



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.575/2024

Shubham Pancham Salame,
aged about 30 Yrs., Occ. Labour,
R/o Shivajai Nagar, Kanhan,
Tah. Parsheoni, Nagpur.

... Petitioner

- Versus -

1. State of Maharashtra,
through its Secretary,
Home Department (Special),
Mantralaya, Mumbai.

2. Collector/District Magistrate,
Nagpur.

... Respondents

Mr. Mir Nagman Ali, Advocate for the petitioner.
Mr. S.S. Doifode, Additional Public Prosecutor for respondent
Nos.1 and 2.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATE OF CLOSE FOR JUDGMENT : 4.12.2024.
DATE OF PRONOUNCEMENT OF JUDGMENT : 14.12.2024.

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Rule. Rule made returnable forthwith. Heard finally
with the consent of learned Advocates appearing for the parties.

2. This petition is filed to challenge the order dated 29.7.2023 passed by the respondent No.2/Collector District Magistrate, Nagpur in exercise of powers conferred under Sub-sections (1) and (2) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (for short “M.P.D.A. Act”) and approved by the respondent No.1/State of Maharashtra, through its Secretary, Home Department (Special), Mantralaya, Mumbai by its order dated 8.8.2023.

3. The order is mainly challenged on three grounds viz. (i) the offences taken into account for the purpose of passing the detention order were stale having no nexus between the last crime allegedly committed by the petitioner and the date of passing the order of detention. (ii) there was a huge delay in passing the detention order from the date of arrest of the petitioner on

16.3.2023 and (iii) Crime Nos.53/2023, 54/2023 and 55/2023 do not create a situation which will amount to breach of public order.

4. Perusal of the detention order reveals that the crimes taken into consideration while passing the detention order were stale. Moreover, all of them have been registered on the same date, i.e. 04.2.2023.

5. Learned Advocate for the petitioner, Mr. Ali, emphasized on the submission that since the last crime was registered against the petitioner on 4.2.2023 and the impugned order is passed on 29.7.2023 there is no live and proximate link between the grounds of detention and the purpose of detention. He further submitted that there is an unreasonable delay between the date of the order of detention and the actual arrest of the detainee. He further stated that in all the three crimes, which are taken into consideration, the petitioner has been granted bail,

which fact was not brought to the notice of the detaining authority by not placing bail orders before it.

6. The learned Advocate for the petitioner has relied on the following judgments to support his contentions that delay in execution of order is itself a ground to quash the detention order.

i) Owais Syed Khan V/s. UT of J & K and others in WP (Cri) No.124/2023,

(ii) Sultan Abdul Kader V/s. Jt. Secy. to Govt. of India reported in 1998 (8) SCC 343,

(iii) Manju Ramesh Nahar V/s. Union of India reported in 1999 AIR (SC) 2622,

(iv) Khailesh Pancham Salame V/s. State of Maharashtra and another in Writ Petition No.834/2023, dated 27.2.2024,

Reliance is placed on the above judgment i.e. Khailesh Pancham Salame (supra) so as to demonstrate that the detention order is set aside against the co-accused in all the three crimes which are considered for passing the detention order in case of the petitioner.

(v) Adil Khan S/o Nader Khan Pathan V/s. State of Maharashtra and others reported in 2002 ALL. MR. (Cri.) 2718 and

In the above said judgment, observations are made about the mandatory requirement of law viz. recording subjective satisfaction regarding in-camera statements.

(vi) Gokul Sahabrao Sabale V/s. Commissioner of Police, Pune and others reported in 2017 ALL.M.R. (Cri.) 2051.

7. *Per contra*, learned A.P.P. Mr. Doifode vehemently opposed the prayers made in the petition. He pointed out that the petitioner is a habitual offender. He submitted that the petitioner is using lethal weapons and terrorizing people. The incidents, narrated in the in-camera statements, had happened at a public place. He stressed upon the fact that there was no delay in passing the detention order as the petitioner was absconding and was arrested on 16.3.2023. He also drew our attention to the fact that since all the three crimes were registered in a single day, if the frequency and nature of the occurrence of the crimes are taken

into account, it shows inclination of the petitioner to continue activities prejudicial to the maintenance of public order. Further, the petitioner himself has admitted that the bail orders were placed before the detaining authority. Learned A.P.P. also claims that the entire procedure to pass the detention order was completed within six months of the commission of last offence.

8. The learned A.P.P. has relied on the judgment in case of Harshad Jivanrao Mundkar V/s. State of Maharashtra and others reported in **2024 ALL.MR (Cri) 1556** to substantiate his contentions.

9. Three offences and two confidential statements of witnesses are considered for passing the detention order. The offences which are considered are allegedly committed by the petitioner along with other co-accused on the same day i.e. 3.2.2023 and the offences are registered on 4.2.2023.

10. The learned Advocate appearing for the petitioner and the learned A.P.P. appearing for the respondents took us through the record. While going through the record, the learned Advocate for the petitioner has brought to our notice that one of the co-accused in all the three offences was detained and this Court has released him by setting aside the detention order on 27.2.2024 in Criminal Writ Petition No.834/2023 (Khailesh Pancham Salame V/s. State of Maharashtra and another). It appears that all the three offences in which the petitioner is accused are considered for passing the detention order against the petitioner and the same offences are considered in Criminal Writ Petition No.834/2023 in which one of us was a party (Mrs. Vrushali V. Joshi, J.).

11. The main ground for challenging the detention order in this petition is the occurrence of delay in passing the detention order, there is no live link between the crimes registered against the detenue and the detention order passed, and there is no

subjective satisfaction of the detaining authority as the statements are not even seen by the detaining authority.

12. If we consider the offences which are considered while passing the detention order, it can be seen that in Crime Nos.53/2023 and 54/2023, F.I.R. is lodged on 4.2.2023 and Crime No.55/2023 is committed on 4.2.2023 since then the petitioner was absconding till 31.3.2023 and thereafter he was produced before the Court in the former two offences. Hence after his arrest, the order is passed on 29.7.2023. Co-accused Khailesh has also filed petition challenging the detention order. While passing of the detention order in the case of co-accused Khailesh Pancham Salame (supra) it is observed by this Court that there is no live link in the offences considered and the date of passing the detention order. No doubt, the time of delay starts from the date of recording of the in-camera the statements and verification of it. The statements are recorded in this case on 5.6.2023 and are verified by the Assistant Commissioner of

Police on 30.6.2023. On perusal of the statements it appears that it is not even seen by the detaining authority, therefore, the truthfulness of the statements are not verified by the detaining authority. Hence, there is no subjective satisfaction arrived at by the detaining authority. Moreover, all the offences are of the same day i.e. 4.2.2023 and the detention order is passed on 29.7.2023. Therefore, there is in all five and half months delay. Even if we consider that the delay is caused because the petitioner was absconding, the question is about nexus and live link between the crime and the detention order. There is no nexus and live link between the last crime registered against the petitioner and the detention order passed on 29.7.2023. We have already placed reliance on the observations made by this Court in the case of co-accused Khailesh Pancham Salame (*supra*) about absence of live link between the last crime registered against the petitioner and the detention order, the statements are also not verified by the detaining authority. It is also not considered by the detaining authority as to whether the petitioner/accused was on bail.

Therefore, the order passed by the detaining authority regarding this petitioner vitiates thereby rendering the detention order dated 29.7.2023 illegal. Accordingly, writ petition must succeed and we pass the following order:-

The writ petition is allowed in terms of prayer clause

(i), which reads as under:-

“(i) Pass any appropriate writ, order or direction and thereby quash and set aside the impugned order dated 29.7.2023 (Annexure No.1) passed by respondent No.2-Collector/District Magistrate, Nagpur.”

13. The petitioner shall be released from detention forthwith, if not required in any other crime. The parties to act upon.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)