

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

CRIMINAL WRIT PETITION NO.212 OF 2024

Aakash Dasan Chakkamsari

.... Petitioner

Versus

Commissioner of Police, Thane and Ors.

.... Respondents

.....

Ms.Jayshree Tripathi, Advocate for the Petitioner.

Mr.S.V. Gavand, APP for Respondent – State.

.....

***CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.***

DATED : 20th AUGUST 2024.

ORDER (PER : Manjusha Deshpande, J.)

1 The matter is taken up for final disposal with the consent of the parties.

2 The Petitioner has filed present Criminal Writ Petition invoking Article 22(5), 21 and 226 of the Constitution of India.

3 The Petitioner is seeking direction to quash and set aside the Detention Order issued by the Commissioner of Police Thane, dated 20.12.2023. The Order of Detention has been

issued by the Commissioner of Police, Thane, in exercise of powers under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords and Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-marketing Essential Commodities Act, 1981 ("MPDA Act", for short).

The Order of Detention dated 20.12.2023 was also accompanied by the grounds of Detention, and order of committal dated 20.12.2023.

4 In the grounds of Detention, the Detaining Authority has observed that record shows that the Petitioner is the 'bootlegger' within the area of Mahatma Phule Nagar, Ulhasnagar No.3, District-Thane. It is alleged the petitioner is illegally selling country liquor in Ulhasnagar and nearby area which created an impact on public order. Hatbhatti being harmful and dangerous to human health, and also considering that, there have been many untoward incidents in the State of Maharashtra, which have occurred due to consumption of Hatbhatti liquor. In order to prevent the illegal activities of the Petitioner, the the State Excise Department, Ulhasnagar and

Madhyavarti Police Station, Ulhasnagar have raided the illicit den of 'Hatbhatti' of Petitioner from time to time and registered offences against him. A report was called from the District Surgeon, Central Hospital, Ulhasnagar-3 regarding consequences of consuming the country-made liquor, which affected the public health adversely.

5 Though preventive action against the Petitioner is taken under Section 93 of the Maharashtra Prohibition Act, 1949 to curb his business activities of 'Hatbhatti' liquor, it had no deterrent effect on the Petitioner. The Detaining Authority has given a list of offences registered against the Petitioner under Section 65(e) of the Maharashtra Prohibition Act, registered between 13.02.2020 to 02.02.2023. Referring to the recent offence registered against the Petitioner, showing his inclination to continue the bootlegging activities, the Detaining Authority has relied on one offence and two confidential statements which are reproduced in paragraph 5(a) and 5 (b).

So far as the offence which has been registered against the Petitioner, it was registered on 29.08.2023, by the Inspector of State Excise Department, Ulhasnagar under Section 65(e) of the

Maharashtra Prohibition Act being C.R.No.152 of 2023. Upon receiving a complaint about illegal sale of country made liquor by the Petitioner, raid was conducted and approximately 50 liter country made liquor and instruments to prepare illegal country made liquor were seized from the possession of the Petitioner. Two bottles of sample from the seized country made liquor was sent for Chemical Analysis and complaint was filed against the Petitioner under the Amended Ordinance of 2005 under Section 65(e) of the Maharashtra Prohibition Act, 1949, for illegally possessing country-made/Hatbhatti liquor and selling it. The Petitioner was arrested on 29.08.2023 itself and was produced before the Court upon which he has been released on bail on 29.08.2023. When the said sample was sent for testing, a report was received from the Chemical Analyser stating that 35% VV ethyle alcohol was found in the sample of Hatbhatti.

An inquiry was made against the Petitioner in which it was found that he was a bootlegger and due to fear, nobody dares to give statement openly against him. On assurance that their names and identity would not be disclosed and they would not be called upon to give evidence, two witnesses have come

forward and their statements were recorded in-camera, by the Inspector of State Excise Department, Ulhasnagar and verified by the Deputy Superintendent of State Excise Department, Kalyan.

6 The in-camera witness “A” has stated that many goons visit the place where the country made liquor is sold by the Petitioner, women, girls and children are harassed because of them. The people visiting the Petitioner have created atmosphere of terror in the said area. Referring to the incident which had occurred in third week of September 2023 at 08.30 in the evening it is narrated that while the victim was proceeding to meet her relatives, the Petitioner had stopped her on the road and abused and threatened her. The Petitioner has threatened if she and her relatives will dare to make any complaint against his Hatbhatti business, they would be facing consequences.

7 Statement of witness “B” was recorded on 20.11.2023 who narrates the incident of first week of September 2023, when she was proceeding to her house she was stopped in the midst and threatened by the Petitioner that, if she did not stop making complaint about his business, she would be put to

death by the Petitioner. After taking into consideration the statement of the in-camera witness, C.R.No.153 of 2023 was registered against the Petitioner, and recording satisfaction about the Petitioner being a bootlegger and his activities being prejudicial to the maintenance of public order, the Order of Detention has been issued against the Petitioner.

8 The advocate for the Petitioner has challenged the said order on various ground, however, she has predominantly relied on ground No.(dd) which reads thus:

(dd)The petitioner says and submits that the detaining authority has taken into consideration C.R.No.152/2023 dated 29.08.2023 for arriving at his subjective satisfaction and pass the detention order. It is to be noted that in said C.R. the petitioner was arrested and was granted bail by the Competent Court of Law on the same day i.e. 20.08.2023. The petitioner further submits that two in camera statements of witness A and B are recorded belatedly on 13.11.2023 and 20.11.2023 for incidents occurred in the 3rd week of Sept, 2023 and 1st week of Sept, 2023, and the order of detention was issued on 20.12.2023 i.e. after about a month of recording of the in-camera statements. The detaining authority categorically states in para 5 of the grounds of detention that in view of the above referred prohibition cases registered against you....., a confidential inquiry was conducted.... However, it is not understood as to when the said inquiry was started, because the in camera statements are recorded after more than two months after the petitioner was granted bail. If the prejudicial activities of the petitioner was so

dangerous and serious for maintenance of public order, then the authorities ought to have acted with promptitude and sense of urgency. After the registration of relied on C.R. the authorities have awaited for more than two months for recording of in camera statements. Therefore, there is a delay in recording in camera statements, and after recording of the in camera statements, the order of detention is passed after another one month. This shows the casual and cavalier approach of the authorities passing the detention order. Live link snaps. Order of detention is illegal and bad in law for delay in passing order, liable to be quashed and set aside. The authorities are called upon to explain the said two delays to the satisfaction of this Hon'ble Court, failing which the order of detention will be held as illegal and bad in law liable to be quashed and set aside."

It is the contention of the Petitioner that, though the C.R. on which the Detaining Authority has relied, is registered on 29.08.2023, and the Petitioner has been granted bail on the same day, the Order of Detention has been issued on 20.12.2023 i.e. after four months after registration of offence against the Petitioner. It is further contention of the Petitioner that, if the activities of the Petitioner were genuinely prejudicial to the maintenance of public order, the Authorities should have acted with promptitude and with a sense of urgency. The delay in issuance of Order of Detention itself reflects that there is no urgency for detaining the Petitioner and no real danger to the maintenance of public order.

9 It is further contended that, even the in-camera statements of witnesses “A” and “B” have been belatedly recorded on 13.11.2023 and 20.11.2023 respectively, against the Petitioner. Considering that the in-camera statements have been recorded belatedly, the Order of Detention suffers from delay is liable, therefore to be quashed and set aside as the live link snaps.

10 We have called upon the learned APP Mr.Gavand seeking response of the Detaining Authority to the grounds raised by the Petitioner. The Detaining Authority has filed an additional affidavit after the Petition was amended by the Petitioner. In the additional affidavit, the Detaining Authority has replied to the ground (dd) in paragraph no.4 of his affidavit dated 09.08.2024. The Detaining Authority has denied that the approach of the Authority is cavalier and the live link has snapped due to delay in passing the Order of Detention. The Detaining Authority has given chronological dates of the steps taken by the investigating officer. According to him, the muddemal articles were seized on 29.11.2023 and samples were forwarded to Directorate of Forensic Science Laboratory on 05.10.2023. The report of the sample was received on

31.10.2023. During the course of inquiry, it was learnt that though the Petitioner had committed several offences, the witnesses were reluctant to come forward and openly make complaint against him. The witnesses were required to be convinced and after much persuasion, two witnesses have come forward. Their statements came to be recorded on 13.11.2023 and 20.11.2023. The sponsoring Authority have carefully gone through the material collected by them and after preparing necessary set of documents the proposal of detention of the Petitioner was submitted on 22.11.2023. After it was forwarded through proper channel, it was scrutinized by various authorities at various levels, and, thereafter, eventually it was placed before the Detaining Authority and the Detaining Authority has passed order of Detention on 20.12.2023.

The Detaining Authority has submitted that, the proposal alongwith accompanying papers were as per usual practice submitted first to the State Excise Department, to the Deputy Superintendent of State Excise Department, Kalyan on 23.11.2023. He has after scrutinizing it carefully and after verifying the in-camera statements on 24.11.2023 and 29.11.2023, forwarded the papers to the Superintendent of

State Excise Department, who in turn after carefully going through it forwarded it to the Commissioner of Police, Thane on 30.11.2023. The Senior Police Inspector M.P.D.A. Cell, Thane, received the said proposal on 04.12.2023, which was scrutinized and submitted alongwith his report to ACP (Preventive). The ACP (Preventive) alongwith his remark on 07.12.2023 submitted the papers to Deputy Commissioner of Police (Crime), who after making his remarks submitted it to the Additional Commissioner of Police (Crime) who in turn has put his endorsement on 15.12.2023. It is only after the file has been moved through, the tables of various Authorities, the Detaining Authority has ultimately being satisfied that it is a fit case for detaining the Petitioner under the M,P.D.A. Act, gave his approval for the said proposal on 18.12.2023.

All the papers thereafter were forwarded to the sponsoring Authority for fair typing, for preparing translation of documents in language known to the Petitioner and preparing necessary sets of documents. After completing all necessary preparatory work, the Senior P.I., M.P.D.A., after verification of all documents placed it before the then Detaining Authority who has once again after careful scrutiny of the proposal

finalized the grounds of Detention, acting promptly without any loss of time and issued Order of Detention on 20.12.2023. It is also brought to our notice that, from the date of submission of proposal on 22.11.2023 by the Sponsoring Authority till the date of passing of Detention Order on 20.12.2023, there were holidays on 26.11.2023, 03.12.2023, 10.12.2023 and 17.12.2023. Therefore there was no delay as such in passing the Order of Detention.

Having considered the detail date wise steps and explanation given by the Detaining Authority, we do not find any substance in the ground raised by the Petitioner, therefore, the order of Detention cannot be set aside on this ground raised by the Petitioner.

11 The other ground pressed into service by the Petitioner is ground (ee) which reads thus:

“(ee)The petitioner says and submits that the detaining authority has also relied upon 2 in camera statements of witness A & B to arrive at his subjective satisfaction and pass the order of detention. The statement of witness A & B narrates an incident where the petitioner has approached the witnesses and later there are verbal altercations and threats made by the petitioner, Such activity of threatening, and assault etc cannot be taken

into consideration to pass an order designating the petitioner as a bootlegger. At best, they are activities falling under the category of dangerous person and not a bootlegger. Both statements cannot be considered to pass a detention order under the category of a bootlegger. The order of detention is illegal and bad in law, liable to be quashed and set aside.”

According to the Petitioner, as per the contents of ground (ee), in-camera statements of witnesses “A” and “B” do not relate to the bootlegging activities of the Petitioner. At the most, the said statements can be said to be applicable in respect of ‘Dangerous Person’. Both the statements cannot be considered for passing the Order of Detention for the category of a ‘bootlegger’, since it does not directly relate to the bootlegging activity of the Petitioner. The learned APP has once again taken us to the response given by the Detaining Authority to the said grounds raised by the Petitioner. The Detaining Authority has stated that, the statements of witness “A” and “B” were recorded on 13.11.2023 and 20.11.2023. The witnesses ‘A’ has stated that many goons visit the Petitioner’s place selling country made/Hatbhatti liquor and create atmosphere of terror. People consuming the Petitioner’s country made liquor vomit on the road and roll in drunkenness. The health of the people in the area is in danger due to foul smell and unsanitary conditions

created due to the country made liquor/Hatbhatti liquor. Hence, the health of the people in this area is in danger. Since the Petitioner has created terror in the area, and nobody is coming forward to lodge complaint against him. The Detaining Authority after verifying the said statements has arrived at subjective satisfaction and has issued the Order of Detention.

12 We have gone through the statements of witnesses “A” and “B”, it not only refers to the threats given by the Petitioner to the witnesses. But also refers to the ill effects of Hatbhatti called in the area, the on women, children and adolescents, the foul smell and unhygienic conditions having its ill effect on the people residing in the said area. Therefore, it cannot be said that the statements of the witnesses refer only to the conduct which is attributable to a ‘Dangerous person’, hence even this ground (ee) has no substance which would render the Order of Detention illegal.

The Petitioner has relied on judgment in the case of *Pradeep Nilkant Paturkar Vs. S. Ramamurthi & Ors.*¹. In support of her contention about the delay in issuing the Order of

1 1993 Supp (2) SCC 61

Detention after registration of last crime making the said order unsustainable. However, in the present case, considering the detailed explanation given by the Detaining Authority about the movement of file from table to table and Authority to Authority, we do not find that, the order suffers from delay, or there is a snapping of live link. In fact, after registration of offence against the Petitioner on 29.08.2023, the report was received from the FSL, and during inquiry when it was disclosed that the petitioner is a bootlegger. Statements of witnesses "A" and "B" have been recorded on 13.11.2023 and 20.11.2023, respectively, which were thereafter verified. As stated above after taking appropriate steps, the Order of Detention has been issued, which has been satisfactorily explained by the Detaining Authority. Hence, the judgment which has been cited by the Petitioner in which the delay was not explained would not be applicable in the case of the Petitioner.

13 The other judgment relied upon by the learned advocate for the Petitioner is in the case of ***Niyazuddin @ Sonu Sirajuddin Ansari Vs. State of Maharashtra and Anr.***². In the said judgment, there was an unexplained delay of 20 days.

2 2013 ALL MR (Cri) 3870

Hence, the Order of Detention was quashed and set aside. However, as we have already observed hereinabove, the chronological dates and the steps taken by the Authority has been satisfactorily explained. Hence, we do not find that the Order of Detention suffers from delay and latches, and as such the said judgment would not be applicable to the facts of the present case.

Similarly in case of *Daksh Juber Ghelani Vs. The Commissioner of Police, Pune City and Ors.* (Cr.W.P.3994 of 2023, dated 04.04.2024), there was a gap of five months in recording in-camera statements of witnesses “A” and “B”, which was not explained, hence, the Order of Detention on account of snapping of live link.

Hence, in view of the distinguishing facts of the present case from the facts of the cases in the reported judgment, we do not find that the Order of Detention issued by the Detaining Authority deserves to be quashed and set aside on the ground of delay.

Since it is settled position of law that, delay by itself would not vitiate the Order of Detention if such delay is properly

explained. If the delay is not explained, it makes the Order of Detention unsustainable.

In the present Writ Petition, both the grounds raised by the Petitioner do not make out the case for interference by this Court in exercise of its power in the writ jurisdiction. Hence, the Writ Petition being devoid of merits is dismissed.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)