

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1617 OF 2024

Bhaskar Madhukar Bhagat] .. Petitioner
vs.
The Commissioner of Police Thane & Ors.] .. Respondents

Mr.Vijay Jha a/w Shanti Vaish for the Petitioner.
Mr.J.P. Yagnik, APP for the State.

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

DATE : 25th JULY, 2024.

JUDGMENT (PER BHARATI DANGRE, J)

1] On 29.04.2024 this Court had issued 'Rule', pursuant to which the pleadings have been completed in the Writ Petition and we have taken it for hearing.

The Petitioner, who is detained in Nashik Road Central Prison, Nashik, pursuant to detention order passed by the Commissioner of Police, Thane, on 01.03.2024, has prayed for revoking/quashing and setting aside the order on the grounds set out in the Petition and has prayed for his release forthwith.

The Detention Order being passed on 01.03.2024 directed the detention of the Petitioner under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers [Drug Offenders,

Dangerous Persons and Video Pirates] Act, 1981, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, on being categorized as 'Bootlegger' as defined under the Act.

2] We have heard the learned counsel Mr. Vijay Jha alongwith Shanti Vaish for the Petitioner and APP MR. J.P. Yagnik for the State.

We have perused the grounds of detention communicated to the Petitioner on the same day when he was directed to be detained and committed to prison.

We have also perused the Affidavit filed by the Detaining Authority traversing the grounds in the Petition and also the subsequent approval and confirmation of the order of detention by the Government of Maharashtra.

The grounds communicated to the detenu reflect that the power under sub-section (1) of Section 3 was exercised by the Commissioner of Police, Thane, in the background that the criminal record of the Petitioner reflected that he is a 'bootlegger', who started illegal business of 'boot-legging' within the area of Diva (East), Mumbra Police Station and adjoining areas. It is alleged that he is involved in the activity of illegally selling Hatbhatti/countrymade liquor to common people in Thane Taluka and nearby areas and his activities created threat to the public order.

On account of the activity of illegal 'bootlegging' many people have lost life due to consumption of this liquor and the Detaining Authority relied upon the list of offences which involved the detenu as well as the preventive actions initiated against him.

Recording that the preventive actions had no effect on his bootlegging activities as he continued to indulge in it, causing danger to

human life and disturbing public order in Thane Taluka, relying upon CR No.272/2023 registered under Section 65(e) of the Maharashtra Prohibition Act, 1949 alongwith two in-camera statements of witnesses A and B, recorded on 19.01.2024 and 22.01.2024, the Detaining Authority arrived at a conclusion that it is necessary to prevent him from acting in any manner prejudicial to the maintenance of public order by detaining him under the provisions of the MPDA Act, 1981.

3] The learned counsel for the Petitioner has taken us through the various grounds in the Petition which has raised challenge to the order of detention by submitting that the order is passed mechanically in a very casual and cavalier manner and also on the ground that there is delay in passing of the impugned order.

The specific ground raised by the Petitioner as regards delay is set out in clause (c), (e) and (l) , which reads to the following effect :-

“(C) Where after issuing notification of the Home Department in the month 19.01.2023, Respondent No.1 made a trap to implicate the petitioner in a concocted story of respondent No.1, which can be noticed from the record of statement made by witnesses A and B as alleged incident date of incident mentioned for alleged offence.”

(E) Where is the considerable amount of delay in passing of detention order and on that ground the alone petition is deserved to be allowed.

(L) Even on merits, the delay in passing a detention order from the date of Registration of the crime and Recording witnesses in camera contravention to each other which shows all the concocted story narrated in a preplanned manner by Respondent No.2 which is not sustainable in eyes of law and therefore, the once the delay and contradiction itself is not sustainable, there is no question of detention to the Petitioners as needed.”

4] The learned counsel would place reliance upon the decision of this Court in Pradeep Nilkanth Paturkar vs. S. Ramamurthi and Others, AIR 1994 SC 656, where the detention order was quashed on the

ground of delay as the detention order was passed after 5 months and 8 days from the date of registration of the last case and more than 4 months from the submission of the proposal. The Court also recorded that the statements from witnesses A to E were obtained only after the detenu became successful in getting bail in all the prohibition cases and that too in the later part of March, 1991 and these statements were relied upon by the Detaining Authority alongwith the registration of the cases under the Act, in passing the Detention Order.

5] The Detaining Authority has filed a detail reply refuting the grounds raised and as far as delay is concerned, we find sufficient explanation being offered to the following effect :

“This proposal was forwarded through the proper channel. It was carefully considered and scrutinized by various authorities at various stages. Hence, each authority at the different levels had to carefully scrutinize the proposal and papers pertaining to present detenu. It is submitted that the present proposal along with the accompanying papers was submitted as per the usual practice, first to the Dy. Superintendent, State Excise Dept., Thane, he carefully went through all the papers and after verification of the in camera statement of witness ‘A’ and ‘B’ on 29.01.2024 and 31.01.2024 respectively, he gave his endorsement on the proposal on 31.01.2024. It is stated that the papers were thereafter forwarded to the Superintendent, State Excise Dept., Thane. He gave his endorsement on 01.02.2024. Then the papers were sent to Sr.PI MPDA Cell, Thane. It was received at MPDA office on 06/02/2024. The Sr. PI, MPDA Cell scrutinized the proposal and attached papers and submitted its report to A.C.P. (Preventive) on 09/02/2024. ACP (Prev.) gave his remarks on 14/02/2024 and submitted the papers to the Deputy Commissioner of Police (Crime). He went through the papers and gave his remarks on 17/02/2024 and submitted it to Addl. C.P. (Crime). He went through all the papers and gave his endorsement on 21/02/2024. Thereafter, all the papers were put up before me on the same day.

The proposal along with the attached papers of the present Petitioner/Detenu were carefully perused by me and I was of the opinion and satisfied that it is a fit case for detaining the Petitioner/ Detenu as a ‘bootlegger’ under the MPDA act and further I was satisfied with the fact that, the criminal activities of the detenu were

prejudicial to the maintains of the public order and found that the detenu repeatedly engaged in such activities as defined in Sec. 2(b) of the MPDA Act which affect adversely or are likely to affect adversely to the maintenance of public order and also satisfied that the preventive action taken in the past was not sufficient to curb the criminal activities of the Petitioner/Detenu. As it was necessary to detain him, hence I gave my approval to the said proposal on 24/02/2024. All the papers were then forwarded to the Sponsoring Authority for the purpose of fair typing, for preparing the translation of the documents in the language known to the Detenu and for preparing the necessary sets of documents etc.

After completing all the necessary work in the matters i.e. typing, translation in language conversant to the Petitioner/Detenu, the necessary sets of documents were received as per the procedure in the Office of Sr. PI, MPDA Cell. The Senior Inspector of Police, MPDA Cell checked all the documents and submitted its to me. I once again carefully went through the proposal and papers accompany. After preparation of grounds of detention and when satisfied with necessary rectifications, finalized the grounds of detention and contemporaneously I issued final detention order on 01/03/2024. Then the Petitioner/Detenu was detained on 01/03/2024 and explained him the detention order, Committal order, Grounds of detention and the relevant material along with translation in language known to him and executed on him on the same day. His signature has been taken in acknowledge and then lodged him in Nashik Road Central Prison, Nashik on 02/03/2024.”

6] On perusal of the above we are satisfied that it is not a case where the livelink in the activities of the Detenu has been snapped from his last activity, which is prejudicial to maintenance of public order, as it is evidently clear that the detention order is based upon CR No.272/2023 which was registered on 20.10.2023. Upon registration of the case, he was produced before the Court, which granted MCR and on moving an Application for grant of bail on the very same day i.e. 20.10.2023, he was released on bail.

The in-camera statement of witness A is recorded on 19.01.2024, where he made reference to an incident which took place on fourth week of December, 2023, reflecting the criminal activity of the detenu,

when he was threatened of dire consequences, if he interfere in his business of liquor and ganja.

Statement of witness B recorded on 22.01.2024 refer to an incident of January, 2024, which is also on similar lines when one of the customer who consumed liquor, brewed by the detenu was abusing women and the witness shouted at him, the detenu arrived at the spot and threatened him by stating that he should not disturb his customers and shall make no complaint against his business. When the witness attempted to seek help, he was threatened and chased.

Recording that it is on account of this conduct of the detenu the persons in the locality are not ready to come forward and record their statement against the detenu in open, but only on an assurance given that their identity shall be kept confidential, they recorded their statements. The in-camera statement of the first witness was verified on 29.01.2024 whereas, the statement of witness B was verified on 31.01.2024.

7] The affidavit furnished by the Detaining Authority has submitted an explanation about the steps taken, till the passing of the detention order on 01.03.2024 and it being a trite position of law that the delay in passing the detention order by itself may not prove fatal and if the Detaining Authority offer an explanation, explaining the time consumed in various steps taken from the last activity of the detenu till passing of the detention order, it cannot be said that the livelink in the activities of the detenu is snapped.

The explanation offered by the Detaining Authority in its Affidavit according to us is satisfactory, as upon the verification of the last in-camera statement, proposal was moved and after the grounds of detention were finalised on obtaining necessary documents, its

translation, the detention order was passed alongwith the committal order and grounds of detention were also conveyed to the detenu.

8] Since in the Petition, the detention order is only challenged on the ground of delay, which according to us is sufficiently explained in the Affidavit filed by the Detaining Authority, subjective satisfaction reached by the Detaining Authority, in our opinion do not warrant any interference, as the order is based on substantial grounds referring to the activities of the detenu as a 'bootlegger' and since the Detaining Authority was satisfied that to prevent his activities as a bootlegger his detention is necessary.

Upholding the impugned order dated 01.03.2024, Rule is discharged.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]