4715.
- II. Majahar @ Majju Vs. State of Maharashtra reported in AIR Online 2022 Bom. 788.
- III. Rashid Shaukat Husain Sayyed Vs. State of Maharashtra reported in 2018 All MR (Cri) 3543.
- IV. Mrs. Minakashi Amol Gedam Vs. The District Magistrate and others reported in 2023 All MR (Cri.) 4230.
- V. Judgment dated 12.08.2022 passed by the Division Bench of this Court in Criminal Writ Petition No. 454 of 2022 in the case of Shri Pandurang @ Panda Narayan Garud Vs. The District Magistrate, Pune and others.

7. The learned Additional Public Prosecutor countered the submissions in the following manner :

- a) The competent authorities have meticulously followed the time schedule. There is no violation of any statutory and mandatory provisions in that regard. Period of two months consumed for passing the impugned order has been explained.
- b) Time taken by the respondent No. 1. of fourteen days in deciding representation is not inordinate.
- c) The petitioner is involved in serious offences. One of the offences that is Cr. No. 425/2022 punishable U/Sec. 323, 324, 327, 504 and 506 r/w Sec. 34 of the I. P. Code was committed by the petitioner by violating order of externment passed against him.

d) There is no necessity to mention details of the instances quoted by the witnesses A and B. In camera statements are not vague considering confidentiality.

e) The detaining authority and the approving authority have arrived at subjective satisfaction for passing the impugned order.

f) The record shows that the petitioner is habitual offender, involved in serious offences, created terror in the vicinity and his being at large is detrimental to the peace and tranquility of the society.

g) It is not statutory and mandatory requirement to supply orders of bail to the detaining authority. There is cogent material available against the petitioner.

8. The learned Addl. P. P. seeks to rely upon following judgments :

- i) Hasan Khan Ibne Haider Khan Vs. R. H. Mendnoca reported in 200 AIR (SCW) 937.
- ii) Kakkovayal Kuhbi Hamja Vs. State of Maharashtra and others reported in 1991(4) Bom. CR 509.
- iii) Abdul Karim Mohd Shaban Khan Vs. Shri R. H. Mendonca and others reported in 1999 All MR (Cri.) 1801.
- iv) Smt. Phulwari Jagadambaprasad Pathak Vs. R. H. Mendonca and others reported in AIR SC 2527.

9. We have considered the rival submissions advanced by the litigating sides across the bar. The learned Addl. P. P. has argued on the basis of affidavit in reply to support the submissions. The learned Addl. P. P. has also placed on record relevant police papers.

10. The respondent detaining authority has relied on four offences registered against the petitioner of which the prosecutions are pending which are referred above. In camera statements of witnesses A and B and the preventive action initiated against the petitioner have been stated in paragraph No. 4. The proposal for taking action against the petitioner under the provisions of the Act was submitted on 13.07.2023. On 13.09.2023 the respondent No. 2/Detaining Authority passed order of detention U/Sec. 3(2) of the Act. It was confirmed by the respondent No. 1 on 22.09.2023. On 10.11.2023, the petitioner made a representation. It was rejected on 24.11.2023.

11. The petitioner has pressed into service ground of delay occurred at three stages. Firstly, delay of one and half month from 29.05.2023 (registration of last offence) to 13.07.2023 (submission of proposal). Secondly, delay of two months from proposal dated 13.07.2023 till order of detention dated 14.09.2023. Thirdly, delay of fourteen days from receiving representation dated 10.11.2023 and its rejection on 24.11.2023.

12. In the matter in hand, the statements of the witnesses A

and B were recorded on 29.05.2023 and 31.05.2023 respectively. The first offence bearing Cr. No. 95/2018 was registered against the petitioner on 20.05.2018. Last offence bearing Cr. No. 240/2023 was registered on 29.05.2023. The proposal was submitted on 04.07.2023 by the respondent No. 5. The proposal dated 04.07.2023 produced on record is accompanied by Ferist comprising of many documents/record of criminal antecedents. In all probability period of about a month and half to prepare a concrete proposal would be required. We do not find any lack of promptitude in submitting proposal.

13. The proposal was submitted on 13.07.2023 and order of detention was passed on 14.09.2023. According to the petitioner there is no explanation for this delay. The detaining authority when dealing with the liberty of the detenue would be cautious. After examining all aspects of the matter, drastic action is taken in the present matter. We do not find that there is any inordinate delay.

14. The petitioner relied on law laid down by the Supreme Court in the matter of Sushanta Kumar Banik Vs. State of Tripura (*supra*) stated in para Nos. 14 and 21. The ratio cannot be doubted but that cannot be made applicable to the case in hand.

15. It is submitted that, there is delay of fourteen days in deciding the representation made by the petitioner. The representation was made on 10.11.2023 and it was rejected on 24.11.2023. The petitioner relied on the judgment rendered by

the Nagpur Bench of this Court in the matter of Mrs. Minakashi Amol Gedam Vs. The District Magistrate and others (*supra*).

16. We have already recorded that the delay occurred at various levels is not inordinate to vitiate impugned action of preventive detention. Considering the material pitted against the petitioner consumption of time is obvious. The judgment cited by the learned counsel is not helpful to the petitioner.

17. The next submission of the petitioner is that the bail orders were not placed before the detaining authority. According to the learned counsel the reasons assigned for enlarging the detinue on bail provide inputs which are necessary for subjective satisfaction. He seeks reliance upon the judgment of the Supreme Court in the matter of Sushanta Kumar Banik Vs. State of Tripura (*supra*), para Nos. 23 to 26. He also places reliance upon para No. 4 of the judgment rendered by the Division Bench of this Court in the matter of Majahar @ Majju Vs. State of Maharashtra (*supra*), judgment rendered in the matter of Rashid Shaukat Husain Sayyed Vs. State of Maharashtra (*supra*) and judgment in the matter of Shri Pandurang @ Panda Narayan Garud Vs. The District Magistrate, Pune and others (*supra*).

18. A careful perusal of grounds of detention shows that the respondent No. 2/Detaining Authority has recorded that the petitioner was enlarged on bail. The proposal is comprising of charge sheet. Subjective satisfaction appears to be founded on

the relevant material including enlargement on bail. Had any mitigating circumstance been found appealing to the detaining authority, that would have been referred in the order. Considering overall conspectus of the matter, we are not inclined to allow the writ petition solely on the ground that there is no subjective satisfaction for non consideration of orders of bail. The judgments cited by the learned counsel for the petitioner in this regard cannot be made applicable.

19. The learned Addl. P. P. vehemently argued that the petitioner committed an offence punishable U/Sec. 323, 324, 327, 504 and 506 r/w Sec. 34 of the Indian Penal Code bearing Cr. No. 425/2022, which was registered with Kallamb Police Station on 15.11.2022. When order of externment passed on 29.11.2021 was in force and the petitioner was prohibited to enter in District Osmanabad and Beed for one year, offence bearing Cr. No. 425/2022 was committed. We have gone through an order of externment dated 29.11.2021 passed by the Sub Divisional Magistrate, Kallamb. It shows that considering criminal antecedents of the petitioner an order of externment was passed. He was prohibited from entering the limits of Osmanabad and Beed districts.

20. We find substance in the submissions of the learned Addl. P. P. This conduct of the petitioner is detrimental to the ground being taken by the petitioner and the submissions made on his behalf against the impugned order. This aspect of the matter has

also been considered by the detaining authority. Committing an offence by violating orders of externment is aggravated form of criminal antecedents. We find that there is no illegality or perversity committed by the detaining authority in appreciating the material on record to come to the conclusion that the petitioner is a dangerous person.

21. Considering the material produced against the petitioner, criminal antecedents and his conduct, we are not inclined to exercise the jurisdiction in favour of the petitioner to uphold the submissions of the learned counsel for the petitioner in respect of delay or non consideration of orders of bail. The petitioner has not tendered any explanation for violation of orders of externment. Rather this circumstance would substantiate the impugned order to demonstrate that ordinary law of the land has been falling short to prevent the activities of the petitioner.

22. The learned Addl. P. P. relied upon the judgment of the Supreme Court in the matter of Hasan Khan Ibne Haider Khan Vs. R. H. Mendnoca (*supra*) to buttress that delay of two months from last registered offence is not undue is applicable to the case in hand. The judgment in the matter of Kakkovayal Kuhbi Hamja Vs. State of Maharashtra and others (*supra*) is pressed into service by referring to its para No. 15. We prefer to adopt the same course in the present matter. The judgment rendered in the matter of Abdul Karim Mohd Shaban Khan Vs. Shri R. H. Mendonca and others (*supra*) also assists the respondents, which

lays down that considering potentiality and propensity to commit the offence the live link would not be snapped.

23. For the reasons stated above, we find that the criminal writ petition is devoid of merits. Hence it is dismissed. Rule is discharged.

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

bsb/Jan. 24