

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

WRIT PETITION NO. 2594 OF 2024

Digambar Shivaji Sagare Age: 30 years R/o: Behind Kirti Gate, Laxmi Chowk, Hinjewadi, Pune (at present, Yerwada Central Prison, Pune)	}	Petitioner
Versus		
1. Commissioner of Police, Pimpri Chinchawad 2. The State of Maharashtra (Through the Secretary Home Department (Spl.) Mantralaya, Mumbai 3. The Superintendent Yerwada Central Prison, Pune	}	Respondents
...		

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

Mr. S. V. Gavand, APP, for the Respondent – State.

...

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 23rd AUGUST, 2024**

Order : (Per Manjusha Deshpande, J.):-

1. The petitioner in this Writ Petition is detained in the Yerwada Central Prison, Pune, as per the order of committal issued in furtherance of the Order of Detention dated

02.05.2024 passed by the Commissioner of Police, Pimpri Chinchwad, Pune.

2. The petitioner was served with the committal order as well as the grounds of detention on 02.05.2024 itself.

Being aggrieved by the Order of Detention, the petitioner has approached this Court on the ground that, the said order has violated his fundamental rights, therefore he is challenging the validity of the Order of Detention. He has challenged the validity of Order of Detention on various grounds from ground (a) to (g) in the memo of Writ Petition. However, the petitioner has pressed into service ground (f), wherein it is the contention of the petitioner that, the Detaining Authority has taken into consideration solitary C.R., vide C.R. No.1320 of 2023 dated 25.11.2023, where an offence under Section 65(e) and 68 of the Maharashtra Prohibition Act, 1949 has been registered against him. The said offence has been relied by the Detaining Authority for arriving at his subjective satisfaction and passing the Order of Detention.

3. It is the specific contention of the petitioner that, though the petitioner was not arrested but he was served with a notice under Section 41(a) of the Code of Criminal Procedure, the Detaining Authority has stated in para 6 of the grounds of detention that, after considering the seriousness of offence the Senior Inspector of Police, Hinjewadi Police Station, Pimpri Chinchwad conducted confidential inquiry. Therefore, relying on the said C.R., which is registered on 25.11.2023 and the

three in-camera statements of witness 'A', 'B' and 'C' recorded on 19.03.2024, 24.03.2024 and 27.03.2024 respectively, for the alleged incidents which had occurred in October and November, 2023, the Order of Detention was issued on 02.05.2024.

4. It is contended by the petitioner that, the Order of Detention has been issued after about two months of recording of the in-camera statements and after about six months of the registration of the C.R. relied by the Detaining Authority. There is unexplained and inordinate delay in passing the Order of Detention, therefore the live link has snapped. If the activities of the petitioner were really dangerous and prejudicial to the maintenance of the public order, the Detaining Authority would have acted with promptitude and with a sense of urgency. The Detaining Authority has waited for more than three months for recording in-camera statements and, thereafter the Order of Detention has been passed after another two months. This reflects the casual and cavalier approach of the the Detaining Authority while passing the Order of Detention. The petitioner has therefore sought declaration that the Order of Detention is illegal and bad in law and, therefore, it is required to be quashed and set aside.

5. We have heard the learned counsel for the petitioner who has raised the above grounds, the Detaining Authority who is represented by the learned APP has filed an affidavit of the Detaining Authority i.e. respondent No. 1, the Commissioner of

Police, Pimpri Chinchwad, Pune.

In the said affidavit it is stated that, the proposal was forwarded by the Senior Inspector of Police, Hinjewadi Police Station, Pimpri Chinchwad, on 30.03.2024 for the detention of the petitioner. The Detaining Authority after carefully considering and scrutinizing the material before him and after being subjectively satisfied that the activities of the petitioner were prejudicial to the maintenance of public order and the petitioner is a bootlegger within the meaning of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Person, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing of Essential Commodities Act, 1981 (for short "the MPDA Act, 1981), the Order of Detention has been issued.

When we have called upon the learned APP, Mr. Gavand seeking his specific response to ground (f) raised by the petitioner in the Petition, he was not in a position to point out specific reply to the ground (f) in the reply affidavit. Though in the para-wise reply ground (f) has been referred, however, no satisfactory reply has been given in response to ground (f) raised by the petitioner. The reason for delay in issuing the Order of Detention after registration of last offence against the petitioner has not been explained in the affidavit filed by the Detaining Authority. The only explanation which is given against the said ground is that, the petitioner is a 'Person doing business of illicit liquor', therefore, in order to curb his activities the Order of Detention has been issued.

6. After considering the contents of the Writ Petition and the arguments advanced by the respective counsel, it is apparent that, the Detaining Authority has considered C.R. No. 1320 of 2023 for offence punishable under Sections 65(e) of the Maharashtra Prohibition Act, 1949, registered on 25.11.2023. The petitioner was not arrested for the said offence, but only a notice under Section 41(A)(1) of Cr.P.C. was issued to him on the same day i.e. on 25.11.2023. Apart from that, no action has been taken against him. After that, the in-camera statements of witness 'A' was recorded on 19.03.2024 and witness 'B' was recorded on 24.03.2024, as well as witness 'C' was recorded on 27.03.2024 for the incidents which has occurred in October and November, 2023.

The statements of the in-camera witnesses were recorded after more than 3 months after the last offence has been registered against the petitioner. Thereafter, on the basis of the last C.R. and the statements of in-camera witnesses, the Order of Detention has been issued on 02.05.2024, which is about two months after recording the in-camera statements. This itself indicates the casual and the cavalier approach of the authorities passing the Order of Detention.

7. The object of MPDA Act, 1981 is to prevent illegal activities which are detrimental to the maintenance of public order. The said power has to be exercised very cautiously, as it amounts to restricting the personal liberty of an individual without trial. The Order of Detention is issued to curb the criminal activities of an individual who consistently indulges in criminal activities, which are causing disturbance to public

order. The Order of Detention has a direct nexus or link with the immediate need to detain an individual, therefore, it refers to previous criminal antecedents while issuing the Order of Detention. The previous criminal activities of the individual indicate his tendency and inclination to act in a manner prejudicial to the maintenance of public order.

It is not open for the Detaining Authority to simply refer to stale incidents and hold them as the basis of an Order of Detention, since the said stale material does not have a bearing on the probability of a detenu engaging in prejudicial activities in future.

Considering the date of registration of last offence and issuance of Order of Detention there is huge gap of almost five months between the two, therefore, there is no live link between the last offence and the immediate need for detention.

8. The C.R. No. 1320 of 2023 was registered on 25.11.2023, thereafter there was no offence registered against the petitioner. The Order of Detention has been issued on 02.05.2024. There is a gap of almost six months between the last offence registered and the Order of Detention. The in-camera statements have been recorded on 19.03.2024, 24.03.2024 and 27.03.2024 respectively. From the dates on record it appears that, the in-camera statements have been recorded to fill in the gap between registration of offence and Order of Detention. Even otherwise, it is necessary to establish live link between the registration of offence and Detention Order, however due to the huge time gap, the

immediate necessity to restrain the detenu does not exist. In similar circumstances in case of ***Ganesh @ Gajraj Sainath Patil V/s. The State of Maharashtra***¹ this Court vide Judgment and Order dated 29.06.2021 has been pleased to quash and set aside the order of detention on the ground of snapping of live link. Similar ground has been raised in the present Writ Petition.

Considering the facts of the present case, we hold that the live link is snapped and in view of the snapping of live link, the Order of Detention issued by respondent No. 1, the Commissioner of Police, Pimpri Chinchwad, Pune deserves to be quashed and set aside.

In view of the aforesaid, Rule is made absolute in terms of prayer clause (b), as under:

“(b) The order of Detention bearing No.PCB/DET/121/2024, Pimpri Chinchwad, dated 02.05.2024, 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 petitioner be ordered for release forthwith.”

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

¹ Writ Petition No. 846 of 2021