



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

CRIMINAL WRIT PETITION NO. 536 OF 2023

Yaduraj @ Bacchi S/o. Ramnaresh Arak,
Aged about 24 years, R/o. Subhash Ward,
Ballarpur, Chandrapur, Dist. Chandrapur
(Presently at Central Prison, Aurangabad)

... PETITIONER

// VERSUS //

1. The State of Maharashtra through
its Secretary, Home Department,
Mantralaya, Mumbai-32.
2. District Magistrate, Chandrapur.
3. Superintendent, Central Prison,
Aurangabad.

... RESPONDENTS

Shri R. M. Daga, Advocate for petitioner.
Shri S. S. Doifode, APP for respondents/State.

**CORAM :- VINAY JOSHI &
M. W. CHANDWANI, JJ.**

RESERVED ON :- 19.12.2023

PRONOUNCED ON :- 05.01.2024

JUDGMENT (PER: M. W. CHANDWANI, J.):-

Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by
consent of the learned counsel for the parties.

3. By this Writ Petition under Article 226 of the Constitution of India, the petitioner seeks to quash and set aside the order dated 23.05.2023 passed by respondent no. 2 under sub-Section (1) and (2) of the Section 3 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 (for short, “the MPDA Act”). The petitioner further challenges the order dated 17.07.2023 passed by respondent no. 1 confirming the order dated 23.05.2023 passed by the respondent no. 2.

4. The brief facts, which give rise to this petition are stated as under:-

A proposal for detention was moved by the Police Inspector, Police Station Ballarpur, District Chandrapur on 23.01.2023 to detain the petitioner under the provisions of the MPDA Act on the ground that the petitioner is a dangerous person within the meaning of Section 2(b-1) of the MPDA Act and a number of offences have been registered against the petitioner. The Detaining Authority relying on two crimes as well as in-camera statement of witnesses ‘A’ and ‘B’ came to the conclusion that the petitioner has created terror in the minds of the people. The witness and victim do not come forward and lodge complaint because of fear from the petitioner. The activities of

the petitioner are adversarial and likely to affect maintenance of public order. Therefore, the respondent no. 2- Detaining Authority has passed the impugned order dated 23.05.2023, which was confirmed by the respondent no. 1- State Government by its order dated 17.07.2023 under the provisions of the MPDA Act. Feeling aggrieved by the said orders, the present petition came to be filed.

5. Heard Shri R. M. Daga, learned counsel for the petitioner and Shri S. S. Doifode, learned APP for respondents/State.

6. Though, various grounds have been raised in the petition but, the learned counsel for the petitioner principally raised the ground of delay in passing the detention order by the Detaining Authority. It is contended on behalf of the petitioner that though the Police Inspector of Police Station Ballarpur had sent the proposal for proceeding under Section 3 of the MPDA Act against the petitioner, the Detaining Authority sat over the said proposal for almost four months and on 23.05.2023, the order of detention came to be passed. It is contended on behalf of the petitioner that the delay in passing the detention order will vitiate the detention order itself. According to him, this itself goes to show that there was no necessity to detain the petitioner, immediately. If there is long and unexplained delay between the date of proposal and the date of order of detention then,

the link in between them is snapped, unless the grounds indicate application of mind to the new and changed circumstances. He submitted that in the present case, there is unexplained delay on the part of the Detaining Authority in passing the detention order. To buttress the submission, he seeks to rely on the decision of the Supreme Court in the case of ***Sushanta Kumar Banik Vs. State of Tripura***¹.

7. *Per contra*, the learned APP for the State vehemently submitted that the petitioner is a dangerous person within the meaning of the MPDA Act. He is a leader of the gang and there is terror in the minds of the people in the locality within the jurisdiction of Police Station Ballarpur therefore, a proposal came to be moved by the Police Inspector of Police Station, Ballarpur whereupon the detention order came to be passed by the respondent no. 2. He further submits that the delay in passing the order has been explained in affidavit-cum-reply. According to him, the certified copy of the charge-sheet of the crimes were obtained, and thereafter in-camera statements of the witnesses were recorded and the proposal was sent to Sub-Divisional Police Officer (SDPO). The SDPO interacted with the witnesses and verified the contents of the statement of the witnesses and thereafter, the proposal was sent to the District Magistrate for

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passing detention order. After verifying the statements of the witnesses, the District Magistrate passed the detention order. According to him, the delay has been properly explained. He further submitted that the order of detention is proper and legal therefore, sought rejection of the writ petition.

8. At the outset, we may mention here that the object and purpose of detention is to offer protection to the Society or people of the locality where the detenu has created terror in their minds. The object is not to punish a man who has done something but, to intercept him so that he does not do it and consequently to prevent him from doing it.

9. In view of the above referred object of preventive detention, it becomes very imperative on the part of the Detaining Authority as well as Executing Authority to remain more cautious in passing the detention order at the earliest from the date of proposal and executing the detention order by detaining the detenu to protect the Society. Any casual approach or un-attentiveness on the part of the Detaining Authority would defeat the very purpose of preventive action and frustrate the entire proceedings. There must be live and proximate link between the grounds of detention and avowed purpose of detention. Any unexplained delay in passing the detention order

would vitiate the detention order itself, rather it shows that there is no necessity to detain the detenu, immediately.

10. It will be profitable to refer the decision of the Supreme Court in the case of ***Sushanta Kumar Banik (supra)*** relied on by the learned counsel for the petitioner, wherein in para nos. 21 and 22 of the decision, it is held as under:-

“21. It is manifestly clear from a conspectus of the above decisions of this Court, that the underlying principle is that if there is unreasonable delay between the date of the order of detention & actual arrest of the detenu and in the same manner from the date of the proposal and passing of the order of detention, such delay unless satisfactorily explained throws a considerable doubt on the genuineness of the requisite subjective satisfaction of the detaining authority in passing the detention order and consequently render the detention order bad and invalid because the “live and proximate link” between the grounds of detention and the purpose of detention is snapped in arresting the detenu. A question whether the delay is unreasonable and stands unexplained depends on the facts and circumstances of each case.

22. In the present case, the circumstances indicate that the detaining authority after the receipt of the proposal from the sponsoring authority was indifferent in passing the order of detention with greater promptitude. The “live and proximate link” between the grounds of detention and the purpose of detention stood snapped in arresting the detenu. More importantly the delay has not been explained in any manner & though this point of delay was specifically raised & argued before the High Court as evident from Para 14 of the impugned judgment yet the High Court has not recorded any finding on the same.

11. In the present case, we have noticed from the affidavit-cum-reply of the respondent no. 2 that proposal for detention of the petitioner was made by the Police Inspector of Police Station, Ballarpur and it was sent to the Superintendent of Police, Chandrapur on

23.01.2023. The Superintendent of Police after complying with all the procedure and after verifying the statement of the witnesses sent proposal to the Detaining Authority on 15.02.2023. However, the Detaining Authority, after more than two months thereafter and four months from the date of proposal passed the impugned order. Though, it has been argued that time was required for obtaining certified copy of the charge-sheets of the crime on which the detention order was relied, record shows that the certified copies of charge-sheets have been obtained prior to 23.01.2023. No explanation is forthcoming from the Detaining Authority as to why despite of receiving the proposal on 15.02.2023 from the SDPO, the order came to be passed after more than two months of its receipt and this delay has not been explained. Thus, the live and proximate link between the grounds of detention and the purpose of detention stood snapped in arresting the petitioner. Consequently, the delay in passing the detention order is bad and invalid therefore, it is required to be set aside. Hence, we proceed to pass the following order:-

- i) The Writ Petition is allowed.
- ii) We hereby quashed and set aside the impugned order dated 23.05.2023 passed by the respondent no. 2 so also the order dated 17.07.2023 passed by the respondent no. 1 and direct that the

detenu be set at liberty forthwith, unless his detention is required in some other case.

Rule is made absolute in the above terms.

(M. W. CHANDWANI, J.)

(VINAY JOSHI, J.)

RR Jaiswal