

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

CRIMINAL WRIT PETITION NO.224 OF 2024

Pawan @ Maruti Vishnu Polekar

Age – 24 years,

R/o.Ambika Nagar Patas,

Taluka – Daund, District – Pune.

At present in Yerwada Central Prison

.... Petitioner

Versus

1 The State of Maharashtra;

2 The Secretary of the Advisory Board,
Mantralaya, Mumbai – 400 032;

3 District Magistrate, Pune,
Amravati Rural;

4 Superintendent of Police,
Pune Rural;

5 Senior Police Inspector,
Yavat Police Station,
District – Pune.

.... Respondents

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Mr.Rupesh Zade a/w. Ms.Priyanka Gupta, Advocate for the
Petitioner.

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

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

DATED : 3rd JULY 2024.

Judgment (Per : Manjusha Deshpande, J.) :

1 The petitioner herein is challenging the order of
detention issued by the Collector and District Magistrate, Pune,

dated 31st October, 2023. The petitioner herein has been detained under the provisions of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Non Licensed Performers of Audiovisual Arts (Video Pirates), Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (“MPDA Act”, for short), *vide* order dated 31st October, 2023. The said order has been confirmed on 28th December, 2023. According to the petitioner, the said order is erroneous and contrary to the provisions of MPDA Act, 1981. The said order is passed on the basis of stale offences ranging from the years 2018 to 2023.

2. The petitioner herein has raised various grounds, while challenging the order of detention, however, the ground relevant for deciding the validity of said order is the ground raised in additional grounds. In the additional grounds, the petitioner has taken objection to the time gap between the purported in-camera statements of witnesses recorded on 21st July, 2023 and 27th July, 2023, respectively, and the order of detention dated 31st October, 2023. According to the petitioner, the reliance is placed by the Detaining Authority on the offence, which is mentioned at paragraph no.4 in the grounds of detention. The Detaining Authority has relied on offence registered at Yavat Police Station, Pune, *vide* C.R.No.554 of 2023, registered on 26th May, 2023. The grounds of detention relies on the said offence alongwith statements of two confidential witnesses, which were recorded on 21st July, 2023 and 27th July, 2023, respectively. The statement of witness “A”, was recorded on 21st July, 2023, refers to an incident which had taken place on 29th April, 2023. Similarly, the witness “B” whose statements has been recorded on 27th July, 2023, refers to an

incident which had taken place on 10th May, 2023. Both the incidents had taken place much prior to recording of their statements. Similarly, the Detaining Authority has relied on crime registered on 26th May, 2023, to pass detention order on 31st October, 2023. From the above dates, it is evident that there is a gap of almost five months in passing order of detention from the date on which the offence was registered.

3. The State Authorities have filed their respective affidavits justifying the Detention Order. The affidavit filed by the District Magistrate, Pune, who is the Detaining Authority states that the petitioner is a 'Dangerous Person', within the meaning of Section 2(b-1) of the MPDA Act. Only after being satisfied that the petitioner was acting in a manner prejudicial to the maintenance of public order, with a view to prevent him from acting in a similar way in future, the order of detention has been passed. The said order has been passed only after being satisfied on the basis of material which was placed before him which was true and genuine. He further states, that the said detention order has been passed by adhering to the procedure laid down in the MPDA Act. He has placed reliance on the in camera statements of the confidential witnesses.

4. The Detaining Authority has taken into consideration the past history of the petitioner. According to him, the detenu has no respect for law and is having tendency to commit offence repeatedly without any fear. The detention order is being tried to be justified by filing affidavit in support of the order.

5. The petitioner has raised additional grounds by way

of amendment which was allowed by order dated 17th April, 2024. Additional affidavit has been filed by the District Magistrate in reply to the amendment. As stated above, the petitioner has raised objection that, there is no proximity in the date of registration of offence on 26th May, 2023, which has been taken into consideration while passing the order of detention. The said time order of detention has been passed on 31st October, 2023. The said gap in the date of registration of offence, and recording of in-camera statements, which were recorded on 21st July, 2023 and 27th July, 2023, respectively, are not at all explained satisfactorily in the additional affidavit filed by the Detaining Authority. There is a huge gap of more than 5 months in the date of registration of office, which has been taken into consideration, while issuing order of detention and the date of issuance of actual detention order which is issued on 31st October, 2023.

6. In his affidavit, the District Magistrate has tried to explain the delay, however, we find that the said explanation is not at all satisfactory. It is contended that, the in-camera statements of witnesses have been verified by the Sub-Divisional Officer and they are genuine. However, the delay has not at all been explained. The proposal was sent to the Superintendent of Police, Pune Rural, by the Yavat Police Station, Pune, on 12th October, 2023. The Superintendent of Police, Pune Rural, in turn submitted the proposal to the Collector, Pune, thereby requesting him to pass order of detention. Thereafter, the order of detention has been issued on 31st October, 2023. Hence, according to the Detaining Authority, there is no delay as such occurred in passing the order of detention.

7. Though petitioner has raised various grounds, but the ground raised by the petitioner in respect of snapping of live link itself is sufficient to set aside the order of detention therefore there is no need to refer other grounds raised by the petitioner. The Hon'ble Apex Court as well as this Court time and again has taken a consistent view in various judgments that, there has to be a direct link between the offence which has been taken into consideration for passing the order of detention, and, the date of the order of detention. In the present case, there is a huge gap of 5 months between the offence which has been registered and taken into consideration while passing the order of detention and the actual order of detention being issued.

8. The order of detention is always passed in order to restrain a person from engaging in a manner prejudicial to the maintenance of public order. The Detaining Authority should be satisfied regarding grounds. The grounds should not be irrelevant and invalid. The material which is relied on by the Detaining Authority should not be stale and should have a live link with the order of the detention. It is not open to the Detaining Authority to simply refer to stale incidents and hold them as the basis for an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future. Therefore, it is necessary that there has to be a live link between the offence and the order of detention. This view has been consistently taken by this Court as well as the Hon'ble Supreme Court.

9. In a recent judgment reported in ***Nenavath Bujji etc. V/s. State of Telangana and Ors.***¹, the said view has been

1 2024 SCC OnLine SC 367

reiterated. In the summary of findings in the said judgment, the Hon'ble Apex Court has observed that if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated. For passing of detention order, there has to be subjective satisfaction of the Detaining Authority. Relying on reported judgment in ***Khaja Bilal Ahmed Vs. State of Telangana and Ors.***², the Hon'ble Supreme Court has reproduced the contents of paragraph no.23 of the said judgment. In paragraph 23, there is an observation that the order of detention may refer to previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then, it may have a bearing on the subjective satisfaction of the Detaining Authority. However, in the absence of a clear indication of a casual connection, a mere reference to the pending criminal cases cannot account for requirements of Section 3.

10. The Detaining Authority should not simply refer to stale incidents and hold them as the basis for an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.

11. We have taken into consideration the grounds raised by the petitioner and the stand taken by the Government in its reply affidavit as well as additional affidavit. The order of

2 (2020) 13 SCC 632

detention is necessarily issued to prevent accused person from repeating and committing offences which are prejudicial to the maintenance of public order. It is based on satisfaction of the Detaining Authority that, he is likely to continue his criminal actively after the offence which is last registered against him. In the present case, there is a gap of 5 months between registration of FIR, which is registered on 26.05.2023, and the order of detention issued on 31.10.2023. Therefore, the urgency to detain the petitioner has been lost over the period of time. The live link connecting the offence to the detention is snapped. There is no proximity and live link between the offence relied, and the order of detention. In view of snapping of live link, the order of detention is required to be quashed and set aside. As a result we pass the following order :

:: ORDER ::

- (i) The Writ Petition is allowed;
- (ii) The order of detention dated 31st October, 2023, issued by the District Magistrate, Pune, is hereby quashed and set aside;
- (iii) In view of setting aside of order of detention, the petitioner-Pawan @ Maruti Vishnu Polekar, shall be set at liberty forthwith.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)