

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

WRIT PETITION NO. 2596 OF 2024

Govardhan Sham Rajput
Age: 32 years, R/o: Near Amey
Company, Sanawane Vasti,
Chikhali, Pune ... Petitioner

Versus

1. The 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

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Mr. 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 : 28th AUGUST, 2024**

Oral Judgment : (Per Manjusha Deshpande, J.):

1. The matter is taken up for final disposal with the consent of parties.

2. The Petitioner is assailing the Order of Detention issued by Respondent No. 1- the Commissioner of Police, Pimpri Chinchawad, Pune, on 11.05.2024.

3. The committal order and grounds of detention were also served on 11.05.2024. The petitioner has made a representation to the State Government on 07.06.2024 for consideration and revocation of the Order of Detention. The Order of Detention is challenged by the petitioner on various grounds. The learned counsel for the petitioner has pressed into service the ground of snapping of live link in ground (d) which is thus:

“(d) The Petitioner says and submits that the detaining authority has taken into consideration solitary offence vide C.R. No. 766/2023 dated 29.11.2023, u/sec 65(e), for arriving at his subjective satisfaction and pass the detention order. It is to be noted that in C.R. No. 766/2023 dated 29.11.2023 the Petitioner came to be arrested on 30.11.2023 and was released on the same day. The detaining authority categorically states at para 6 of the grounds of detention that “After considering the seriousness of the offence described above, the Senior Police Inspector of Chikhali Police Station, Pimpri Chinchwad conducted a confidential inquiry...”, it is not understood as to when the said inquiry was conducted, as after the detenu’s release on bail on 30.11.2023, in camera statements of both the witnesses A and B are recorded belatedly on 14.03.2024 and 16.03.2024 i.e. after a delay of more than two months. The said in camera statements are only taken to fill up the gap and pass the order of detention on 11.05.2024. If the activities of the Petitioner 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 him. There is delay in passing the order of detention. Live link snaps. After the registration of C.R. No.766/2023 the authorities have waited for more than two months for recording of in camera statements, therefore there is a delay in recording in camera statements, and after recording of the in camera statements, the order of detention is passed after another two months. This shows the casual and cavalier approach of the authorities passing the detention order. Order of detention is illegal and bad in law for delay in passing order, liable to be quashed set aside.”

4. The grounds of detention have been communicated to the petitioner by the Detaining Authority in C.R. No. 766/2023, for offence punishable under Section 65 of the Prohibition Act, registered on 30.11.2023.

It appears from the grounds of detention that, on 29.11.2023 at about 19:50 hrs. the complainant raided the tin shed behind Pathare Hotel, Chikhali, Pune and the petitioner was found in possession of one black plastic can in which approximately 30 liters of *hatbhatti* liquor worth Rs.2,000/- and cash Rs.230/- received from sale of illicit liquor was recovered. Accordingly, the complaint was registered against the petitioner with Chikhali Police Station, Pimpri Chinchwad on 30.11.2023. Thereafter, confidential statement of witness 'A' has been recorded on 14.03.2024 for the incident that occurred on 19.02.2024. The confidential statement of witness 'B' was recorded on 16.03.2024 for the incident that occurred on 10.03.2024.

5. On the basis of one C.R. and two in-camera statements, the Detaining Authority has recorded his subjective satisfaction that, the petitioner is acting in a manner dangerous to the health and life of people and prejudicial to the maintenance of public order, therefore, being satisfied that the activities of the petitioner are prejudicial to the maintenance of public order, has issued the Order of Detention, which is impugned in the present Writ Petition. According to the petitioner, the offence has been registered on 30.11.2023 and the Order of Detention has been issued on 11.05.2024, due to which the live link has snapped.

6. The learned APP has relied on the affidavit filed by the Detaining Authority, when we have called upon the learned APP to address us on specific ground of snapping of live link. The learned APP has relied on the explanation given by the Detaining Authority in paragraph 11 of the affidavit in reply to paragraph 5(d) of the grounds in the Writ Petition, wherein the Detaining Authority has given details about the date-wise steps taken before issuing the Order of Detention, however, he has not offered any explanation to the gap in the last offence registered against the petitioner and the order of detention issued against him. The explanation given by the Detaining Authority does not give any satisfactory explanation for the huge gap between the two dates that is the date of registering offence on 30.11.2023 and Order of Detention issued on 11.05.2024, therefore, the Order of Detention becomes unsustainable due to snapping of live link and the same is required to be quashed and set aside.

7. Learned APP in his submissions while trying to justify the delay has stated that the C.A. report of the liquor which was seized, has been received by the Detaining Authority on 26.12.2022, hence, thereafter the steps have been taken for the detention of the petitioner. We are not satisfied by the said explanation since already the offence has been registered under Section 65 (e) of the Maharashtra Prohibition Act, therefore, there was no propriety in waiting for the said report for taking further steps.

8. We have considered the arguments of the respective

parties and we have perused the contents of the memo of Writ Petition as well as the reply affidavit filed by the Detaining Authority. The record discloses that there is a huge gap of more than five months between the date of registration of offence and the date of issuance of the Order of Detention. Though the delay by itself will not make the Order of Detention unsustainable, but when such delay is not explained, the Order of Detention becomes unsustainable. Even otherwise, due to unexplained delay, the live link has snapped. In such situation the Order of Detention warrants interference by this Court. In view of the above, the Order of Detention being erroneous and unsustainable is quashed and set aside.

Accordingly, the Writ Petition is allowed and Rule is made absolute in terms of prayer clause (b).

“(b) The order of Detention bearing No. PCB/DET/134/2024, Pimpri Chinchwad, dated 11.05.2024 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.)