

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

CRIMINAL WRIT PETITION NO.1719 OF 2024

Rushikesh Rupesh Kadam

.... Petitioner

Versus

Commissioner of Police, Pune City
and Ors.

.... Respondents

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

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

.....

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

DATED : 2nd AUGUST 2024.

P.C. :

1 The Writ Petition filed by the detenu raising challenge to the order of Detention dated 1st December, 2023, passed by the respondent no.1 is admitted on 10th May, 2024.

The petition has assailed the order of Detention on various grounds which has received a response from Mr.Amitesh Kumar, the Commissioner of Police, Pune city, who is not the Detaining Authority who has passed the detention order.

Time and again we have reminded the Authorities that since the order of detention is passed on subjective

satisfaction of the Competent Authority on whom the powers are conferred by the State Government, it is imperative that the same person file the affidavit offering justification in passing of the order of Detention. However, such instructions are taken lightly, and even in this petition, we find that though the Detention order is passed by Mr. Retesh Kumaarr, the then Commissioner of Police, Pune City, on the ground that he has been transferred to some other post, the affidavit of the Commissioner of Police, Pune City, who is the present Detaining Authority, is filed.

We have perused the said affidavit, and since we are not going into the subjective satisfaction which are recorded by the Detaining Authority, but the ground which was canvassed by Ms. Tripathi, as raised in the ground No.(f) of the petition has appealed to us, we have deliberated upon the same.

2 The ground (f) of the Writ Petition reads the following effect:

“(f) The detenu says and submits that the detaining authority has taken into consideration solitary 278/2023 dated 01.10.2023 U/Sec.326, 324, 323, 504, 506 r/w.35 of I.P.C along with in camera statements of witness A and B to arrive at his subjective satisfaction and pass the detention order. In the said relied on C.R. i.e. 278/2023 the detenu came to be arrested on the 01.10.2023 and was granted bail by the Competent Court of law on the 04.10.2023, thereafter there are no prejudicial activities of the detenu is recorded. In camera

statements of both the witnesses A and B are recorded belatedly on the 10.10.2023 and 13.10.2023 for incidents occurred on 25.08.2023 and 19.09.2023. The said in camera statements are only taken to fill up the gap and pass the order of detention on 01.12.2023, i.e. belatedly after about two months of recording the in camera statements. If the activities of the detenu were so dangerous and prejudicial to the maintenance of public order then the authorities ought to have taken prompt and immediate steps to initiate proceedings against the detenu, the said delay shows that the authorities have taken a very casual approach. The authorities are called upon to explain the said delay to the satisfaction of this Hon'ble Court failing which the order of detention will be held as illegal and bad in law, liable to be revoked and set aside. The Petitioner says and states that this Hon'ble Court has jurisdiction to entertain this petition since the fundamental right of the Petitioner is violated."

3 When the affidavit of the Detaining Authority is perused, we find no justification and surprisingly even no attempt is made to offer such justification, and the casual response is seen in paragraph no.13, which reads to the following effect:

"13. With reference to Paragraph No.5(f) of the Petition, the contents of para are denied.

It is submitted that the last offence registered against detenu i.e. C.R.No.278/2023 on 01.10.2023, he

was arrested on 01.10.2023 and 04.10.2023 he was released on bail. The charge sheet of the case was submitted on 09.11.2023.

It is submitted that during the course of investigation confidential enquiries conducted by Sponsoring Authority i.e. Senior Inspector of Police, Vishrantwadi Police Station, Pune, into the activities of the detenu, it was revealed that number of people becomes victims of the atrocities of the detenu and therefore on giving assurance of their safety, two witnesses came forward to record their statements depicting atrocities suffered by them at the hands of the detenu on 10.10.2023 and 13.10.2023 respectively.

It is submitted that thereafter, the Sponsoring Authority carefully went through all the material they had collected. They then prepared the necessary sets of documents by getting them typed, xeroxed etc. It is further submitted that after the necessary sets of documents were ready, they submitted the same along with the proposal for the detention of the detenu on 16.10.2023.

It is submitted that this proposal was forwarded through the proper channel. It is further submitted that it was carefully considered and scrutinized by various authorities at various levels and thereafter the entire material was placed before the then Detaining Authority and he carefully examined all the material placed before and after subjectively satisfied that it was absolutely necessary to detain the detenu, passed by the Order of Detention on 01.12.2023. It is further submitted that the

proposal and papers pertaining to the detenu was forwarded to the various authorities. Hence, each authority at the different level had to carefully scrutinize the proposal and papers pertaining to present detenu.”

4 We have noticed that the Detention order is based on a solitary C.R., which was registered on 1st October, 2023, whereas the in-camera statements of witnesses “A” and “B” are recorded on 10th October, 2023 and 13th October, 2023, in respect of the incidents that took place on 25th August, 2023 and 19th September, 2023, respectively. Thereafter, it was imperative for the Detaining Authority to explain as to what steps were taken after the last in-camera statement was recorded, and assuming that, it deserves consideration as a part of subjective satisfaction, till 1st October, 2023, when the Detention order was passed, which is a period of almost one and half months.

Hence without any justification being offered, the impugned order suffers from grave illegality, having been passed after one and half months. Though it is a trite position of law that delay by itself may not be fatal if the Detaining Authority is able to offer explanation for the same, however, in absence of such explanation being offered, the period of one and half month has proved to be fatal to the Detaining Authority, as the action against the detenu is impacted by the unexplained delay and the failure to justify the passing of detention order.

3 For the reasons recorded above, the impugned order dated 1st December, 2023 is quashed and set aside.

The Writ Petition is made absolute in terms of prayer
Clause (b).

4 The petitioner shall be set at liberty forthwith.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)