



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.276 OF 2024

Rajesh Dipak Untwal
r/o Mukhare Chowk,
Navalbaba Ward Pusad
Tah – Pusad Dist Yavatmal

Petitioner

-Versus-

1. The State of Maharashtra,
Home Department (Special),
through its Section Officer,
Second Floor, Main Building,
Mantralaya, Mumbai 32.
2. Collector & District Magistrate, Yavatmal

Respondents

Mr. J.D. Bastian, counsel for the petitioner.
Mr. S.S. Doifode, APP for R-1.

**CORAM : VIBHA KANKANWADI AND
MRS.VRUSHALI V. JOSHI, JJ.**

DATE : 24/07/2024

ORAL JUDGMENT (Per :Vrushali V.Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith. The Criminal Writ Petition is heard finally with the consent of the learned counsel for the parties.

2. By this Writ Petition, the petitioner is challenging the confirmation of the order passed by the Respondent no.1 on 13.02.2024 under 12(1) of the of the Maharashtra Prevention of

Dangerous Activities of Slumlords, Bootleggers, Drug offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black Marketing of Essential Commodities Act, 1981 (hereinafter referred to as the MPDA, Act, 1981), initially passed by the Respondent no.2 under Section 3(2) of the MPDA Act, 1981) on 21.12.2023. The petitioner has presently been detained in the District Central Prison, Akola.

3. The ground on which the detention order is based is as under:

There is no live-link between the last criminal activity and passing of the detention order. It is stated that the last Crime No. 656/2023 has taken place on 14.09.2023. The proposal for detention was sent on 28.11.2023 and the order was passed on 21.12.2023.

4. Shri Bastian, Learned counsel appearing for the petitioner submits that, confidential witness A in his statement states about the incident which is of February 2023. Confidential witness B in his statement states about the incident of August 2023. Hence, there is an inordinate gap of more than 90 days.

5. The petitioner was not supplied with the material and documents relied on in order along with the grounds of detention. Hence, prayed to set aside the order of detention by allowing this Writ Petition.

6. *Per contra*, Shri Doifode, Learned APP, vehemently opposes the contentions of the petitioner, he submits that, when the complainant, mother of the detenu was with her elder daughter, at the Government Hospital, as the younger daughter of the complainant delivered a baby, the detenu came there and asked to show new born baby. When denied, he beat the elder daughter and hit with wooden stick and also threatened to kill them. The medical examination report of the injured in the crime was curated by the Medical Officer, Pusad. Notice under Section 41(1) of Cr.P.C. was served to the petitioner.

7. Learned APP, further submits that, in the second crime on 14.09.2023, when the complainant was returning to his home, the detenu and his associate Jay Gajbhar asked him about the payment of previous amount, two more persons arrived and beat the complainant with sticks and blew punches and injured him on head. After the inclusion of two in-camera statements, there is sufficient material on record, for the detaining authority to arrive at his subjective satisfaction that the petitioner is a “dangerous person “under Section 2 [b-i] of the MPDA Act, 1981, as his acts would disturb the maintenance of public order.

8. The detention order has been passed after conducting necessary inquiry and verification and after following the due

procedure under the MPDA, Act, 1981. Hence, prayed to dismiss the Writ Petition.

9. Heard the learned counsel appearing for the petitioner and the learned APP for the State.

10. The detention order is based on two crimes and two confidential statements. The last Criminal activity as per registration of Crime No. 656 of 2023 has taken place on 14.09.2023 and detention order is passed on 21.12.2023. There is inordinate gap of more than 90 days. If we consider in-camera statement of the witnesses, the incident narrated by the witness A is of February 2023 and narrated by Witness-B it is the incident of August 2023. There is gap of more than 3 months between the date of incident and passing of detention order.

11. While considering the live-link or delay, it is necessary to consider whether, the said delay is properly explained by the authority. On going through the reply filed by the respondent No.2, the respondent No.2 has explained the delay stating that the Crime No.656 of 2023 was registered on 14/09/2023 by Police Station Pusad. District Superintendent of Police Yavatmal has submitted the proposal for detention of the petitioner as per MPDA Act, 1981 on 28.11.2023. Respondent No.2 District Magistrate Yavatmal. Thereafter, has passed the detention order on 21.12.2023 after conducting the necessary enquiry and verification

and after following due procedure under the MPDA Act,1981. Therefore, the respondent has denied that there is no live-link to pass the impugned order. If we consider the explanation nothing is stated by the respondents as to what had happened after registration of the crime on 14.09.2023 till 28.11.2023 for taking the decision.

12. The in-camera statements were recorded on 16.10.2023 and 17.10.2023. before the Police Inspector. They have narrated the incident of February 2023 and August 2023 along with other incidents. Therefore, there is no any delay in passing the detention order. Considering the reply which is not satisfactory, there is delay of more-than 90 days. Moreover, the offence on which the authority has relied in the said offence, the detenue is acquitted. Only one offence is there which is registered in the month of September and the order was passed on 21.12.2023. There is inordinate delay. The Hon'ble Apex Court in the case **Pradeep Nilkanth Paturkar Vs. S.Ramamurthi and ors.** of 1993 Supp (2) Supreme Court Cases 61 has observed in paragraph Nos.8 ,9 and 10 as under :-

8. The question for our consideration is as to whether the delay in passing the detention order has vitiated the said order. The High Court before which a similar contention has been raised has negated that contention observing thus:

“The period of four months required by the authorities to pass the order can by no stretch of imagination be tested as unduly long. Though the statements were available in March 1991, the procedure required some time before the powers are exercised. In our judgment, the order of detention does not suffer from the vice of delay.

9. According to Mr. Gupte, the explanation given by the High Court for the delay that the “Procedure required sometime before the powers are exercised” is not the explanation offered by the detaining authority and therefore that explanation should not be accepted to the prejudice of the right of the detenu. In support of his submission that the unexplained and undue delay in passing the order vitiates the impugned detention order, he drew our attention to a decision of this court in T.A. Abdul Rahman V. State of Kerala to which one of us (S.Ratnavel Pandian, J.) was a party. In that case after recapitulating the various decisions on this point the following dictum has been laid down: (SCCp.748, para 10)

“ The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each. No hard and fast rule can be

precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case.

10. Reference also may be to Hemlata Kantilal Shah V. State of Maharashtra in which case this Court observed:(SCC P. 655, para 16)

“Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily examined by the detaining authority”.

13. In the case in hand, there is delay of 90 days from the date of last incident. The old incidents of June and August are narrated by the witnesses. Said delay is not satisfactorily explained

hence, there is no live-link to pass the detention order.

14. It is also necessary to consider whether the offences considered by detaining authority are of such a nature which disturbs the public order. On perusal of both the offences, it appears that the offences are against an individual. In the first offence, in which the petitioner is acquitted, the complainant is his mother and in another offence, it occurred out of dispute on recovery of borrowed amount. Hence, no public order is affected by both these offences.

15. On considering the confidential statements of witness A and B, witness A has made the general statement against the petitioner and has stated that the petitioner also committed a crime against him, abused and threatened him. On perusal of original statements it appears that he has narrated the incident of February 2023 and the statement was not even seen by the detaining authority.

16. Confidential witness B has stated that the petitioner has committed crime against him, stopped him, he was having knife in the hand and threatened him, beat him and slapped him with his hand and told him that it is his area and also abused him. On perusal of original statements it appears that he has narrated the incident of August 2023 and the statement was not even seen by the detaining authority.

17. After going through the record, the offences and the statements, which are considered by the detaining authority, it does not amount to public order.

18. Considering the delay and as there is no live-link, We, thus find the substance in the present Writ Petition. The Writ Petition is required to be allowed.

19. In the result, we find that this Writ Petition deserves to be allowed and it is allowed in terms of prayer clause (a).

Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J) (VIBHA KANKANWADI, J)