

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3778 OF 2023

Kiran Ramjan Machare

Age – 42 years, Occupation – Student,

R/at : 8/1, Bhatnagar, Pimpri,

District Pune.

.... Petitioner

v/s.

- 1) The State of Maharashtra
(Through the Secretary of Home Dept.)
(Preventive Detention,) (Special),
Mantralaya, Mumbai – 400 032.
- 2) The Commissioner of Police,
Pimpri Chinchwad,
Add. Premlok Park, Chinchwad,
Pune – 411 033.
- 3) The Superintendent of Yerwada
Central Jail, Yerwada, At Pune,
- 4) The Police Inspector,
Through Pimpri Police Station,
Pimpri, District – Pune.

.... Respondents

Mr. Harshvardhan Suryavanshi for the Petitioner.

Mr. S.V. Gavand, APP for the State.

**CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATED : 03rd APRIL, 2024.

ORAL JUDGMENT : (PER : SHYAM C. CHANDAK, J.) :-

- 1) Petitioner has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India, impugning the Detention Order dated 05th September 2023, issued by Respondent No.2–The Commissioner of Police, Pimpri-Chinchwad, Pune, under Section 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 (for short 'the MPDA Act').

1.1) Along with the said Detention Order dated 05th September, 2023, the Committal Order of even date and Grounds of Detention were served upon the Petitioner and Petitioner was directed to be detained at Yerwada Central Prison, Yerwada, Pune. The Detention Order has been issued with a view to prevent the Petitioner from acting in any manner prejudicial to the maintenance of public order as the Petitioner has been involved in bootlegging activities.

2) Heard Mr. Suryavanshi, learned Advocate for the Petitioner and Mr. Gavand, learned A.P.P. for the State. Perused entire record and all the Affidavits-in-reply filed by the Respondents.

3) Learned Advocate for the Petitioner submitted that, the Detention Order is assailed on several grounds, however, he is relying on the sole ground that, there is an inordinate delay in issuing the Detention Order. Explaining the same, it is submitted that, after registration of the subject crimes, there is more than 03 months delay in recording the in-camera statements of witnesses. Further, there is delay of 08 to 20 days in verification of said statements. The proposal for Detention Order was processed slowly and ultimately, the Detention Order was passed on 05th September 2023, which includes 48 days delay on the part of the Deputy Commissioner of Police (Crime). Thus, there is total 07 months and 08 days delay in passing the Detention Order. Said delay

is not satisfactorily explained. This all indicate that, there was no need of passing the Detention Order. Therefore, the Detention Order is illegal and liable to be quashed. To support the submissions, the learned Advocate has relied on following decisions.

- i) *Hardhan Saha vs. State of West Bengal and Othrs,*
(1975) 3 SCC 198,
- ii) *Pradeep Neelkanth Paturkar vs. S Ramamurthy and Others,*
1993 Supp (2) SCC 61,
- iii) *Majahar @ Majju Firoz Shaikh vs. State of Maharashtra and Anr.,*
AIR Online 2022 Bom 788.

4) Per contra, learned A.P.P. submitted that, on 32 occasions there were VIP bandobast and public holidays between 24th June 2023 and 31st July 2023. Looking at this workload and compelling circumstances, it cannot be accepted that, the Order of Detention is bad for the alleged delay in considering and onward forwarding the proposal for detention order by the said Deputy Commissioner of Police (Crime). Otherwise there is no delay on any other count. In the Affidavit-in-reply, the time taken in issuing the Order of Detention has been explained. The Petitioner is continuously involved in the illegal activities which caused very bad effect on the society and thus, prompted the Detaining Authority to issue the Order of Detention. As such, there is no substance in the Petition.

5) The Detention Order has been issued against the Petitioner in view of two crimes i.e., C.R.No.226/2023 and C.R.No.243/2023 both

registered with Pimpri Police Station, Pune and three in-camera statements of witnesses.

5.1) Said C.R.No.226/2023 and C.R.No.243/2023 were registered on 22nd February 2023 and 24th February 2023 respectively, as on those days, at the relevant time and places, the Petitioner was found in possession of illicit liquor with intent to sell. However, on getting hint of police, the Petitioner fled from the spot on both the occasions. Therefore, the illicit liquor was seized, but its sample were sent for chemical analysis on 27th March 2023. Thereafter, in both the crimes notice under Section 41-A(1) of Cr.P.C. was served upon the Petitioner on 17th April 2023, thereby calling upon him to attend for the investigation at the Police Station on 31st July 2023. However, the C.A. Reports of the samples were received on 6th June 2023.

5.2) Meanwhile, a secret inquiry was made and the in-camera statements were recorded on 3rd, 7th and 15th June, 2023. The first in-camera statement relates to an incident occurred in the 3rd week of January 2023, at about 21:00 hours, when the Petitioner, his family members and friends assaulted said Witness-A at the instance of the Petitioner because the said witness objected the Petitioner for carrying liquor business in the locality. The second in-camera statement relates to an incident occurred in the 2nd week of March 2023, at 19:00 hours, when the Petitioner and his relatives threatened, abused and manhandled Witness-B for he objected the Petitioner for carrying illicit liquor business. The third in-camera statement relates to an incident occurred in 1st week of April 2023, at about 11:00 hours, when the Petitioner

unnecessarily abused, assaulted with hand and threatened to kill Witness-C and his family for he complained to police against the Petitioner's liquor business. The in-camera statements also shows that, the Petitioner takes the help of his family members or suppliers for his illicit liquor business. The Petitioner has created terror in the locality with the help of local young boys. This illegal activity has affected the lives of poor and young boys got addicted to liquor. If anybody objects or complains to police the Petitioner threatens to assault them with weapon with the help of his relatives and suppliers.

6) As stated in the Affidavit-in-Reply of Respondent No.2, in view of the aforesaid two crimes, the in-camera statements were recorded on 3rd, 7th and 15th June, 2023 after serving the notice provided under Sections 41-A(1) of Cr.P.C. Thereafter, the Sr. Police Inspector, Pimpri Chinchwad, forwarded the proposal for Detention Order on 20th June 2023, through Assistant Commissioner of Police, Pimpri Division, who verified the in-camera statements of witnesses on 23rd June 2023. The said Assistant Commissioner of Police gave his endorsement on 03rd July, 2023 and forwarded the papers to the Deputy Commissioner of Police, Zone-1. The latter gave his endorsement on 05th July 2023, and forwarded the proposal to Sr. PI., P.C.B. Crime Branch, who received the same on 06th July 2023. In turn, the Sr. PI., P.C.B. Crime Branch, scrutinized the proposal and submitted it with his report to A.C.P. (Crime) on 07th July 2023. Said A.C.P. (Crime) gave his remarks on 07th July 2023 and submitted the papers to the Deputy Commissioner of Police (Crime) who gave her remarks on 24th August 2023 and, submitted the proposal to

Addl. C.P. who gave his remark on 30th August 2023 and, forwarded it to the Jt. Commissioner of Police. The latter gave his endorsement on 31st August 2023. Thereafter, the papers were placed before the Detaining Authority on 01st September 2023.

7) From the above facts, it is evident that, the said two crimes were committed in 4th week of February 2023. The in-camera statements, however, were recorded on 03rd, 07th and 15th June 2023. Even though the proposal seeking the Detention Order was not voluminous, the Deputy Commissioner of Police (Crime) took 48 days in reading the proposal, giving her remarks thereon and forwarding it to the Additional Commissioner of Police. In its Affidavit, the Detaining Authority tried to explain the said delay of 48 days with a plea that, on more than 30 occasions as stated above, there were VIP *bandobast* and public holidays between 24th June 2023 and 31st July 2023. However, we noted that, after 31st July 2023 also, the Deputy Commissioner of Police took 24 days for considering the proposal and forwarding it to the immediate superior authority. That apart, the Affidavit of the Respondent No.2 does not claim that, the said Deputy Commissioner of Police (Crime) herself was engaged in the *bandobast* duty on all the occasions and was at field. Therefore, in our considered view, on account of the said delay in recording the in-camera statements and 48 days delay on the part of Deputy Commissioner of Police (Crime) has snapped the live-link between the alleged prejudicial activities and need for the preventive detention.

8) It is settled law that, the object of preventive detention is to

prevent the person from indulging in the activities prejudicial to the maintenance of Public Order. Therefore, it is expected that, the proposing authority as well as the other authorities involved in the process are taking prompt steps not only for initiating the proposal seeking for Detention Order but also for expeditiously processing it in all respect and at all levels, so that, the object behind passing of the Order of Detention is achieved. Otherwise, the live-link between the alleged prejudicial activities and need for preventive detention would be snapped.

9) In the case of *Bhawarlal Ganeshmalji vs. State of Tamil Nadu*, (1979) 1 SCC 465, it is held 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."

10) As held in the case of *Sushanta Kumar vs. State of Tripura and Others*, 2022 SCC OnLine SC 1333, "...if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the

same manner, from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.”

10.1) Considering the impact of delay in such proceedings, it is enunciated that, “The preventive detention is a serious invasion of personal liberty and the normal methods open to a person charged with commission of any offence to disprove the charge or to prove his innocence at the trial are not available to the person preventively detained and, therefore, in prevention detention jurisprudence whatever little safeguards the Constitution and the enactments authorizing such detention provide assume utmost importance and must be strictly adhered to.”

10.2) In the case of *Pradeep Paturkar* (supra), it is held that, unexplained delay, whether long or short, especially when the detenu has taken a specific plea of delay, vitiates the Order of Detention.

11) In view thereof, the Detention Order stands vitiated and the continued detention of the Petitioner is illegal and impermissible. The detention of the Petitioner is therefore liable to be quashed. Thus, we quash and set aside the impugned Order dated 05th September, 2023.

11.1) Hence, the following Order :-

- (a) Detention Order dated 5th September, 2023 bearing No. PCB/DET/123/2023 and Committal Order dated 5th September, 2023 bearing No.PCB/DET/124/2023, issued by Respondent No.2, are quashed and set-aside.
- (b) Petition is allowed in terms of prayer Clause (b).
- (c) Petitioner be released from jail immediately, on production of an authenticated copy of this Operative Order, if not required in any other case(s).
- (d) Rule is made absolute.

(SHYAM C. COHANDAK, J.)

(A.S. GADKARI, J.)

PREETI
HEERO
JAYANI

Digitally signed by
PREETI HEERO
JAYANI
Date: 2024.05.09
14:38:55 +0530