



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

CRIMINAL WRIT PETITION NO.992/2024

Dilip Sheshrao Chavhan
Aged about 25 years, Occ. Labour,
R/o Dadham Lakhawada,
Tq. Khamgaon, Dist. Buldhana ... Petitioner

- Versus -

1. Additional Chief Secretary,
Govt. of Maharashtra,
Home Department, Mantralaya,
Mumbai 440 032.
2. Collector and District Magistrate,
Buldhana, District Buldhana.
3. Sub-Divisional Police Officer,
Buldhana Sub Division,
Buldhana, Tq. & Distt. Buldhana.
4. The Police Inspector,
Police Station Hiwarkhed,
Tq. Khamgaon Distt. Buldhana. ... Respondents

Ms. Saware Sonali Madhukarappa, Advocate for the petitioner.
Mr. S.S Doifode, A.P.P. for respondent Nos.1 to 4/State.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 13.3.2025.
DATE OF PRONOUNCING THE JUDGMENT: 21.3.2025.

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

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

2. In the present writ petition, the petitioner challenges the detention order dated 20.8.2024 passed by respondent No.2 which was further approved by respondent No.1 on 29.8.2024 under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates and Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (for short “MPDA Act”).

3. The registration of last four offences, namely Crime Nos.200/2021 registered at Hiwarkhed Police Station for the offence punishable under Sections 395 and 397 of the Indian Penal Code, 207/2021 registered at Hiwarkhed Police Station under Sections 395, 397 of I.P.C, 98/2023 under Sections 4/25

of the Arms Act, 129/2023 under Sections 307 and 504 of the I.P.C., 223/2023 under Sections 419 and 420 r/w. Section 34 of I.P.C. and Crime No.70/2024 under Sections 382, 392, 420 r/w. Section 34 of the I.P.C. have been relied upon by the respondents to pass the impugned order.

4. Major grounds in the petition on the basis of which the order of detention is being challenged are as under:-

(a) The last crime is registered against the petitioner on 15.3.2024 and the detention order is passed on 20.8.2024. There is a delay of about six months in passing the detention order which is not explained by the detaining authority.

(b) At the time of proposal being forwarded on 6.3.2024, bail was granted in all the five offences mentioned in the said proposal for detention, which has been overlooked by the detaining authority.

(c) As per the contents of proposal issued for detention, statements of both the unnamed witnesses have been obtained after the petitioner was released on bail in all the five cases.

5. In Crime No.98/2023 dated 9.6.2023 registered for the offence punishable under Sections 4/25 of the Arms Act, by virtue of search warrant obtained from the Court, when search of the house of petitioner was carried out, iron sword, 300 yellow colour metal coins and bicycle worth ₹ 70,000, Laptop of Apple Company, KTM motorcycle of ₹ 1,00,000 were seized from his possession.

In another Crime bearing No.129/2023, the complainant has stated that on 3.8.2023 at around 7.30 P.M. when he was present in the house with his wife and other family members, at that time, petitioner went to his house and started asking about the legal notice sent by the wife of the petitioner through an Advocate and quarrelled with the family of the complainant and when he was given an understanding, the

detenu took knife out from his waist and injured the complainant by stabbing him in the stomach.

6. It is the contention of learned Advocate of the petitioner that there is a delay in the order of detention which is not explained. The bail orders are not considered by the detaining authority while passing the said order. The statements of the witnesses are of generalized nature and largely in the form of opinion. It is stated by learned Advocate for the petitioner that the offences do not breach the 'public order' and the petitioner is not a dangerous person as per section 2(b-1) of the MPDA Act.

7. Ms. Saware, learned Advocate for the petitioner, has placed reliance upon the following judgments:-

(i) Pradeep Nilkanth Paturkar Vs. Ramamurthi and others, AIR 1994 SC 656,

(ii) Vijay Baburao Avhad Vs. State of Maharashtra and others, 2023 (4) Mh.L.J. (Cri.) 126,

8. *Per contra*, learned A.P.P. Mr. Doifode relying upon the affidavit-in-reply vehemently opposed the arguments of the petitioner. He submitted that four recent offences committed by the petitioner as mentioned in paragraph No.3.3 to 3.6 in the grounds of detention have been taken into account for passing the detention order. He then submitted that the detenu was detained already in Crime No.70/2024 in District Central Prison, Buldhana in Magisterial Custody vide order dated 12.8.2024. Learned A.P.P. further submitted that perusal of the above stated four crimes reveals that the petitioner is a dangerous person having no fear of law being continuously involved in criminal activities and due to his terror in the society, witnesses do not come forward to complain against him. He further contended that in another crime bearing No.223/2023 dated 10.11.2023, it has been reported that the petitioner had misappropriated ₹ 4,00,000 from the complainant by cheating him by giving fake gold coins. It appears that within a span of six months, the petitioner committed three offences which are offences against human body

and property. The in-camera statements were recorded by the Police Inspector, Police Station, Hiwarkhed and the statements were seen and verified by the detaining authority. It is submitted that the subjective satisfaction regarding genuineness of the statements and witnesses was recorded by respondent No.3 on 26.3.2024 by exchanging dialogue with the witnesses. Therefore, the detaining authority has rightly considered that activities of the petitioner as dangerous and it has created a sense of terror in the minds of people.

9. We have considered the submissions made by both the parties.

10. Learned Advocate for the petitioner took us through the detention order. It appears from the detention order that the offences committed since 2021 are considered for passing the detention order. Total six offences are considered. All are about

theft and bodily injury and about using the deadly weapons while committing the offences.

11. Two confidential statements which are considered by the detaining authority are identical. No specific incident is mentioned in the statements. Both the witnesses have stated about general criminal character of the petitioner.

12. On perusal of the crimes which are considered for passing the detention order it is clear that there is delay in passing the detention order from the date of last offence which is committed on 26.2.2024 and the order is passed on 2.8.2024. Statements which are recorded are dated 4.3.2024. Said statements were not verified by the person who has recorded it and not even seen by the detaining authority.

13. Learned Advocate for the petitioner has relied on the judgment of the Hon'ble Apex Court in the case of Pradeep

Nilkanth Paturkar (supra) wherein the Hon'ble Apex Court has observed in para 9 as under:-

“The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case. “

14. The respondents have not given any explanation for delay.

15. Though the petitioner was on bail in all the earlier offences the bail orders are not considered by the detaining authority. The petitioner has placed reliance on the judgment passed by this Court in case of Vijay Baburao Avhad V/s. State of Maharashtra and others reported in **2023(4) Mh.L.J. (Cri.) 126** wherein this Court has relied on the judgment of the Hon'ble Apex Court in case of Sunila Jain V/s. Union of India and another reported in **2006 Mh.L.J. OnLine (Cri.) (S.C.) 50** and observed in para 13 as under:-

"13. It will be also useful to make a reference to Sunila Jain (supra) In Paragraphs 12 and 18 of the decision, it is held thus:-

"12. The question as to whether an offence is bailable or not is not a vital fact whereupon an order of bail can be passed. Application of mind to the averments made in a bail application may be relevant where the grounds stated therein reveal certain facts which are vital for passing an order of detention. In a case of such nature, it may be said that the application for bail was necessary to be placed before the detaining authority and non-furnishing a copy thereof to the detenu would vitiate the order of detention."

"18. The decisions of this Court referred to hereinbefore must be read in their entirety. It is no doubt true that whether a detenu on the date of the passing of the order of detention was in custody or not, would be a relevant fact. It would also be a relevant fact

that whether he is free on that date and if he is, whether he is subjected to certain conditions in pursuance to and in furtherance of the order of bail. If pursuant to or in furtherance of such conditions he may not be able to flee from justice, that may be held to be relevant consideration for the purpose of passing an order of detention but the converse is not true. Some such other grounds raised in the application for bail and forming the basis of passing an order of bail may also be held to be relevant. It would, however, not be correct to contend that irrespective of the nature of the application for bail or irrespective of the nature of the restrictions, if any, placed by the court of competent jurisdiction in releasing the detenu on bail, the same must invariably and mandatorily be placed before the detaining authority and the copies thereof supplied to the detenu." (underline supplied)"

16. The detaining authority has relied on the identical statements which were not even verified by the detaining authority or the person who has recorded it. The Hon'ble Apex Court in the recent judgment about stereotype statements in case of Arjun S/o Ratan Gaikwad V/s. The State of Maharashtra and others in Criminal Appeal No.5204/2024 (Arising out of SLP (Cri.) No.12516/2024) decided on 11.12.2024 in para 17 has observed as under:-

“17. Insofar as statements of the two unnamed witnesses are concerned, the allegations are as vague as it could be. In any case the statements which were stereotype even if taken on its face value would show that the threat given to the said witnesses is between the appellant and the said witnesses. The statements also do not show that the said witnesses were threatened by the appellant in the presence of the villagers which would create a perception in the mind of the villagers that the appellant herein is a threat to the public order.”

17. The detaining authority has not followed the mandatory procedure while passing the detention order. The detention order is passed in a most casual manner though the offences are of serious nature. Considering the casual approach while passing the detention order, the same requires to be quashed and set aside.

18. For the aforesaid reasons, writ petition is allowed.

The detention order dated 20.8.2024 passed by respondent No.2 which was confirmed by respondent No.1 on 29.8.2024 is quashed and set aside.

The petitioner be set at liberty forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

Tambaskar.