

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.755 OF 2024

Nihal Ravindra Kumbhar
Age: 23 years, R/o: Karandi
Khedebare, Tal: Bhore, Dist: Pune

(Presently detained at Yerwada
Central Prison, Pune)

.. Petitioner

Versus

1. District Magistrate, Pune

2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department
Mantralaya, Mumbai)

3. The Superintendent
Yerwada Central Prison, Pune

.. Respondents

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Ms Jayshree Tripathi a/w Ms Anjali Raut, for the Petitioner.

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

...

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

DATED : 19th JULY, 2024

P.C:-

1. Heard the learned counsel for the petitioner and the learned APP for the State.

2. The Writ Petition is taken up for final disposal with consent of the parties.

3. The petitioner in this Writ Petition, has been ordered to be detained under 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, 1981”), by respondent No. 1- District Magistrate, Pune by order dated 03.08.2022. The grounds for detention dated 03.08.2022 have been served on the petitioner on 09.01.2024. The petitioner has submitted representation against the order of detention to the State Government on 17.01.2024 through the jail for consideration and revocation of order.

4. The petitioner has challenged the order of detention on various grounds, as mentioned in the Writ Petition from ground (a) to (e). Amongst the substantive grounds which have been raised by the petitioner, ground (d) alone is sufficient to quash and set aside the order of detention. In the said ground, the petitioner has taken exception to the order of detention on the ground that, though the order of detention has been issued on 03.08.2022, the said order was served on him on 09.01.2024, that is after a long gap of 16 months.

According to the petitioner, procedure prescribed under Section 7 of the MPDA Act, 1981, with regard to absconding person has not been followed.

5. In light of this ground, we called upon the learned APP to explain the delay.

The learned APP has taken us through the affidavit of respondent No. 1- District Magistrate, Pune. In the affidavit it is stated that, the petitioner had been absconding since the year 2022 and though the police machinery tried to trace him, their efforts did not yield any result.

Upon receiving confidential information, the petitioner was arrested from his house on 09.01.2024 and thereafter, the detention order is served on him.

Apart from this reason, the Detaining Authority has not given any explanation in his affidavit that, he has taken any step as contemplated under Section 7 of the MPDA Act, 1981. In fact, the perusal of record also do not indicate that the proceedings under Section 7 of the MPDA Act, 1981 was initiated against the petitioner.

6. The other ground raised by the petitioner during the course of argument is that, though the order of detention has been issued by the District Magistrate, Pune, namely Dr. Rajesh Deshmukh, the affidavit has been filed by the present District Magistrate Dr. Suhas Diwase. In this regard, the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in case of *Gazi Khan Alias Chotia V/s. State of Rajasthan*¹. In the said judgment, the practice of allowing a public officer to file affidavit, who has not dealt with the case at any point of time or at any level and who in the very nature of the case, could not have any personal knowledge of the proceedings, has been deprecated. The Hon'ble Apex Court has held that, the counter and reply affidavits filed by such officers merit nothing but rejection.

In the present case also the order of detention is passed on 03.08.2022 by District Magistrate- Dr. Rajesh Deshmukh, whereas the affidavit has been sworn by Dr. Suhas Diwase, who has no knowledge about the proceedings, the nature of case and above all, he is not the authority who has recorded

¹ 1990 DGLS(SC) 279 : 1990 AIR (SC) 1361

the subjective satisfaction. Recording of subjective satisfaction is an important exercise to be undertaken by the Detaining Authority, before issuing the order of detention. Since the affidavit is sworn by a person other than, who has recorded his subjective satisfaction, the explanation given by the said authority in his affidavit cannot be taken into consideration.

7. The petitioner has also taken objection to the belated service of order of detention with a gap of 16 months, which is not explained, and even otherwise the affidavit is not capable of being taken into consideration. Hence in view of the fact that, there exists no live link between the date of registration of CR, which has been taken into consideration for issuance of the detention order and the actual date of detention of the petitioner. There is a gap of 16 months between issuance of order of detention and service of the said order on the detenu, as a result, the urgency for detaining the petitioner as a potential threat to the public order would not survive.

Therefore, in view of the above mentioned reasons, the order of detention requires to be quashed and set aside. In view thereof, the Writ Petition is allowed.

Rule is made absolute in terms of prayer clause (b):

“(b) The order of Detention bearing No. PGM/MPDA/SR/05/2022, dated 03.08.2022 issued under Section 3 of M.P.D.A Act 1981 by the Respondent No. 1 be quashed and set aside and on quashing the same the Petitioner be ordered for release forthwith;”

No order as to costs.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)