

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

CRIMINAL WRIT PETITION NO. 372 OF 2025

Ikhlaq Bashir Shaikh

..Petitioner

Versus

Radhika Rastogi & Ors.

..Respondents

Mr. Munira Palanpurwala Shaikh a/w. Sumaiya Khan for Petitioner.
Smt. M. M. Deshmukh, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 4 APRIL 2025

JUDGMENT: (*Per Sarang V. Kotwal, J.*)

1. The Petitioner has challenged the Detention Order bearing No. PSA-0324/C.R.-70/SPL-3(A), dated 15.10.2024, issued against the petitioner U/s.3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (for short 'PITNDPS Act').

2. Heard Ms. Munira Palanpurwala Shaikh, learned counsel for the Petitioner and Smt. Deshmukh, learned APP for the State.

3. The petitioner was served with the grounds of detention

along with the Detention Order. The material given to the petitioner mentions his past history. However, in paragraph-3 of that communication it is clearly mentioned that paragraphs-5 to 9.6 of the grounds of detention were merely preamble/introduction and were not actual grounds of detention and said grounds were not relied upon by the Detaining Authority in issuing the order of detention. The offences mentioned in paragraph-5 are related to the registered offences at Agripada police station, Nagpada police station, Anti Narcotics Cell, Worli Unit and Unit 8, DCB, CID, Mumbai. All these offences were in respect of possession of *ganja*, but they were of non commercial quantity. In one of the offences, 360 bottles of Chlorphen iramine Maleate, Codeine Phosphate syrup and Phency Rex cough syrup were found. Paragraph-6 mentions preventive action taken U/s.110(g) of the Cr.p.c. Paragraph-9 gives details of these registered offences.

4. After referring to this past history, paragraph-9.7 mentions the offence which was the subject matter of passing of the Detention Order. Based only on that ground the Detention

Order was passed. It is specifically stated so by the Detaining Authority in paragraph-4. It is stated that the detainee was communicated the ground mentioned in paragraph-9.7 on which the Detention Order was passed by the Detaining Authority, U/s.3(1) of the PITNDPS Act.

5. That particular offence pertains to C.R.No.252 of 2023, registered at R.C.F. police station, Mumbai, U/s.8(c) r/w. 20(b)(ii) (B) of NDPS Act, 1985. On 28.04.2023 on prior information, in the morning after 9:00a.m. the petitioner was apprehended in Chembur area. He was found to be in possession of *ganja* weighing 3Kg and 85 grams valued at approximately Rs.36000/-. He was arrested on that very day i.e. on 28.04.2023. He was remanded to custody from time to time. His bail application prior to filing of the charge-sheet was rejected by the learned Special Judge on 25.05.2023. The charge-sheet was filed on 27.06.2023. The petitioner had preferred another bail application before the learned Special Judge under NDPS Act, Sessions Court, Mumbai on 15.07.2023 and the said Court granted him bail on 14.08.2023. He was directed to execute P.R.bond of Rs.50000/- with one surety

in the like amount. On 14.08.2023 itself he made another application for providing provisional cash bail. Even that application was allowed and he was directed to be released on his providing provisional cash bail for Rs.1 lakh, for the period of four weeks. The Petitioner was released on bail on 17.08.2023 after he had furnished cash bail of Rs.1 lakh. On the basis of this offence the Detention Order was passed. The Detaining Authority recorded that the petitioner had availed of bail facilities and that he was again likely to indulge in similar activities. Based on this satisfaction the Detention Order was passed.

6. Learned counsel for the Petitioner made submissions only on one ground before us. She submitted that there is a gross delay in passing the Detention Order which suggests that passing of the Detention Order was not necessary at all. The live-link was snapped. The Detaining Authority had clearly stated that she was not referring to the earlier offences and had restricted her subjective satisfaction to the last offence registered against the detainee i.e. C.R.No.252 of 2023 at R.C.F. police station. Issuance of Detention Order and detaining the petitioner under that Order

was not necessary at all, because there was a long gap between the date on which he was released on bail and the date on which the Detention Order was passed. In between, there were no other allegations of committing any such offences.

7. Learned counsel relied on the Judgment of the Hon'ble Supreme Court in the case of **Sushanta Kumar Banik Versus State of Tripura & Ors.**¹, in support of her contentions.

8. Learned APP opposed these submissions and relied on the Affidavit-in-Reply filed by the Detaining Authority i.e. the Respondent No.1-Principal Secretary (Appeals and Security) Home Department, Government of Maharashtra. She submitted that there was no delay in issuing the Detention Order and in any case the period taken for issuance of Detention Order is explained by the Detaining Authority in that affidavit.

9. We have considered these submissions. As mentioned earlier, the petitioner had availed of bail granted to him and was actually released on 17.08.2023. The period has to be seen from that point onwards. The Affidavit filed by the Respondent No.1

1 Criminal Appeal No.1708 of 2022 : Decided on 30.09.2022.

mentions that the proposal to detain the petitioner under PITNDPS Act was initiated by R.C.F. police station, Mumbai on 07.10.2023. The proposal was approved by the superior officer on 13.11.2023 and it was forwarded to the Screening committee on 15.11.2023. The meeting of the screening committee was held on 15.03.2024. On that date the screening committee approved the proposal and submitted it to the Detaining Authority. After going through that proposal, the Detaining Authority raised certain queries on 02.04.2024 and 19.07.2024, to which, the sponsoring authority submitted reply on 02.07.2024 and on 06.09.2024 respectively. The Affidavit further mentions that since the Lok Sabha Elections were to be held in May 2024, the Detaining Authority and the sponsoring authority were busy from April 2024 to June 2024. After the results of the Lok Sabha Elections were declared, they got busy in preparing for Maharashtra State Assembly elections, 2024. But after being subjectively satisfied the officer has passed the impugned Detention Order on 15.10.2024. It is mentioned that the proposal consisted of 1434 pages and, therefore, some time was taken to process the entire proposal.

10. The explanation offered by the Detaining Authority speaks for itself. It can hardly be termed as an acceptable and reasonable explanation of delay. In fact, the delay has remained unexplained. The delay is quite unreasonable. After the petitioner was released on bail and after he availed of the bail order on 17.08.2023, it took almost two months for the sponsoring authority to even initiate the proposal on 07.10.2023. Then it was forwarded to the superior Officer on 13.11.2023. This delay of one month from 07.10.2023 up to 13.11.2023 has again remained unexplained. After that it was forwarded to the screening committee on 15.11.2023. But again, the screening committee did not act on it immediately. In fact, the meeting of the screening committee was held on 15.03.2024 i.e. after a gap of four months. No explanation is offered for this delay of four months in between. The screening committee approved the proposal on 15.03.2024 and the proposal was submitted to the Detaining Authority. At the first instance, the Detaining Authority raised certain queries on 02.04.2024. The sponsoring authority responded to those queries on 02.07.2024. Even at that stage, there is no explanation of the

delay between 02.04.2024 to 02.07.2024. After getting response from the sponsoring authority on 02.07.2024, again fresh queries were raised by the Detaining Authority on 19.07.2024, to which, response was given by the sponsoring authority on 06.09.2024. At this stage also no explanation is offered for the delay between 19.07.2024 to 06.09.2024. It is further mentioned in the Affidavit that the Detaining Authority and the sponsoring authority were busy from April 2024 to June 2024 in Lok Sabha Election and after the results of the Lok Sabha Election they got busy in making preparation for Maharashtra State Assembly Election. Finally, after all this delay, the Detention Order was issued only on 15.10.2024. No explanation is offered for the process adopted between 06.09.2024 when the Detaining Authority received last response from the sponsoring authority, and 15.10.2024 when the Detention Order was passed.

11. Thus, we have observed that there is gross delay at every stage in initiating and processing the proposal and ultimately in passing the Detention Order. As rightly submitted by learned counsel for the petitioner that, if the Detaining Authority was of

the opinion that the petitioner's activities were so prejudicial, the authorities should have acted swiftly and urgently to prevent the petitioner from committing these activities by issuing the Detention Order at the earliest. However, as can be seen that the Detention Order is passed much belatedly which would strongly indicate that issuance of Detention Order was a mere formality and there was no real necessity of issuing that order.

12. Learned counsel for the petitioner has rightly relied on the observations of the Hon'ble Supreme Court in the case of *Sushanta Banik (supra)*. The relevant paragraph-20 reads thus:

“20. 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.”

These observations are squarely applicable to the facts

of the present case. The delay from the date of proposal and passing of order and even delay in initiation of proposal has remained unexplained. Whatever explanation is offered is unsatisfactory. In this view of the matter, the Detention Order cannot be sustained and is liable to be set aside.

13. Hence, the following order:

O R D E R

i) The Rule is made absolute in terms of prayer clause (a); which reads thus:

“a) To quash and set aside the said order of detention bearing PSA-0324/C.R.-70/SPL-3(A), dated 15.10.2024, issued against the petitioner U/s.3(1) of the PITNDPS Act, 1988.”

ii) The petitioner be released forthwith if not required in any other case.

iii) It is made clear that this order and these observations are restricted to consideration of the Detention Order and it shall not affect any other action which the authorities can take in accordance with law.

iv) The Petition is disposed of.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)