

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.1141 OF 2024**

Mr. Sai Krishna Bhaskar Kasam S/o
Bhaskar Rangaya Kasam,
R/at : 35, New Taware Compound,
Durga road, Bhaskar Kiran Store,
Ashok Nagar, Bhiwandi, Dist. Thane. .. Petitioner

Versus

1. Ashutosh Dumbre
Commissioner of Police, Thane.
2. Inspector of Police,
State Excise Department, Bhiwandi.
3. The State of Maharashtra,
Through the Additional Chief Secretary
(Home), Mantralaya, Mumbai - 32.
4. The Superintendent,
Nashik Road Central Prison, Nashik.
5. The Secretary, Hon'ble Advisory Board
C/o. Desk Officer, Desk - 10, Home
Department (Special), Mantralaya,
Mumbai - 32. .. Respondents

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Mr. Nilesh Nawale, for the Petitioner

Mr. S. V. Gavand, A.P.P., for the State-Respondent.

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**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 27th AUGUST, 2024**

JUDGMENT (PER MANJUSHA DESHPANDE, J.) :-

1. With the consent of the parties, the matter is taken up for final hearing.

2. Being aggrieved by the Order of Detention dated 29.01.2024, bearing No. TC/PD/DO/MPDA/01/2024, issued by the Respondent No.1 - Commissioner of Police, Thane, in exercise of his powers under Section 3(1) 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"), against his father Mr. Bhaskar Rangaya Kasam (Detenu), the Petitioner has approached this Court.

3. The Detenu i.e. father of the Petitioner was served with the Committal Order alongwith the said Order of Detention. It is alleged by the Petitioner that though his father was not in a position, either to read or write in English as well as in Marathi, he was provided with the Grounds of Detention

as well as the Order of Detention in Marathi language, alongwith the compilation of the documents. All the documents provided him were in Marathi language.

4. The Petitioner has challenged the Order of Detention on various grounds from Ground Nos. 'a' to 'w' in the memo of the Petition. The first objection raised by the Petitioner was regarding the absence of signature, on the confidential statements of Witness 'A' and 'B', by the witness as well as the absence of signature of the authority verifying those statements. According to the Petitioner, the absence of signature on both the documents create doubts about the veracity of the documents in the mind of the Petitioner.

When the Petitioner has pointed out above discrepancies in the two documents, we have called upon Mr. Gavand, the learned A.P.P. to produce the original file, which was in the custody of the concerned authority present in the Court. He has made available original record and on going through the same, we found that, the statements as well as verification are hand written documents, on which the signatures of the witnesses as well as the authority verifying the documents, are obtained.

The learned A.P.P. has informed that since those documents were hand written and the true copies are provided to the Petitioner, there is merely an endorsement that the said documents are signed by the concerned authority. Considering the explanation given by the learned A.P.P., we do not find anything objectionable in the said document.

5. The other ground raised by the Petitioner which deserves consideration is about the huge gap between the offence which has been relied upon and the Order of Detention. The C.R. No. 187 of 2023, under Section 65(e) of the Maharashtra Prohibition Act, 1949, was registered against the Detenu on 28.07.2023. He was arrested on 31.07.2023 and was granted MCR till 11.08.2023. Thereafter, he was released on bail.

Record discloses that the in-camera statement of witness 'A' was recorded on 23.11.2023 for the incident which had occurred in 4th week of October, 2023, and it was verified on 15.12.2023 by the Superintendent, State Excise Department, Thane. The in-camera statement of Witness 'B' was recorded on 24.11.2023 for the incident that had occurred on 1st week of October, 2023, and it was also verified by the

Superintendent, State Excise Department, Thane, on 15.12.2023. Thereafter Order of Detention has been issued against the Detenu on 29.01.2024.

6. According to the Petitioner, the Detaining Authority has relied on the offence i.e. C.R. No. 187 of 2023, which was registered on 28.07.2023 and thereafter no steps are taken by the Detaining Authority for a long time. After recording of the in-camera statements on 23.11.2023 and 24.11.2023 respectively, the Order of Detention is passed on 29.01.2024. Therefore, considering the huge time gap between the last offence relied upon by the Detaining Authority and the Order of Detention, the Order of Detention deserves to be quashed and set aside.

7. The learned A.P.P. relies on the affidavit filed by the Detaining Authority. According to the Detaining Authority the Inspector of State Excise Department, Flying Squad, Thane, has submitted proposal on 14.12.2023 for the detention of Bhaskar Rangaya Kasam (Detenu) i.e. the father of the Petitioner, after carefully scrutinizing the material placed before him and after being subjectively satisfied that the activities of the Detenu are prejudicial to the maintenance to

the public order, in exercise of his power under the MPDA Act, the Detaining Authority has passed the Order of Detention.

8. As regards the objection regarding supply of the documents in Marathi language is concerned, the Detaining Authority has stated that, during the detention of the Detenu while recording his statement by the Sponsoring Authority the Detenu had stated that he has studied up to 10th class and he knows Marathi and Hindi language. He has neither informed about his medium of education nor has he made any request to supply the translation of documents in Tamil language. If the Detenu had raised objection at a proper time, his grievance would have been redressed.

9. So far as the grounds regarding huge time gap between the registration of offence and Order of Detention is concerned, the same has not been replied by the Detaining Authority. The Detaining Authority has merely given the dates of various steps taken by him. The Detaining Authority has stated that the people were living under the constant shadow of fear because of which even the tempo of life of the people in the said area was badly affected. The previous preventive action against the Detenu proved to be insufficient and

inadequate, therefore in order to restrain the Detenu from his continuing the criminal activities, which were prejudicial to the maintenance of public order, the Order of Detention has been issued.

10. We have considered the arguments of respective parties and we have also perused the documents which are placed on record.

The undisputed position which emerges is that there is a delay of more than five months in issuing the impugned order from the registration of last offence against the Detenu. On this ground alone the Order of Detention is liable to be quashed and set aside.

The only offence meted against the Detenu is C.R. No. 187 of 2023, for which he was arrested on 31.07.2023 and after granting Magisterial Custody till 11.08.2023, he has been released on bail. It is only after his release on bail the in-camera statements of witness 'A' and 'B' have been recorded in the Month of November, 2023 and thereafter the Order of Detention has been issued on 29.01.2024. The dates as recorded above indicate that there is a huge gap of six months in the registration of offence and the Order of Detention.

11. The action of the Detaining Authority being a drastic action under the Act, wherein the personal liberty of the Detenu is curtailed without there being any trial. Therefore, the Detaining Authority has to be very cautious and act with promptitude, since the personal liberty of the proposed Detenu is at stake. The Detaining Authority is expected to be diligent while taking action against him. Therefore, if at all the proposed Detenu is causing any disturbance to the public order and is also likely to cause such disturbance in future, the Detaining Authority has to take appropriate steps without any delay.

12. In the present case, considering the huge gap, the live link between the offence which is relied upon and the Order of Detention is snapped. Considering the delay in issuing the Order of Detention, there does not appear to be any imminent and immediate need for detention of the Detenu. From the respective dates as stated above, it appears that after the Detenu has been released on bail, the in-camera statements have been recorded in the month of November 2023 and thereafter with a further gap of two months, the Order of Detention has been issued.

13. The Hon'ble Apex Court as well as this Court considered the issue of delay as well as snapping of live link in catena of decisions.

In *Pradeep Nilkhant Paturkar V/s. S. Ramamurthi, reported in 1993 SUPP (2) SCC 61*, referring to the earlier decision in *Hemlata Kantilal Shah V/s. State of Maharashtra*, the Hon'ble Apex Court has observed that '*delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority.*'

Relying on the said decision the Hon'ble Apex Court has held that, "*the unexplained delay whether short or long especially when the appellant has taken a specific plea of delay, we are constrained to quash the detention order. Accordingly we allow the appeal, set aside the judgment of the High Court and quash the impugned detention order*".

The ratio laid down in *Hemlata Kantilal Shah V/s. State of Maharashtra*, which was further followed in *Pradeep Nilkhant Paturkar V/s. S. Ramamurthi*, would be squarely applicable to the case of the Detenu since the delay has not

been explained by the Detaining Authority.

The gap of five months, in issuing the Order of Detention after the registration of offence, has resulted into snapping of live link, hence the Order of Detention is required to be quashed and set aside.

14. Therefore, we hold that due to the huge gap in issuance of Order of Detention after registration of last offence, the live link has snapped and the Order of Detention has become unsustainable. Resultantly, the Writ Petition is allowed. Hence, we pass the following Order :

ORDER

- (i) Rule is made absolute in terms of prayer clause 'a'.
- (ii) The Order of Detention dated 29.01.2024, bearing No. TC/PD/DO/MPDA/01/2024, issued by the Respondent No.1 – Commissioner of Police, Thane, is quashed and set aside.
- (iii) The Detenu i.e. the father of the Petitioner, be released forthwith, if not required in any other case.
- (iv) The Writ Petition stand disposed off.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)