

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 954 OF 2024

Vimal Vijay Rathod
Age- 43 years; Occu: Agri.
Residing at: Near Banjara Mitra
Mandal, Naiknagar, Yerwada, Pune
Presently lodged at Kolhapur
Central Jail, Kolhapur

} .. Petitioner

Versus

1. The State of Maharashtra
Through Home Department
Mantralaya, Mumbai.

2. The Section Officer
Government of Maharashtra,
Home Department (Special)
Mantralaya, Mumbai

3. The Commissioner of Police,
Pune City, Pune.

} .. Respondents

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Mr. Kayval P Shah, for the Petitioner.

Ms M. M. Deshmukh, APP, for the Respondent – State.

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CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 4th JULY, 2024

Judgment: (Per Manjusha Deshpande, J.):

1. Rule. Rule made returnable forthwith, the Writ Petition is taken up for final disposal with consent of the parties.

2. The petitioner is challenging the impugned order dated 21.02.2024 passed by the respondent No. 2- Section Officer to the Government of Maharashtra, Home Department (Special) as well as the order of detention issued on 21.09.2023 by the Commissioner of Police, Pune City. The order of detention has been passed by the Commissioner of Police, Pune City, in exercise of his powers 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 "MPDA Act, 1981"). The said detention order was followed by the order of approval of the said detention order dated 26.09.2023 issued by the State Government. The grounds of detention were issued on 21.09.2023 itself, however, they were received by the detenu in Kolhapur prison, on 09.01.2024.

3. Since the petitioner was taken into custody on 09.01.2024, the petitioner has filed a representation dated 23.01.2023 before the Advisory Board, taking exception to the order of detention. The Advisory Board has communicated its decision to the State Government, and on the basis of the opinion given by the Advisory Board, the State Government has passed the impugned order on 21.02.2024, thereby confirming the order of detention. The petitioner is challenging the order of detention issued by the Commissioner of Police, Pune, dated 21.09.2023 as well as the impugned order confirming the detention dated 21.02.2024.

4. The petitioner has raised various grounds. Amongst the said grounds, one of the grounds raised by the petitioner is ground (e) wherein it is contended that, there is no live link for which the petitioner could be detained illegally. While hearing the matter on 14.06.2024, this Court after hearing the matter for some time has passed an order. During the hearing, the petitioner has pointed out that, the order of detention was issued on 21.09.2023, and the petitioner was taken into custody on 8/9.01.2024. As a result, the live link has been snapped while passing the order of detention under the provisions of MPDA Act, 1981. It is further observed in the order that, the Detaining Authority has not responded to this ground in the reply affidavit explaining the delay for detention on 09.01.2024 for order issued on 21.09.2023. The matter was thereafter adjourned to 19.06.2024.

When the matter was heard on 19.06.2024, the learned APP appearing for the State authorities has filed an affidavit justifying the delay in implementation of order dated 21.09.2023. According to the Senior Police Inspector, attempts were made in past for executing the detention order, but the detenu had concealed herself and, therefore, she could not be taken into custody till 09.01.2024. Since the affidavit was not served on the petitioner, the petitioner had sought time to go through the said affidavit.

5. Today, when the matter was called out, the petitioner has addressed us on the issue of snapping of live link. The

petitioner has taken us through the affidavit of Senior Police Inspector of Yerwada Police Station, Pune City, who has stated in his affidavit that, attempts were made for executing the order of detention on the mentioned dates i.e. on 22.09.2023, 29.11.2023, 02.12.2023, 08.12.2023, 11.12.2023 and 14.12.2024 on the given address of the petitioner, but the petitioner had concealed herself and was not available for execution of the order. Though, watch was kept on her house, but all the efforts had gone in vain. The petitioner could be traced and arrested only on 09.01.2024. It was on account of the detenu concealing herself and her whereabouts, there is a delay in arresting and executing the order of detention.

6. The said affidavit is supported by the report of the Police Constable addressed to the Senior Police Inspector, Yerwada Police Station, Pune City, indicating a table containing names of various persons/offenders, who were tried to be located. In the table, the remarks show that, against the name of the persons who are wanted, there is a remark that “could not be located”. Even against the name of the petitioner who is a woman, it is recorded that, “he could not be located”. The said remark indicates the casual manner in which the offenders are being tried to be located and reports are being prepared. The concerned authority has not even taken any efforts to verify, whether the said person is a man or a woman. One more report dated 11.12.2023 is placed on record indicating the efforts taken by the concerned Assistant Police Inspector, Yerwada Police Station, Pune City, to locate the offenders named in the said table. Even in the said table, the remark

against the name of the present petitioner, who is a woman shows that, he is not located. The said casualness indicates the sorry state of affairs and casualness of the concerned authorities, it also creates doubts about the efforts being taken to locate the petitioner.

7. Be that as it may, so far as the explanation as to why the petitioner could not be served up to 09.01.2024 when the order of detention was already passed on 21.09.2023, has not been satisfactorily explained. Even otherwise, the offence which has been taken into consideration while passing the order of detention, as basis for issuing the detention order has been registered on 17.06.2023. The statements of two in-camera witnesses have been recorded on 30.08.2023 and 31.08.2023 respectively, whereas the order of detention has been passed on 21.09.2023 and served on the petitioner on 09.01.2024. From these dates it is evident that, there is a huge gap between registration of offence relied on and the actual detention. It is indicating lack of live link and proximity between the material, which is taken into consideration by the Detaining Authority and the detention order.

Though the petitioner has raised number of grounds, however, the other grounds do not require any consideration, since the snapping of live link in the present case itself is sufficient for quashing of the order of detention. Though the State authorities i.e. the Commissioner of Police, Pune City as well as the Superintendent, Kolhapur Central Prison, Kolhapur have filed their affidavit justifying the order of detention,

however neither of the authorities have satisfactorily explained the delay, which is caused in issuing the order of detention as well as the serving order of detention on the petitioner.

8. It is the settled position of law in respect of preventive detention that, there has to be a live link between the offence which forms basis of detention and actual order of detention. The importance of live link and proximate link for immediate need to detain an individual has been considered by the Hon'ble Supreme Court in case of ***Khaja Bilal Ahmed V/s. State of Telangana and Ors.***¹. It is categorically held by the Supreme Court in the said Judgment that, previous criminal antecedents can be relied on if they have a direct nexus with immediate need to detain an individual. If criminal activities of the detenu indicates his tendency or inclination to act in a manner prejudicial to maintenance of public order; the Detaining Authority has to record its satisfaction that a person to be detained is likely to indulge in illegal activities and therefore there is a need to detain such person.

9. In paragraph 22 of the said Judgment, the Hon'ble Supreme Court has observed that, the order of detention cannot be passed on stale grounds, which could not have been considered as relevant for arriving at the subjective satisfaction, that the detenu must be detained. 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.

¹ (2020) 13 SCC 632

10. In the present case, considering that there is no proximity in the date of last registered offence relied on and the issuance of order of detention, much less the order of detention being served after the gap of more than three months, makes the said order of detention invalid and illegal.

Hence in view of the aforementioned legal and factual position, the order of detention issued by the Commissioner of Police, Pune deserves to be quashed and set aside. Hence we pass the following order:

:ORDER :

- (i) The Writ Petition is allowed;
- (ii) The impugned orders dated 21.09.2023 passed by the Respondent No. 3 and the impugned order dated 21.02.2024 passed by the Respondent No. 2, are hereby quashed and set aside.
- (iii) The Petitioner- Vimal Vijay Rathod shall be released forthwith.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)