

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1720 OF 2024

Jayesh Duryodhan Chandanshive .. Petitioner

Versus

Commissioner Of Police, Thane And Ors. .. Respondent

...

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

Mr. J. P. Yagnik, A.P.P. for the State/Respondent.

...

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

DATED : 19th JULY, 2024

P.C:-

1. The Detention Order dated 06.02.2024, passed by the Commissioner of Police, Thane, is challenged by the Petitioner/detenu on various grounds set out in the Petition and the learned counsel Ms. Tripathi, representing the Petitioner, has pressed into service ground Nos. 'd', 'e' and 'f'.

The gist of the ground No.'f' in the words of Ms. Tripathi is, that the Detaining Authority in the grounds of detention had referred to a report from the Assistant Commissioner of Police, Wagle Estate Division but this report, on which the reliance is placed by the Detaining Authority in arriving at the subjective satisfaction, in respect of the in-camera statements of witness Nos. 'A' and 'B' is not made

available to the detenu.

We have therefore looked into the in-camera statements of witness Nos. 'A' and 'B', which were supplied to the detenu and placed alongwith the Petition at Page Nos.106 and 109 respectively. At the end of the statement, we would find the verification of the in-camera statement, recorded by the Senior Police Inspector, Wagle Estate Police Station, Thane, and the ACP has verified the truthfulness of these statements and has offered his verification report, at the end of the statement of both these witness.

Mr. Yagnik, learned A.P.P. has placed before us the original statements of witness Nos. 'A' and 'B', being recorded on 08.12.2023 and 12.12.2023 respectively. At the bottom of the statements we have found this verification report, under the signature of Assistant Commissioner of Police, Wagle Estate Division and we find that the statements of witness 'A' and 'B' furnished to the detenu, are accompanied with this report.

Though in the Marathi version, this is referred to as an 'Ahawal', the English translation it is referred to as 'Record'. However, the Detaining Authority has specifically dealt with this ground in the affidavit-in-reply, wherein para No.12 in response to the ground No.5(f), he has categorically stated as below :

"At the time of verification of both the victims they were present in person before verifying authority who in turn verified the genuineness of statements made by the witnesses. At that time, both witnesses stated that, the incident mentioned in the in-camera statements were

true. The said officer has found the in-camera statements are to be true and genuine and the ACP opinioned and confirmed that fear expressed by the said witnesses to be genuine. The copies of the said in camera statements alongwith "verification report" written by the A.C.P., Wagle Estate Division on the backside of the both in-camera statements were furnished to the Petitioner/Detenu at the time of his detention on 06/02/2024 along with the compilation given to him which is placed at page Nos. -102 to 103 and 106 to 107 of the compilation, except names and identifying particulars of the in-camera witnesses kept in secret in public interest, for which I claimed privilege."

In the wake of the specific stand of the Detaining Authority, and since we are satisfied that what he is referring to is the verification report and in the original file, there is no other report, on which the Detaining Authority has relied upon, while forming his subjective satisfaction, we are not impressed by this ground, as to its sufficiency for setting aside the Order of Detention.

2. Ms. Tripathi has placed reliance upon a decision of the Division Bench, in case of **Jitendra @ Tiger Umaji Pawar V/s. Commissioner of Police, Thane (Criminal Writ Petition 116 of 2024)**, wherein similar observation in the grounds of detention, where the Detaining Authority had expressed that he was satisfied with the facts given in the statement and the apprehension entertained by witness Nos. 'A' and 'B', being true and reasonable and there was a reference of the report of the

Assistant Commissioner of Police, Ambarnath Division. The Division Bench by referring to the decision of the Hon'ble Apex Court in case of *Khudiram Das V/s. The State of West Bengal And Ors., reported in (1975) 2 SCC 81*, which made it imperative for the Detaining Authority to furnish all that material which he has relied upon for reaching the subjective satisfaction, so as to make an opportunity of the making representation available to the detenu, has observed that the grounds of detention is being intended to subserve the purpose of enabling the detenu to make an effective representation.

In absence of any specific pleading and the point being canvassed before us that the non-supply of the report has in any way prejudiced the detenu and in fact, what we have noted is, it is a verification report to which the Detaining Authority is referring to and this is already furnished to the detenu. Hence, we are not impressed by this ground.

3. Another ground which Ms. Tripathi has pressed into service is ground No. 'd', which we have conciled to read to the effect that there is a delay in passing the Order of Detention. Ms. Tripathi has taken us to the said ground and she has advanced her submission that the detention order is passed on 06.02.2024, which is based upon two CRs, the first being registered on 24.07.2023 and the second being registered on 13.10.2023.

The detenu came to be arrested in connection with the said C.R., though he was not arrested in the first C.R. as a notice under Section 41A of the Code of Criminal Procedure, was served upon him. In the second C.R. when he was

arrested, he was released on bail on 30.10.2023. On 08.12.2023 and 12.12.2023 two in-camera statements are recorded, the first statement revolving around an incident in the Month of October 2023, whereas the statement of witness No. 'B' referred to an incident of December 2023.

Affidavit of the Detaining Authority, in paragraph No.10 specifically offer a response to ground No.5(d) and what we have noticed is an explanation offered for the gap from 12.12.2023 to 06.02.2024, which is specifically scribed in the following words :

“After collecting all relevant documents as mentioned in the grounds of detention, Senior Police Inspector, Wagle Estate Police Station submitted proposal of detention on 14/12/2023 to Assistant Commissioner of Police, Wagle Estate Division, ACP verified in-camera statement of 'A' and 'B' on 15/12/2023 and forwarded the proposal on 18/12/2023 to Deputy Commissioner of Police, Zone-V, Thane City then the DCP, Zone-V, perused and considered the proposal along with the attached documents which took to time between 19/12/2023 to 21/12/2023 and then forwarded the same to the Additional Commissioner of Police (West Region), Thane on 22/12/2023. The Additional Commissioner of Police (West Region), Thane after its perusal, consideration and scrutiny, he gave his endorsement and forwarded the proposal to my office on 26/12/2023.

There are approved by me then to prepare final grounds of and documents. Proposal was sent back through proper channel and again after prepare of final draft sent to my

office through proper channel.

It is submitted that, thereafter MPDA Cell made detail scrutiny and forwarded noting with compilation to ACP (Preventive) on 04/01/2024. ACP (Preventive) forwarded papers to DCP (Crime) on 08/01/2024. DCP (Crime) forwarded papers to Additional Commissioner of Police (Crime) on 12/01/2024. The Additional Commissioner of Police (Crime) placed papers for approval before me on 18/01/2024. It is submitted that after carefully going through the entire material, I gave my final approval on 24/01/2024 and formulated the grounds of detention. I once again carefully went through the proposal and the papers accompany. After preparation of grounds of detention and when satisfied with necessary rectifications, finalized the grounds of detention and contemporaneously to prepare the total number of sets, typing and other work time took 24/01/2024 to 06/02/2024 in between there were holiday i.e. 26/01/2024 and 27/01/2024 and 28/01/2024. I issued final detention order on 06/02/2024. thereafter all the compilation alongwith draft grounds was forwarded to MPDA Cell and sponsoring authority for the purpose of typing and translation of grounds of detention and all relied upon documents in Marathi language.”

4. It being a trite position of law that it is not the length of delay, which deserve to be considered while examining whether the detention order suffers on the ground of it being passed belatedly, thereby de-linking the past activity of the detenu from the detention order is passed but it

is the sufficiency of the delay, which must be taken into consideration. It cannot be presumed that as soon as the last activity has taken place, the Detention Order should be passed immediately on the next day as it would amount to an hurried affair.

On receipt of the proposal from the sponsoring authority, the Detaining Authority has to examine the material and it is only after its examination, he can give a final approval or the grounds of detention which are formulated on which the detention order is based.

A perusal of the affidavit of the Detaining Authority and in specific the explanation offered, in our opinion inspire confidence that the passing of detention order is not an afterthought and in any case it has not snapped the live link in between the last incident, when the detenu had indulge himself into an activity, which according to the Detaining Authority was prejudicial to the maintenance of the public order, resulting into passing of the order of detention.

For this very reason, even the other ground being ground no. 'e' that the passing of detention order has snapped the live link between the last activity of the detenu and the passing of the detention order, do not deserve any consideration and by rejecting the same, by upholding the Order of Detention dated 06.02.2024, passed by the Detaining Authority, the Writ Petition is dismissed.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)