

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 547 OF 2024

Ravi Vyankatrao Dadhi
Age : 27 Years, Occu.: Nil
R/at : Darshana Apartment, Building
Room No.3, Vijay Nagar, Kalyan (E),
District Thane. .. Petitioner

Versus

1. The State Of Maharashtra
(Through Public Prosecutor)
2. The Commissioner of Police
Thane, District – Thane
3. The Superintendent
Yerwada Jail, Pune .. Respondents

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Mr. Vishal V. Rankhambe, for the Petitioner.

Mr. J. P. Yagnik, A.P.P. for the State/Respondent.

...

CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 14th JUNE, 2024

JUDGMENT (PER - MANJUSHA DESHPANDE, J.) :-

1. The Petitioner is challenging the order of detention dated 25.08.2023, issued by the Respondent No.2 i.e. the Commissioner of Police, Thane, District Thane. The said order has been issued by the Respondent No.2 in exercise of powers

conferred under Sub-Section (2) of Section 3 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. ("the MPDA Act"). The said order of detention issued by the Respondent No.2 has been approved by the State Government, directing the Petitioner to be detained for a period of 12 months, on the basis of the reports submitted by the Advisory Board constituted under the Act.

2. The order of detention alongwith grounds of the detention were served on the Petitioner. The said grounds of detention mention that, the said order of detention has been issued relying on the offence registered under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code ("the IPC") read with Section 37(1)135, 142 of the Maharashtra Police Act. The Petitioner was found to be engaged in criminal activities, terrorizing the people in the mentioned localities and engaged in committing crimes, like extortion, rioting, robbery, grievous hurt, abusing and likewise. The criminal activities of the Petitioner were found to be prejudicial to the maintenance of the public order, peace and tranquility. The said order also refers about the involvement of the Petitioner in various criminal cases since the year 2018. Five cases are shown to be pending in the Court against the Petitioner. The said order also refers to the preventive orders issued against the Petitioner. Though preventive orders have have been issued, the said orders had

failed to deter the Petitioner from committing offences. Therefore, it became extremely necessary to take strong measures to prevent the Petitioner from committing offences. Since the preventive orders did not curb the activities of the Petitioner, confidential inquiries were made about the criminal activities in the locality of Kolshewadi area, and Thane Commissionerate, by preventive section of the Kolshewadi Police Station.

3. Upon inquiry it was found that number of people were victimized by the Petitioner in the recent past. However being a dangerous person nobody was ready to complaint against the Petitioner. Therefore, two witnesses who were given assurance not disclosing their identity, came forward and their statements were recorded in-camera. After recording the said statements of the witnesses, the same were verified by the Assistant Commissioner of Police, Kalyan Division on 01.08.2023. After recording satisfaction that, the Petitioner is a dangerous person within the meaning of Section 2(b-1) of the MPDA Act, 1981, the order of detention of came to be passed.

4. The Petitioner is challenging the said order of detention on the grounds mentioned in the memo from ground Nos. (i) to (xii). The first and foremost ground raised is that, the Respondent No.2 has violated the principles of natural justice. According to the Petitioner he was not produced before the Advisory Board within the period of three weeks from the order of detention, as contemplated in Section 10 of the said

Act. Therefore, the said order is vitiated and the detention in pursuance of that order becomes impermissible and illegal.

5. The next ground taken by the Petitioner is that the order of detention is illegal for the reason that, in the said order specific period of detention is not mentioned. The Petitioner has also raised a ground, that the initial period for which the Petitioner could be detained is only six months. The impugned order issued by the State Government confirming his detention is beyond six months, which is illegal.

6. Apart from the said grounds mentioned in the memo, while making submission learned counsel for the Petitioner has raised grounds regarding non-consideration of the order of bail while passing the order of detention by the Detaining Authority. It is the contention of the Petitioner that the Detaining Authority should have considered the material granting bail to the Petitioner. In support of his submission the Petitioner has placed reliance on the Judgment delivered in Criminal Writ Petition No. 626 of 2022 by the Nagpur Bench of this Court (Coram : Sunil B. Shukre and M. W. Chandwani, JJ.).

7. We have heard the learned counsel for the Petitioner as well as learned A.P.P. for the Respondent – State. Learned A.P.P. relies on the affidavits filed by the State Authority. First of such affidavits being filed by the Respondent No.2 – Commissioner of Police, Thane, wherein he has opposed all the grounds raised by the Petitioner. It is alleged by the

Petitioner that principles of natural justice are not followed, as he was denied opportunity of being heard before the Advisory Board. The Commissioner of Police in his affidavit has stated that in fact an opportunity of being heard was given to the Petitioner and he was present through the Video-Conferencing before the Advisory Board on 09.01.2023. Only thereafter the order of detention is confirmed by the Advisory Board and also by the State Government by order dated 17.10.2023. Therefore, so far as the ground regarding non-adherence to the principles of natural justice is concerned, the same is not tenable.

It is further mentioned that the then Detaining Authority has carefully gone through the material placed before him and only after recording his satisfaction that the Petitioner/detenué is acting in a manner prejudicial to the maintenance of the public order, the order of detention has been passed on 25.08.2023 under Sub-Section (2) of Section 3 of the MPDA Act. It would be useful to reproduce Section 3 of the said Act which reads as under :

3. (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing,

direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section :

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed ²[six months] but the State Government may, if satisfied as aforesaid that it is necessary so to amend such order to extend such period from time to time by any period not exceeding ³[six months] at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

8. The Commissioner of Police further dealt with the absence of specific period in the detention order, issued by the Detaining Authority. According to the Commissioner of Police the proviso to Sub-Section (2) of Section 3 is applicable only if the detention order is passed either by the District Magistrate or the Commissioner of Police of the area. It does not contemplate mentioning the period of detention in the order passed by the District Magistrate and the Commissioner of Police. It is only when the order of detention is confirmed under Section 12, the period of detention is mentioned.

9. So far as the objection of the Petitioner, to the period of one year mentioned in the order of the State Government is concerned, the Commissioner of Police while dealing with the said ground has categorically stated that Section 13 provides that, the detention of the detinue can be for a maximum period of 12 months. Accordingly, after considering the report of the Advisory Board, the State Government has confirmed the order of detention, prescribing the maximum period as contemplated under Section 12(1) and 13 of the MPDA Act.

10. Learned counsel while making his submissions has invited our attention to the proviso of Sub-Section (2) of Section 3 wherein there is a restriction on passing order of detention at the first instance, exceeding six months. Only upon recording satisfaction, the said period can be extended from time to time. So far as this ground is concerned, the issue has already been set at rest in the reported Judgment of **Mrs. T. Devaki V/s. Government of Tamil Nadu, 1990 2 SCC 456**, wherein while dealing with pari-materia provisions under the Tami Nadu Act, the Hon'ble Apex Court has clarified Section 3 and proviso thereto. In the said case, it was argued that the Detaining Authority is not obliged to specify the period for which the detinue is reported to be detained. While clarifying the proviso of Sub-Section (2) of Section 3, the Hon'ble Apex Court has explained that, the Sub-Section 2 empowers the State Government to delegate its power conferred on it under Section 3(1) to the District Magistrate or Commissioner of Police. The said order of delegation which is required to be in

writing, is required to specify the period during which the District Magistrate or the Commissioner of Police are authorized to exercise the powers of the State Government and it is in this context the proviso specifies that the delegation shall not exceed six months. Therefore, there is no substance in the ground raised by the Petitioner. The said period mentioned in the proviso is for the purpose of delegation of powers and not about the period of detention.

11. According to the Respondent No.2 the order of detention has been passed on the basis of three incidents i.e. Kolsheewadi Police Station, in C.R. No. 411 of 2023, in-camera statement of witness 'A' recorded on 12.07.2023 and in-camera statement of witness 'B' recorded on 13.07.2023. On the basis of the said material, satisfaction is recorded by the Detaining Authority, thereafter the order of detention has been passed.

12. It is contended that conviction in an offence registered is not *sine-que-non* for passing of the order of detention under the provisions of the MPDA Act. The action taken under the MPDA Act, is a preventive action. Therefore, the prosecution and prevention are both different from one another. It is contended that the Petitioner is a dangerous person and he has continued to commit offences after being released on bail. Even the preventive action initiated against the Petitioner in the year 2019-2022, did not have any deterring effect on him, therefore it become imperative to pass order of detention against him.

13. An Affidavit has also been filed by the Joint Secretary of the Home Department, wherein he has stated that as per Section 13 of the MPDA Act, the maximum period for which any person may be detained in pursuance of any detention order, is 12 months and the impugned order also mentions period of 12 months. He has further given the details about the dates and reports received by the various authorities of the State Government. In para No.3 it is stated that the detention order is passed by the Respondent No.2 being authorized by the State Government on 25.08.2023. The report under Section 3(3) from the Detaining Authority was received by the State Government on 28.08.2023. The State Government has approved the said order on 04.09.2023. The order of detention was referred to the Advisory Board on 04.09.2023. The opinion of Advisory Board was received on 10.10.2023 and after considering the report, order of confirming the detention is passed by the State Government on 17.10.2023. Therefore, according to him all the orders, report of Advisory Board have been issued in adherence to the time line as provided in the MPDA Act, therefore it requires no interference. So far as the affidavit of Superintendent of Yerawada Central Prison, Pune, is concerned, it is filed in support of the stand taken by the State Government that the Video-Conferencing was made available to the detainee in Central Prison on 04.10.2023.

14. We have gone through the memo of the Writ Petition, annexures and affidavits filed by the respective authorities. We have heard respective counsel and after going

through the same, we do not find that the Petitioner has made out any case for interference in the order of detention passed by the State Government.

15. The Petitioner raised three grounds. The first is regarding non-adherence to the principles of natural justice, by not giving him an opportunity before the Advisory Board. As far as this ground is concerned, it has already demonstrated through the affidavits filed by the State Government that the Petitioner was given opportunity to appear before the Advisory Board through Video-Conferencing. As regards the ground raised by the Petitioner that the Detention order issued by the Detaining Authority did not mention period of detention is concerned, the same is now settled by the various judicial pronouncements that Section 3 does not contemplate period of detention to be mentioned by the Detaining Authority, therefore even the said ground is not maintainable.

16. As far as ground of the Petitioner regarding period of detention of one year being mentioned by the State Government in its final order is concerned, even the same is now set to rest by the judicial pronouncements in this regard issued by the Hon'ble Apex Court in *Mrs. T. Devaki V/s. Government of Tamil Nadu*, as referred hereinabove. Therefore, even the said ground raised by the Petitioner is not maintainable.

17. While making submissions the Petitioner has raised another ground which is not raised in his grounds in the memo. The Detaining Authority while issuing the order of detention has failed to consider the material regarding grant of bail to the Petitioner. As the grant of bail is an important factor which goes into making up subjective satisfaction of the authority. Therefore, while recording his subjective satisfaction, the concerned authority is required to go through the material granting bail to the detenue. In support of the said submission, the Petitioner has relied on the orders passed in Writ Petition No. 626 of 2022 (Coram : Sunil B. Shukre and M. W. Chandwani, JJ.) by the Nagpur Bench of this Court, wherein the Hon'ble Court has held that it is necessary for the concerned authority to take into account the material which was placed before the Court while granting bail. So far as the applicability of the said order in the present case is concerned, the order of the Detaining Authority in the ground of detention has categorically mentioned that, he has been granted bail in the offence registered at Kolshewadi Police Station, being C.R. No. 411 of 2023, and after grant of bail he has become a free person, therefore more the reason which was necessary to curb his criminal activities to which was found to be prejudicial to the maintenance of the public order. It is categorically recorded by the Detaining Authority that since he has been granted bail he is free, therefore as a consequence he has continued to engage in his criminal activities and people in the said area are in constant shadow and fear of the Petitioner. In the order relied upon by the Petitioner the Division Court has categorically observed that the Detaining

Authority had not at all considered any of the bail orders which were granted to the Petitioner in that case. In the present matter, the Detaining Authority has in fact considered the bail matter and material before him and it is only thereafter he has passed the order, therefore the said case can very well be distinguished from the present matter. Hence, the ground raised by the Petitioner during his submission also lacks merit.

18. Having considered all the grounds raised by the Petitioner, we do not find that the Petitioner has made out any case for interference in the order of Detention dated 25.08.2023, issued by the Respondent No.2 i.e. the Commissioner of Police, Thane, District Thane.

19. As a result, the Writ Petition is dismissed being devoid of merit. No order as to costs.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)

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signed by
CHAITANYA
ASHOK
JADHAV
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