

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

CRIMINAL WRIT PETITION NO. 3124 OF 2025

Sunil Anand Kole
Age : 54 years,
S.G Road, Near Bondali,
Talav, Papadi Boudhwada
Vasai West, Tal- Vasai,
Dist Palghar
(At present Thane Central
Prison, Thane)

... Petitioner

V/s.

1. Commissioner of Police,
Mira Bhayandar, Vasai-Virar.
2. The State of Maharashtra
(Through the Secretary Home
Department (Spl), Mantralaya,
Mumbai.)
3. The Superintendent,
Central Prison, Thane
Thane

... Respondents

Ms. Jayshree Tripathi, a/w Anjali Raut, Advocate for the Petitioner.
Ms. Madhavi H. Mhatre, Additional Public Prosecutor for the State.

SANJAY
KASHINATH
NANOSKAR

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**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.**

RESERVED ON : 25th NOVEMBER 2025.

PRONOUNCED ON : 27th NOVEMBER 2025.

JUDGMENT [Per: RANJITSINHA RAJA BHONSALE, J] :-

1) Petitioner, by the present Petition under Article 226 of the Constitution of India, seeks to challenge the Detention Order, bearing No. CP-MBVV/MPDA/BL/EXCISE/01/2025, dated 18th March 2025 (the Detention Order), passed by the Respondent No.1 issued under Section 3(2) 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 (MPDA Act) and the Order of Committal of even date, thereby detaining him in the Central Prison, Thane. The Petitioner being detained seeks a direction for being released and set at liberty.

2) By Order dated 18th June 2025, this Court issued Rule in the Petition. The Respondent No.1 to 3, have filed their respective Affidavits in reply dealing with the contentions/grounds raised by the Petitioner and opposed the Petition.

3) We have heard Ms. Jayshree Tripathi, learned Advocate for the Petitioner and Ms. Madhavi H. Mhatre, learned Additional Public Prosecutor for the Respondent–State. Perused the record and the Affidavits in Reply.

4) At the outset, it would be important to make a mention of the fact that, the learned Advocate for the Petitioner has raised various grounds in paragraph No.5(a) to 5(f) of the Petition for challenging the Detention Order

dated 18th March 2025. However, learned Advocate for the Petitioner submitted that, she is restricting her argument only to the ground of delay, on three counts i.e (i) delay in recording of the in-camera statements, (ii) delay in processing the detention proposal and (iii) delay in passing the impugned Detention Order.

5) Learned Advocate for the Petitioner submits that, two in-camera statements of witnesses 'A' and 'B' were recorded on 25th December 2024 and 28th December 2024, for offences allegedly committed in the 4th week of September 2024 and 3rd week of May 2024. The last offence which is relied upon by the Detaining Authority is registered on 27th September 2024 i.e. about 3 months prior to the recording of the 2 in-camera statements. The Detention Order is passed on 18th March 2025. Learned Advocate for the Petitioner further submits that, the proposal was received in the CP Office on 1st January, 2025 after which the proposal was scrutinized and submitted with remarks by the ACP crime on 6th March 2025. That, there is a delay of 64 days. Learned Advocate would further go on to submit that, there is a delay, of more than two and half months (79 days), in passing the Detention Order dated 18th March 2025 as the last in-camera statement was recorded on 28th December 2024. That, on the ground of delay, the Detention Order dated 18th March 2025 ought to have been quashed and set aside.

6) Learned Advocate for the Petitioner further submits that, the Detaining Authority has taken into consideration one crime i.e. C. R. No.179

of 2024 under Section 65(e) of the Maharashtra Prohibition Act, 1949 registered on 27th September 2024. The Detention Order was passed after more than 5 months (140 days) of registering the last crime relied upon.

7) Ms.Mhatre, Additional Public Prosecutor for the State, in reply submits that, the said delay has been explained by the Respondents in their Affidavits in reply. Learned APP submits that, in the present matter there is no delay and the delay, if any has been explained. While referring the Affidavit-in reply, she submits that, a detailed account has been given in respect of the movement of the proposal and the ultimate approval and issuance of the Detention Order.

8) We have perused the record and given our considered thought to the arguments of the parties on the ground of delay. It is well settled that on the ground of unexplained delay, the Detention Order can be set aside. The Supreme Court in the matter of *Pradeep Nilkanth Paturkar V/s. S. Ramamurthi & Ors*, reported in 1993 Supp (2) Supreme Court Cases 61 in paragraph 14 has observed that unexplained delay whether short or long especially when the detenue has taken a specific plea of delay, has to be explained. The Supreme Court quashed and set aside the order of detention on the ground of unexplained delay. This Court has followed the ratio laid down by the decision of the Supreme Court in the case of *Pradeep Nilkanth Paturkar* (Supra) in the cases of (i) *Mr. Austin William Luis Pinto Vs. Commissioner of Police, Greater Mumbai and Others* reported in 2005 ALL

MR (Cri) 28 at paragraph 8; (ii) *Niyazuddin @ Sonu Sirajuddin Ansari v. State of Maharashtra and Anr* reported in *2013 ALL MR (Cri) 3870* at Paragraph No. 12; and (iii) *Shri. Sanjeev @ Sanjay @Tatyasaheb Nagnath Upade Vs. The Commissioner of Police, Solapur and others* passed in *Criminal Writ Petition No.3035 of 2021* at paragraph no 9.

9) Perusal of the record and the Affidavits in reply, in the present matter, indicates that the delay has not been explained properly. The delay remains to be explained. After considering the sequence of events and the manner in which the events have unfolded, we are of the opinion that the in-camera statements have been recorded only to fill in the gap and/or in an attempt to explain the delay.

10) We note that, the two in-camera statements of witnesses 'A' and 'B' are recorded on 25th December 2024 and 28th December 2024. The last offence which was relied upon by the Detaining Authority is registered on 27th September 2024 i.e. about 3 months prior to recording of the in-camera statement of witness 'B'. The Detention Order is passed on 18th March 2025. There is a delay of about 3 months. We find that there is no explanation for the same nor the delay is properly explained.

10.1) On a perusal of the Affidavit in reply of the Respondent No.1, we have noted, that the proposal was received in the CP Office on 1st January, 2025 after which the proposal was scrutinized and submitted with remarks by the ACP (Crime) on 6th March 2025. Here, there is a delay of 64 days, for

which no explanation is offered, much less a satisfactory explanation.

10.2) A perusal of the record indicates that the last in-camera statement was recorded on 28th December 2024, and the Detention Order is dated 18th March 2025. Here again, there is a delay, of more than two and half months (79 days) in passing the Detention Order dated 18th March 2025. Again, there is no explanation at all.

10.3) We have also noted that, the Detaining Authority has taken into consideration and relied upon one crime i.e. C.R.No. 179 of 2024 under Section 65(e) of the Maharashtra Prohibition Act, registered on 27th September 2024 and two in-camera statements, for issuing the Detention Order. We note that the last crime relied upon is dated 27th September 2024 and the Detention Order was passed only on 18th March 2025 i.e after more than 5 months (140 days) of registering the last relied upon crime. Once more the delay is not explained.

11) It is well settled that unexplained delay, in a detention proceeding is fatal and on that ground alone a Detention Order can be quashed and set aside. We find that, in the present matter there is unexplained delay on all the counts i.e (i) between recording of the in-camera statements and the registered crime which is relied upon, (ii) between the proposal being received to the C.P office and the proposal being scrutinized and submitted with remarks by the A.C.P crime, (iii) between recording the last in-camera statement and passing the Detention Order and (iv) between registering the

last relied upon crime and passing the Detention Order. For all the occasions, we find that there is no explanation for the delay. There is a complete silence.

12) The Respondent No.1 in its Affidavit in reply, has made an attempt to explain the procedure and process which is undertaken by the Sponsoring Authority when the Detention Proposal was moved, the various authorities which process and check the proposal etc. These are attempts to generally explain the process/procedure and time taken by the authorities. We find no plausible and specific explanations for the delays. We are of the view that, there is an undue, unreasonable and unexplained delay in processing and passing the Detention Order. The delay, being unexplained, vitiates the impugned Detention Order. As we have repeatedly said unexplained delay, in the matters of preventive detention, cannot be accepted, it is fatal. Unexplained delay vitiates the very urgency and the object with which action of preventive detention is initiated. In the matters of preventive detention, the timelines and procedural safeguards as envisaged have to be complied with, in a most strict form and manner. Any action which affects the personal liberty of a citizen, cannot be dealt in the casual manner, nor is there any room for unexplained delay. In effect, the Detention Order is vitiated on the count of delay and deserves to be quashed and set aside.

12.1) Hence, the following order:

(a) The impugned Detention Order dated 18th March 2025 bearing

No.CP-MBVV/MPDA/BL/EXCISE/01/2025, passed by Respondent No.1, is quashed and set aside.

(b) Petition is allowed in terms of prayer clause (b).

(c) Petitioner be released from Jail forthwith, if not required in any other case/cases, on production of an authenticated copy of operative part of this Judgment.

(d) Rule is made absolute in the aforesaid terms.

(e) All the concerned to act on the basis of an authenticated copy of this Judgment.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)