

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

CRIMINAL WRIT PETITION NO.1586 OF 2024

Mangesh Baban Londhe
Age - 36 years,
R/o. Suhasnagar, Aamrai,
Baramati, Taluka - Baramati,
District - Pune

}

....Petitioner

Versus

1. District Magistrate, Pune;
2. The State of Maharashtra
Through Addl. Chief Secretary)
Government of Maharashtra
Mantralaya, Home Department,
Mantralaya, Mumbai
3. The Superintendent,
Yerwada Central Prison, Pune

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....Respondents

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

Mr.Ajay S. Patil, APP for Respondent - State.

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

DATED : 22nd JULY 2024.

JUDGMENT (Per : Manjusha Deshpande, J.) :

1 The matter is taken up for final disposal with
consent of the parties. We have heard the respective counsel for
the petitioner and respondent-State.

Rajeshri Aher

The petitioner is challenging the order of detention issued by respondent no.1-District Magistrate, Pune, on 5th March, 2024, in exercise of his powers under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers (Drug-offenders, Dangerous persons and video pirates) Act, 1981 ("MPDA" for brevity).

The petitioner was served with the order of Detention; order of committal; and Grounds of Detention on 5th March, 2024.

2 The petitioner being aggrieved by the order of Detention has filed the present Writ Petition.

The petitioner has raised various grounds in the Writ Petition. The said grounds are set out under the caption grounds from grounds (a) to (g) in the Memo of Writ Petition.

3 The petitioner has contended that, the Detaining Authority has relied on C.R.No.747 of 2023, registered at Baramati Police Station, Pune, on 27th September, 2023, under Section 328 read with 34 of Indian Penal Code (IPC), and Section 65(e) of the Maharashtra Prohibition Act, 1949. The petitioner was arrested on the same day and has been granted bail on 9th October, 2023. The in-camera statements of the witness "A" has been recorded on 5th January, 2024, for the incident that had occurred on 31st December, 2023. While the statement of witness "B" has been recorded on 1st January and 3rd January, 2024, for the incident that had occurred on 31st December, 2023.

According to the petitioner, there is a huge time gap between recording of confidential statement of witnesses “A” and “B” and passing of order of Detention. Due to such delay, the live link between the alleged illegal activities of the petitioner and the purpose of detention is snapped is required to be quashed and set aside.

4 The Detaining Authority has filed affidavit of Dr.Suhas Diwase, District Magistrate, Pune, which is sworn on 24th June, 2024. The Detaining Authority has stated in his affidavit that, only after being satisfied that the petitioner is a ‘Bootlegger’ within the meaning of Section 2(b-1) of the MPDA Act, the order of Detention has been issued. Since the detenu was acting in a manner prejudicial to the maintenance of the public order, it was necessary to detain him under the said Act.

It is further averred that, the Detaining Authority has passed the order of Detention by relying upon the latest C.R. No.747 of 2023, registered at Baramati Police Station, Pune. After release of the petitioner on bail, he had reverted back to his criminal tendencies. The activities of the petitioner necessitated in sending the proposal for Detention. Therefore, after considering his past history and relevant record and after satisfying himself about the necessity of restraining the petitioner, the order of Detention was issued on 5th March, 2024. There is no delay as such in issuing the order of Detention.

5 We have heard the learned counsel for the petitioner as well as the learned APP. With the help of the counsel for respective parties we have gone through the order of Detention;

the grounds of detention; and the affidavit filed by the Detaining Authority.

After going through the relevant dates as well as the grounds of detention, it is obvious that the Detaining Authority has relied on CR No.747 of 2023, registered against the petitioner on 27th September, 2023. After his release on bail on 9th October, 2023, confidential statement of witness “A” has been recorded on 5th January, 2024, for incident that had occurred on 31st December, 2023 and 3rd January, 2024. Whereas confidential statement of witness “B” was recorded on 6th January, 2024, for incident that had occurred on 1st January, 2024 and 3rd January, 2024.

From the abovementioned dates it is evident that the two incidents have occurred after two months of the release of the petitioner on bail, and more than three months after registration of offence against the him. The order of Detention has been issued on 5th March, 2024. Since there is a huge time gap of two months between last incident and order of Detention, the Live Link is snapped.

5 We are not at all satisfied with the explanation for delay given by the Detaining Authority. The proposal itself has been moved belatedly by the Detaining Authority on the basis of stale offence registered on 27th September, 2023. There exist no live and proximate link, which is required to be established for passing of the order of Detention. In the judgment of ***Khaja Bilal Ahmed V/s. State of Telengana and Ors.***¹, the Hon’ble Apex

1 2020 13 SCC page 632

Court while considering the matter of 'Detention', has made certain observations regarding snapping of live link. In the said judgment, it is observed that, the Detaining Authority should record his subjective satisfaction on the basis of relevant material, which is not stale and has a live link. The order of Detention may refer to previous criminal antecedents only if they have a direct nexus or immediate link to detain an individual.

The relevant dates referred hereinabove are illustrative of the fact that, there is huge gap between the registration of offence and the recording of confidential statements, as well as huge gap between the date of recording of confidential statements, and the passing of the Detention order. This time gap has snapped the live link between the alleged offence of the petitioner and the purpose of order of Detention.

6 It is a settled position of law that the order of Detention must be based on reasonable apprehension of future behaviour of a person depending on his past conduct in the light of the surrounding circumstances. The live link is required to be established between his past conduct and imperative need to detain him. If the delay is not satisfactorily explained, the Detention order becomes unsustainable in law.

7 The law of detention being essentially based on the principle that a person is required to be prevented from doing a particular act and not as a punishment. We deem it appropriate to quash and set aside the order of Detention issued by the Detaining Authority, since there is no proximity and live link

between the date of registration of offence and the date of issuance of order of Detention.

8 As a result, the Writ Petition is allowed in terms of prayer Clause (b), which reads as under:

“b. The order of Detention being No.PGM/MPDA/SR/01/01/2024, dated 05.03.2024 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;”

Rule is made absolute in the above terms.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)