



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

CRIMINAL WRIT PETITION NO.587/2023

Jakir @ Jakira Hussain
Ansari S/o Abdul Kadir Ansari,
aged about 25 Yrs., Occ. Labour,
R/o Nai Basti, Teka, Nagpur.

... Petitioner

- Versus -

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

2. Commissioner of Police,
Nagpur.

... Respondents

Mr. Mir Nagman Ali, Advocate for the Petitioner.
Mr. S.S. Doifode, A.P.P. for the Respondents.

CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT : 30.1.2024.

DATE OF PRONOUNCING THE JUDGMENT : 14.2.2024.

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

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The petitioner detainee takes an exception to the order dated 4.4.2023 and confirmation order of same date passed by the Commissioner of Police, Nagpur preventively detaining the detainee in exercise of powers under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (for short "M.P.D.A. Act").

3. The facts in brief are as under:-

A proposal was initiated to detain the detainee in terms of Section 3 of the M.P.D.A. Act as the activities of detainee rendered him a dangerous person. It transpired that the detainee and his associates roamed upon the areas since year 2018 and the detainee have been continuously engaged in the commission of violent and desperate criminal activities. The crimes committed by the detainee are of the nature of dacoity, making preparation of committing dacoity, assembling for the purpose of committing dacoity, robbery, house trespass after preparation for hurt, assault or wrongful restraint, extortion by putting a person in fear of

death or grievous hurt, voluntarily causing hurt, mischief causing damage to property, intentional insult with intent to provoke breach of peace, abusing in filthy language, criminal intimidation with threat to cause death, moving armed with deadly weapon, violation of prohibitory order, being possession of narcotics drugs substance, rash driving or riding on a public way, causing grievous hurt by act endangering life or personal safety of others etc. Even tempo of the life of residents of the areas where the detainee personally resides and the public order in general have been disturbed by incessant criminal activities which are continuing unabated even after taking all preventive actions against the detainee.

4. On account of terror created by the detainee, persons were not coming forward to lodge the complaint against the detainee who were afraid of their life and safety. The police have recorded two in camera statements of witnesses "A" and "B". It reveals that the detainee was persistently indulging in criminal activities thereby endangering the public order. The respondent

No.1 then recorded subjective satisfaction that the detenue was a dangerous person and in order to prevent him from acting in a manner which was prejudicial to the maintenance of public order in future it was necessary to detain the detenue. The impugned order of detention under Section 3(2) of M.P.D.A. Act was passed and according to the petitioner, the grounds of detention were not served on the detenue.

5. The learned Counsel for the petitioner has relied on the following judgments:-

- i) Khaja Bilal Ahmed V/s. State of Telangana and others reported in 2020 (13) SCC 632,*
- ii) Deepak Dattu Suryawanshi V/s. Commissioner of Police and others reported in 2017 ALL MR (Cri) 416,*
- iii) Bharat Kisan Mekale V/s. Commissioner of Police and others reported in 2021 ALL MR (Cri) 3783,*
- iv) Criminal Writ Petition No.434/2023 (Harshal Rakesh Brahmne V/s. State of Maharashtra and another) dated 11.9.2023,*
- v) Niyazuddin @ Sony Sirajuddin Ansari V/s. State of Maharashtra and another reported in 2013 ALL MR (Cri) 3870,*
- vi) Gokul Sahabrao Sabale V/s. Commissioner of Police, Pune and others reported in 2017 ALL MR (Cri) 2051,*
- vii) Criminal Writ Petition No.347/2023 (Mohammad Arbaz @ Sanu S/o Mohammad Israil @*

Manja Ansari V/s. State of Maharashtra and others)
dated 17.1.2023,

viii) Criminal Writ Petition No.546/2023 (Hanif @ Illu Hafiz Ansari V/s. The State of Maharashtra and others) dated 22.1.2024,

ix) Criminal Writ Petition No.536/2023 (Yaduraj @ Bacchi S/o Ramnaresh Arak V/s. The State of Maharashtra and others) dated 5.1.2024,

x) Criminal Writ Petition No.1383/2023 (Ibrahim @ Tipu @ Tipya S/o Sattar Maniyar V/s. The State of Maharashtra and others) dated 28.11.2023 and

xi) Criminal Writ Petition No.940/2023 (Shaikh Gaffar @ Bablu Shaikh Sattar V/s. State of Maharashtra and others) dated 19.12.2023.

6. The learned A.P.P. for respondent Nos.1 and 2 has relied on the following judgments:-

i) Golam Hussain alias Gama V/s. Commissioner of Police, Calcutta and Ors. reported in (1974) 4 SCC 530,

ii) Phuwari Jagdambaprasad Pathak V/s. R.H. Mendonca reported in 2000 ALL MR (Cri) 1503 SC.

7. The detinue has assailed the impugned order on the premise that clear non-application of mind and dealt with the detention of the detinue in a casual and cavalier manner. To challenge the detention, grounds are raised in the petition. During the course of arguments, however, the learned Counsel for the petitioner restricted the challenge to the grounds (i) that the

detenue has not been provided with proper translation of all documents, (ii) that there was no proposal placed before the Detaining Authority to detain the detenue and there was no material available to pass the detention order and the detenue was also deprived to challenge the detention order on the ground of delay in disposal of proposal, (iii) there is a gap of nearly 90 days in between incident and the date of passing the order of detention and (iv) in camera statements could not have been taken into consideration while passing the detention order.

8. In the above backdrop we deem it appropriate to deal first with the ground of non-furnishing of vital documents and variance in the translation.

9. The challenge to the impugned order on account of non-furnishing of vital documents are made but nothing is mentioned which documents are not provided. While giving reply to the petition the respondents have specifically stated that all the documents were supplied and the translation was also given to the detenue. It is specifically stated that the Detaining

Authority carefully went through the grounds of detention and every relevant document, and after being subjectively satisfied passed the detention order. After going through the petition we find that nothing is specifically mentioned by the petitioner in this regard. Only he has stated that the documents were not provided to the detainee but which document is not provided is not mentioned. It is clear that the documents were given to the detainee and the detainee has appeared through video conferencing before the Detaining Authority to defend himself. In this view of the matter, we are not able to accept the submission on behalf of the petitioner that the documents were not furnished to petitioner and therefore it is fatal. There is no specific submission about not providing translation and incorrect translation therefore these grounds are not available to detainee.

10. The second ground raised by the petitioner is about the absence of live link. The petitioner has alleged that last criminal activity has taken place on 7.1.2023 and the order of detention has been passed on 4.4.2023 and thus there is no live

link requiring detention of petitioner and, therefore, impugned order needs to be quashed and set aside. It is submitted that there is a gap of nearly about 90 days in between incident and the date of passing order of detention. Thus, it is submitted that in camera statements would not have been taken into consideration while passing the detention order. The confidential statements of witnesses “A” and “B” disclose that the incident is of first week of February, their statements were recorded on 11.2.2024 verified on 2.3.2023, the Detaining Authority thereafter has verified in camera statements on 4.4.2023 on the date of passing of detention order. There is no remark that Detaining Authority has gone through the in camera statements, and verification is nothing but a farce.

11. The reply is filed by the respondents and they have denied the delay in passing the order. According to the respondents three crimes are registered before Police Station Panchpaoli. First Crime No.1278/2022 for the offence punishable under Sections 386, 452, 504, 506-B, 427 read with

Section 34 of the Indian Penal Code and Sections 4 and 25 of Arms Act, Section 135 of Maharashtra Police Act, Second Crime No.1297/2022 for the offence punishable under Section 392 read with Section 34 of the Indian Penal Code and the third crime is Crime No.7/2023 under Section 399 and 402 of the Indian Penal Code read with Section 4 and 25 of Arms Act and Section 135 of the Maharashtra Police Act. Two witnesses also came forward and expressed their willingness for giving in camera statements against the detainee. Their statements were recorded. Last in camera statement was recorded on 11.2.2023. Panchpaoli Police Station, Nagpur initiated the proposal for detention on 27.2.2023 under M.P.D.A. Act and the same was submitted to the Assistant Commissioner of Police, Panchpaoli Division. It was verified. The in camera statements "A" and "B" are recorded on 2.3.2023 and recommended the proposal to the Deputy Commissioner of Police, Zone-III, Nagpur on 3.3.2023. The Deputy Commissioner of Police, Zone-III, Nagpur verified the in camera statements and recommended it to the Additional

Commissioner of Police, North Region, Nagpur on 6.3.2023 who in turn recommended to the office of Joint Commissioner of Police, Nagpur City on 7.3.2023. The Joint Commissioner of Police, Nagpur City on 9.3.2023 forwarded it to the Commissioner of Police, Nagpur i.e. Detaining Authority and on 9.3.2023 it was received in the Detaining Cell, Crime Branch, Nagpur. On 23.3.2023 the Detention Cell, Crime Branch Nagpur initiated the proposal to the Detaining Authority i.e. Commissioner of Police. The Detaining Authority *prima facie* found that it was a fit case for detention under M.P.D.A. Act and directed the office of the Detention Cell, Crime Branch, Nagpur to prepare the compilation, translation, fair typing and to comply with other requirements of law. The Detention Cell, Crime Branch, Nagpur complied with the directions and on 23.3.2023 a draft of grounds of detention were forwarded to the Deputy Commissioner of Police (Detention), Crime Branch, Nagpur City who went through the draft of grounds of detention and other relevant documents and gave his endorsement on 26.3.2023

which was forwarded to the Joint Commissioner of Police, Nagpur City. The Joint Commissioner of Police, Nagpur City went through the grounds of detention and other relevant documents and referred the endorsement on 29.3.2023. The Detaining Authority carefully went through the draft of grounds of detention and other relevant documents and after being subjectively satisfied passed the detention order on the same day i.e. on 4.4.2023. According to the respondents there was no delay in passing the detention order and there is live link between the prejudicial activities of the detainee and passing of detention order against the detainee.

12. We find that the said period is almost 90 days and the explanation in this regard is vague. It is difficult to understand as to why such a long period was taken only for typing documents and translating English version as held by the Apex Court in the case of Pradeep Nilkanth Paturkar V/s. S. Ramamurthi and Others reported in **AIR 1994 SC 656** unexplained delay whether short or long, especially when the petitioner has taken a specific

plea of delay, vitiates the detention order. As such, our appreciation is based on the observations in the case of Pradip's case (supra) and the same is well founded.

13. As held by the Apex Court in the case of Rushikesh Tanaji Bhoite V/s. State of Maharashtra and others reported in **(2012) 1 Bom (Cri) 325** that once the detention of the detenue is held to be illegal his detention for a single day would be contrary to the constitutional mandate.

14. In view of the above, we hold that the impugned orders are not sustainable in law and the detention of the petitioner is held to be illegal. The petitioner is directed to be released forthwith, if not required in any other crime.

Petition is disposed of in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)