



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 838 OF 2024

Kiran Kailas Pandit
Age: 27 years,
R/o. Village Merkheda,
Tq. Bhokardan, Dist. Jalna

...Petitioner

Versus

1. District Magistrate, Jalna

2. The State of Maharashtra
[Through the Secretary Home
Department [Spl.] Mantralaya,
Mumbai

3. The Superintendent Central
Prison Harsul, Chhatrapati Sambhajinagar

...Respondents

.....
Mr. Rupesh A. Jaiswal - Advocate for the Petitioner
Mrs. Ashlesha S. Deshmukh - APP for respondent/State

.....
CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, JJ.

DATED : 04TH JULY 2024

JUDGMENT : [Per Neeraj P. Dhote, J.]

1. RULE. Rule is made returnable forthwith. Heard finally with the consent of both the sides.

2. Impugned in this Petition is the order dated 03/04/2024 bearing No. D.O. 2024/RB-Desk-1/Pol-1/MPDA/Kavi-83 issued by the Detaining Authority and its confirmation by the State vide order dated 12/04/2020 bearing No. MPDA-0424/CR-246/Spl-3B detaining the Petitioner in exercise of the powers under

the provisions of Sub-section 1 of 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 [hereinafter referred to as 'the MPDA Act']

3. The Detaining Authority held the Petitioner to be the Dangerous person on the basis of following criminal cases and two in-camera statements and recorded its satisfaction that the Petitioner's activities were harmful for public order in the Jalna District.

Criminal Cases

Sr. No.	Name of police station	Cr. No	Section	Date of registration	Remark
1	Bhokardan	120/2019	379, 34 of IPC	27/02/2022	Sub judice
2	Bhokardan	552/2023	392, 34 of IPC	15/10/2023	Sub judice
3	Hasnabad, Tq. Bhokardan	352/2023	385, 387, 506, 34 of IPC r/w section 3, 25 of Arms Act.	20/12/2023	Under Investigation
4	Hasnabad, Tq. Bhokardan	365/2023	386, 323, 504, 506, 109 of IPC	31/12/2023	Under Investigation

Preventive Action

Sr. No.	Name of police station	Chapter Case number	Sections	Date of registration	Disposal
1	Bhokardan	23/2023	110 (E) (G) of CRPC		
2	Hasnabad, Tq. Bhokardan	05/2024	110 (E) of CRPC		

4. It is submitted by the learned Advocate for the Petitioner that the main grounds of challenge are; [a] Delay in passing the detention order [b] Delay in forwarding the report to the State Government [c] Delay in deciding the representation and [d] inconsistent in-camera statements.

He submitted that the impugned order is unsustainable in the eye of law in view of the following Judgments :-

- [i] **Hetchin Haokip Vs. State of Manipur and Ors.; 2018 All SCR (Cri.) 1240**
- [ii] **Akash Annasaheb Hodade Vs. District Magistrate, Latur and Ors.; in Criminal Writ Petition No.391/2023**
- [iii] **Dharani Raja Padyachi Vs. State of Maharashtra and Ors.; 2019 CJ (Bom) 1658**
- [iv] **Harish Pawha Vs. State of U.P.; (1981) CJ (SC) 139**
- [v] **S. Amutha Vs. The Government of Tamil Nadu & Ors.; 2022 Livelaw (SC) 25**
- [vi] **Prakash Chandra Yadav @ Mungeri Yadav Vs. The State of Jharkhan and Ors.; 2023 Livelaw (SC) 529**
- [vii] **Pradeep Nilkant Paturkar Vs. S. Ramamurthi; 1992 CJ (SC) 513**
- [viii] **Austin William Luis Pinto Vs. Commissioner of Police, Greater Mumbai & Ors.; 2005 All MR (Cri.) 28**

5. The impugned order is defended by the learned APP. She submitted that the Detaining Authority has passed the impugned order on the basis of proposal received from the Police Department and after taking into consideration the relevant aspects. She submitted that there is no delay in processing the proposal and whatever delay is shown by the Petitioner, has been explained in the Affidavit-in-reply. She submitted that no interference is called for in the impugned judgment. She relied on the Judgment in the case of **Narayan Radhakishan Bhusari Vs. District Magistrate Beed and Ors.; 2020 DGLS (Bom.) 1232.**

6. Before adverting to the factual aspects in the matter, it would be proper to refer to the relevant provisions of the MPDA Act, as under:

"2. In this Act, unless the context otherwise requires, -

(a) "acting in any manner prejudicial to the maintenance of public order" means -

(i)

(iii)

(ii)

(iv) in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(iv-a)

(iv-b)

(v)

(b)

(b-1) "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959

Section 3 of the Act reads thus:-

3.(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed [six months] but the State Government may, if satisfied as aforesaid that it is necessary so to amend such order to extend such period from time to time by any period not exceeding [six months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

Section 8 of the Act reads thus:-

8.(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

7. Now, we proceed to consider the grounds of challenge to the impugned order.

As to ground – [a] : -

8. It is the Petitioner's contention that there is delay in passing the detention order. It is submitted by the learned Advocate for the Petitioner that the last offence, which was registered against the Petitioner was dated 13/12/2023, in which, he was released on bail 03/01/2024 and the proposal was moved to the Detaining Authority on 17/02/2024 and therefore, there was delay of forty four [44] days in passing the detention order from the date of proposal and delay of more than three [3] months from the date of last offence. He submitted that the said delay is not properly explained.

9. The Detaining Authority in Paragraph No.14 of the Affidavit-in-reply has stated that considering the offences referred in the detention order, the Assistant Police Inspector of Police, Hasnabad Police Station conducted confidential inquiry and recorded the statement of two [2] witnesses on 11/02/2024 and 12/02/2024 and thereafter submitted the proposal on 17/02/2024 to the Superintendent of Police. After the said submission of proposal, the Sub-Divisional Police Officer, Bhokardan verified the statement of the witnesses on 07/03/2024 and thereafter, the Superintendent of Police, Jalne

forwarded the proposal to the Detaining Authority on 15/03/2024 and after perusing the proposal, the Detaining Authority passed the impugned order on 03/04/2024.

10. From the above factual aspects, we are satisfied with the response of Detaining Authority. In our view ground - [a] has no merit. Thus, the challenge on the ground of delay in passing the impugned order falls down.

As to ground - [b] :-

11. In the case of Hetchin Haokip Vs. State of Manipur and Ors. [*Supra*], the Hon'ble Apex Court has interpreted the term 'forthwith' appearing in Section 3[4] of the National Security Act, 1980, which is pari materia with Section 3[3] of the MPDA Act, and it is observed in Paragraph Nos.13 and 16 as follows;

"13. From the above cases, the position that emerges is that "forthwith", Under Section 3(4), does not mean instantaneous, but without undue delay and within reasonable time. Whether the authority passing the detention order reported the detention to the State Government within reasonable time and without undue delay, is to be ascertained from the facts of the case. In Joglekar, there was a delay of eight days by the Police Commissioner, in sending the report to the State Government. However, the court found that the reasons for the delay were reasonable, since the Commissioner and his team were occupied in maintaining law and order during a particularly tense time in Mumbai.

16. The expression "forthwith" under Section 3(4), must be interpreted to mean within reasonable time and without any undue delay. This would not mean that the detaining authority has a period of twelve days to submit the report (with grounds) to the State Government from the date of detention. The detaining authority must furnish the report at the earliest possible. Any delay between the date of detention and the date of submitting the report to the State Government, must be due to unavoidable circumstances beyond the control of the authority and not because of administrative laxity. "

12. In the case of Akash Annasaheb Hodade Vs. District Magistrate, Latur and Ors [*Supra*], this Court set aside the order of detention on the ground of delay, non-supply of copies

of in-camera statements to the Petitioner therein.

13. In the case of Dharani Raja Padyachi Vs. State of Maharashtra and Ors. [*Supra*], this Court set aside the detention order on the ground of delay in sending the report as contemplated by Section 3[3] of the MPDA Act.

14. Coming to the case in hand, the impugned order is dated 03/04/2024. In the Affidavit-in-reply filed by the Detaining Authority, it is stated in Paragraph No.9 that after the detention order was passed on 03/04/2024, two [2] days were consumed in preparing detailed report and thereafter, on 06/04/2024 the proposal was forwarded to the State Government. This aspect is not disputed by the learned Advocate for the Petitioner. It is thus seen that on the third [3] day, the Detaining Authority forwarded the proposal to the State Government as contemplated under Section 3[3] of the MPDA Act. This show that the Detaining Authority has sent the proposal to the State Government within reasonable time. We are not with the Petitioner for ground - [b] and challenge on the said ground fails.

As to ground - [c] :-

15. According to the Petitioner, he sent the representation on 29/04/2024, which was received by the Respondent on 03/05/2024 and it was decided on 06/06/2024, however, the decision was not served upon him. It is submitted by the learned Advocate for the Petitioner that even assuming but not admitting, that the representation was decided on 06/06/2024, there is unreasonable delay of twenty eight [28] days in deciding his representation, which has not been explained by

the Detaining Authority.

16. As can be seen from the papers enclosed with the Petition, Exhibit - E, which is the postal receipt in the name of Superintendent of Prison, show the date as 29/04/2024. The Affidavit of the Detaining Authority show that the representation of the Petitioner was received by the Jail Authority on 02/05/2024 by post and the same was forwarded to the State Government on 03/05/2024. In Paragraph No.12 of the Affidavit-in-reply, it is stated that para-wise reply was called from the Detaining Authority and after gathering the information from the Superintendent of Police, Jalna, the para-wise reply was submitted to the State Government on 10/05/2024 and the State Government decided the representation on 06/06/2024.

17. The Article 22 [5] of the Constitution of India reads as under:

“22. Protection against arrest and detention in certain cases

(1)

(2)

(3)

(4)

(5) *When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.*

(6)

(7)”

18. The Hon’ble Apex Court in the case of **Rama Dhondu Borade Vs V. K. Saraf, Commissioner of Police & Ors; [1989] 3 SCC 173**, wherein, the order of Detention was under challenge, it is observed in Paragraph Nos.19 and 20, as follows:

“19. The propositions deducible from the various reported decisions of this Court can be stated thus:

The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly, there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose the same as expeditiously possible. as This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty--the highly cherished right-which is enshrined in Article 21 of the Constitution.

20. True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the word "as soon as may be" occurring in Article 22(5) of the Constitution reflects that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority IS SO unsatisfactory, such delay could vitiate the order of detention.”

19. Coming to the case in hand, the above referred factual aspects show that the State Government took twenty eight [28] days in deciding the representation of the Petitioner. There is no explanation for the said delay in deciding the Petitioner's representation. The Affidavit-in-reply of Detaining Authority is completely silent on this aspect. Moreover, the State Government is Respondent No.2 in the Petition. However, there is no reply Affidavit by the Government explaining the reason for deciding the Petitioner's representation after a period of twenty eight [28] days.

20. Thus, the aforesaid delay on the part of the State Government in not deciding the Petitioner's representation

within reasonable dispatch has led to violation of constitutional mandate as referred above. Thus, the impugned order is liable to be set aside on ground - [c].

As to ground - [d] :-

21. In respect of two in-camera statements, it is the contention of the Petitioner that there is complete variance in the in-camera statements and the gist of those statements mentioned in the impugned order. According to the learned Advocate for the Petitioner, this is non-application of mind by the Detaining Authority.

22. In Paragraph No.13 of the Affidavit-in-reply of the Detaining Authority, it is stated that two in-camera statements of the witnesses are taken into consideration to arrive at the subjective satisfaction by the Detaining Authority. It is further stated that due to clerical/typing mistake, unintentionally, the gist of the said in camera statements were not mentioned in Paragraph No.5 [1] and 5 [2] of the impugned order. It is stated that the contents of previous matter has mistakenly appeared in those paragraphs. It is further stated that both the statements were recorded as per narration of makers of the statements.

23. The copies of in-camera statements are enclosed with the Writ Petition. We have gone through the same and the gist of in-camera statements mentioned in Paragraph No.5 of the impugned order. There is variance in the in-camera statements and the gist given in the impugned order. Moreover, in the Affidavit-in-reply, the Detaining Authority admitted of the said variance by giving the reason that inadvertently, the gist of

previous matter got reproduced in the impugned order. This itself go to show that the Detaining Authority signed and issued the impugned order casually and without due precaution and care. It also indicate that the Detaining Authority acted mechanically and without application of mind. Thus, the impugned order is liable to be set aside on ground - [d].

24. In view of the aforesaid discussion, the Petition succeeds on ground Nos.[c] and [d] and the impugned order is liable to be set aside. Hence, we proceed to pass the following order :

ORDER

[i] Criminal Writ Petition is allowed.

[ii] Order of detention dated 03.04.2024 bearing No. D. O. 2024/RB-Desk-1/Pol-1/MPDA/Kavi-83 and its confirmation by Respondent No.2 is hereby quashed and set aside.

[iii] Petitioner be released forthwith, if not required in any other case.

25. Rule is made absolute accordingly.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE