

(2020) 01 BOM CK 0020

Bombay High Court

Case No: Criminal Writ Petition No. 6041 Of 2019

Narendra @ Chotya
Mahadev Balkawade

APPELLANT

Vs

Commissioner Of
Police Pune City And
Ors

RESPONDENT

Date of Decision: Jan. 9, 2020

Acts Referred:

- Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons And Video Pirates Act, 1981 - Section 3
- Indian Penal Code, 1860 - Section 143, 147, 148, 149, 341, 352, 354, 427, 504, 506
- Arms Act, 1959 - Section 4, 25
- Maharashtra Police Act, 1951 - Section 37(1), 135
- Constitution Of India, 1950 - Article 22(5)

Citation: (2020) 01 BOM CK 0020

Hon'ble Judges: S.S. Shinde, J; N.B. Suryawanshi, J

Bench: Division Bench

Advocate: Jayshree Tripathi, Udaynath Tripathi, M H Mhatre

Final Decision: Allowed

Judgement

S.S. Shinde, J

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2. The Petitioner/Detenu Narendra @ Chotya Mahadev Balkawade has preferred this Petition questioning the preventive detention order passed

against him being No.PCB/DET/3299/2019 on 04/10/2019 by Respondent No.1 "The Commissioner of Police, Pune City. The said detention order

has been passed under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous

Persons and Video Pirates Act, 1981 (hereinafter referred to as "MPDA Act"). The said detention order has been issued by Respondent No.1

as, according to him, the Petitioner/Detenu is a dangerous person whose activities are prejudicial to the maintenance of public order. The detention

order is based on two Crimes i.e. C.R.No. 42/2019 registered with Alankar Police Station on 01/03/2019 for the offences punishable under Sections

143, 147, 148, 149, 352, 427, 504, 506 of the Indian Penal Code r/w 4, 25 of Arms Act r/w Section 37(1), 135 of the Maharashtra Police Act; and C.R.

No.129/2019 registered with Alankar Police Station on 23/05/2019 for the offences punishable under Sections 354, 341, 504, 506 of the Indian Penal

Code, and two in-camera statements of Witnesses A and B recorded on 29/07/2019 and 31/07/2019 respectively.

3. Though the number of grounds have been raised in the present Petition whereby the detention order has been assailed, however, the learned

counsel appearing for the Petitioner / Detenu has pressed only two grounds before us i.e. Ground Nos. (b) and (c), which are reproduced herein

below in verbatim :-

"(b) The Petitioner says and submits that two criminal cases vide C.R. No.42/2019 registered on 01.03.2019, and C.R. No.129/2019 registered on

23.03.2019, the Petitioner was bailed out on 06.03.2019 and 26.05.2019 respectively. The detaining authority passed the order on 04.10.2019 much

belatedly after about 5 months. There was no necessity to hold a confidential enquiry particularly when the Petitioner was bailed out in both the cases

and record two in camera statements on 29.07.2019 and 31.07.2019 this is done to fill up the gap between the last offence committed and the order

passed. There is a delay which has to be explained and it is not justified to record statements, the authorities could have passed the order immediately

if the activities of the Petitioner were serious and prejudicial to maintenance to public order. The order of detention is illegal and bad in law, liable to be quashed and set aside.

(c). The Petitioner says and submits that two statements of witness A and B, their truthfulness of incidents are not verified by the

detaining authority. It is only shown `seen` the Petitioner says and submits that merely stating seen is not enough or cannot be equated to the

verification by the detaining authority thus the camera statement is not verified by the detaining authority. It is the overall responsibility of the detaining

authority to find the real and truthfulness of the incidents mentioned in the statements for arriving at his subjective satisfaction. The order of detention

is illegal and bad in law, liable to be quashed and set aside.

4. The learned counsel appearing for the Petitioner " Detenu submits that the detaining authority passed the order of detention on 04/10/2019 much

belatedly after about 5 months from the registration of crimes mentioned in Ground (b). It is submitted that in the aforesaid crimes the Petitioner

/Detenu was bailed out and thereafter just to fill up the lacuna and to make the ground to explain the delay a confidential enquiry by recording the

alleged two in-camera statements of witnesses A and B, has been done. In support of the contention raised in Ground (b) reproduced

herein above, the learned counsel appearing for the Petitioner / Detenu has placed reliance on the exposition in the case of Mohsin Ahmed S/o

Mushtaque Ahmedv/s. State of Maharashtra and Anr. 2014 ALL MR (Cri) 2409 unreported judgments of this Court in Parvez Faizulla Khan v/s. Shri

A n Roy, Commissioner of Police and ors in Writ Petition No.1018 of 2007 decided on 08/02/2008, and in Aalam Yosuf Shaikh v/s. The Commissioner

of Police, Pune and ors in Writ Petition No.4180 of 2017 decided on 15/12/2017. The learned counsel for the Petitioner further submits that so far as

the alleged two in-camera statements of witnesses A and B, which alleged to have been recorded by the concerned police officer, are

concerned, the truthfulness of the incidents mentioned in the said statements was not verified by the detaining authority, and therefore, subjective

satisfaction of the detaining authority is vitiated, and as a result the order of detention impugned in this Writ Petition cannot be sustained. In support of

the aforesaid contention, the learned counsel appearing for the Petitioner has placed reliance on the judgment of this Court in the case of Smt. Vijaya

Raju Gupta v/s. R H Mendonca & ors. 2001 ALL MR (Cri) 4 8In the light of aforesaid submissions as also on basis of the two grounds reproduced

herein above, the learned counsel appearing for the Petitioner submits that Petition deserves to be allowed.

5. On the other hand the learned APP appearing for the Respondents/State invites attention of this Court to the averments made in 3 affidavit in

replies filed by Dr. K Venkatesham " the Commissioner of Police, Pune City, Pune; Aniruddha Venkatesh Jewlikar " the Deputy Secretary (In-

charge), and Umaji Tolaram Pawar " Superintendent of Jail, Yerwada Central Prison, Pune respectively. The learned APP submits that the court

cannot look into the sufficiency of the grounds in passing the detention order. It is also submitted that mere delay in passing the detention order itself

cannot be a ground in causing interference in detention order if the delay is satisfactorily explained. It is submitted that even in case there is a delay,

and said delay is not explained, that itself is not a ground to cause interference in the order of detention. It is further submitted that the detaining

authority has mentioned the details about the prejudicial activities of the Petitioner / Detenu causing disturbance to the Public Order. It is also

submitted that the Assistant Commissioner of Police, Sinhgad Division, Pune City forwarded a report ascertaining the truthfulness of the contents of

the in-camera statements of witnesses "A" and "B", and thereafter the detaining authority was satisfied about the truthfulness of the

contents of the said in-camera statements made by witnesses "A" and "B". It is also submitted that in the grounds of detention it is clearly

mentioned by the detaining authority that, he is satisfied that the facts given in the statements and the apprehension expressed by witnesses A and B,

and B are true and reasonable, and therefore, the learned APP submits that there is a compliance of relevant provisions and also the procedure

at the time of passing the impugned order. In support of the aforesaid contentions the learned APP has placed the reliance upon the exposition in

following judgments :- 1] Smt. Masuma v/s. State of Maharashtra and another(1981) 3 SCC 566 2] Nagnarayan Saryu Singh v/s. A N Roy & ors.

2006 ALL MR (Cri) 2147 3] Rajendrakumar Natvarlal Shah v/s. State of Gujarat and others AIR 1988 SC 125 5and 4] Syed Farooq Mohammad v/s.

Union of India and another AIR 1990 SC 1597

6. We have given our anxious consideration to the submissions of the learned counsel appearing for the Petitioner / Detenu and the learned APP

appearing for the Respondents/State. With their able assistance we have also carefully perused the pleadings and Grounds (b) and (c), annexures

thereto, the replies filed by the Respondents/State, and the original record maintained by the Respondents in relation to the detention of the Petitioner /

Detenu, which was made available by the learned APP.

7. Firstly, we will deal with the contention raised by the learned counsel appearing for the Petitioner / Detenu in Ground (c). Though it is argued by the

learned counsel for the Petitioner / Detenu that the detaining authority has not personally verified the in-camera statements of witnesses A and B,

B. However, the detaining authority in the grounds accompanying the order of detention did mention that the detaining authority was satisfied

about the truthfulness of the contents of the said in-camera statements made by witnesses A and B. The detaining authority has also

perused the report ascertaining the truthfulness of the contents of the in-camera statements of witnesses A and B by the Assistant

Commissioner of Police, Sinhgad Division, Pune City. In so far as this aspect is concerned, in our considered view and as rightly argued by the learned

APP, the detaining authority did arrive at subjective satisfaction about truthfulness of the contents of statements made by witnesses A and B.

A and B.

This Court, in the case of Smt. Vijaya Raju Gupta (supra), in paragraph 6 thereof, has observed that the detaining authority must be satisfied about the

truthfulness of the statements made in the in-camera statements. Testing it from this touch stone, the Court found that neither in the detention order

nor in the grounds of detention, the detaining authority has stated anything that he was satisfied about the truthfulness of the statements made in the in-

camera statements. However, in the facts of the present case, as already observed herein above, the detaining authority did mention in the grounds of

detention that the Assistant Commissioner of Police, Sinhgad Division, Pune City forwarded a report ascertaining the truthfulness of the contents of the

in-camera statements of witnesses A and B, and thereafter the detaining authority recorded his satisfaction about the truthfulness of the

contents of the said in-camera statements made by witnesses A and B. It is also mentioned in the grounds of detention by the detaining

authority that the detaining authority was satisfied that the facts given in the statements and the apprehension expressed by witnesses A and B

are true and reasonable.

In that view of the matter we do not think that the detention order can be interfered by accepting the contentions raised in Ground (c) of the Writ

Petition. There is, therefore no merit in the contentions raised in Ground (c) of the Petition.

8. It appears that two Crimes i.e. C.R. No.42/2019 and C.R. No.129/2019 were registered on 01/03/2019 and 23/05/2019 respectively. It is an

undisputed position that the Petitioner "Detenu was bailed out on 06/03/2019 and 26/05/2019 respectively. It is also an undisputed position that after

the Petitioner was bailed out in the aforesaid two crimes, the concerned authority held confidential enquiry, and recorded two in camera statements of

witnesses A and B on 29/07/2019 and 31/07/2019 respectively. In relation to contentions raised in Ground 5(b) of the Petition, it would be apt to reproduce herein below paragraph 9 of the affidavit in reply filed by Dr. K Venkatesham, the Commissioner of Police, Pune City, Pune :-

9. With reference to ground 5(b) of the Petition, it is denied that the statements of in-camera witnesses were recorded in order to filling the gap

between the last offence committed and the order passed. It is further denied that the order of detention has been issued belatedly after 5 months.

It is submitted that the first incident i.e. C.R. No.42 of 2019 has been registered on 1.3.2019. He was bailed out on 6.3.2019. The second incident was

registered on 23.5.2019 wherein the detenu was granted bail on 26.5.2019, the detenu has committed the second offence immediately after coming on

bail in C.R. No.42 of 2019, likewise the detenu has committed two more offences after releasing on bail in second case on 26.5.2019. the said two

incidents were narrated by the in-camera witnesses A and B in their statements dated 29.7.2019 and 31.7.2019, which shows the prejudicial activities

on the part of detenu were continued even after he was arrested in both the cases. Therefore the proposal for the detention of detenu was submitted

through proper channel firstly to the A.C.P. Sinhgad Division, Pune on 8.8.2019. The said authority verified the truthfulness and genuineness of the

statements of in-camera witnesses A and B on 12.8.2019 and forwarded the proposal to the Deputy Commissioner of Police Zone III,

the said D.C.P Zone III perused the proposal and gave his endorsement and forwarded the same to the Additional Commissioner of Police, West

Region, Pune on 15.8.2019. The Additional Commissioner of Police, West Region scrutinized the proposal and forwarded it to PCB Crime Branch

Pune on 29.8.2019. The Senior Inspector of Police, PCB Crime Branch prepared detailed note and submitted the A.C.P. Prevention on 3.9.2019. The

A.C.P. Prevention submitted to D.C.P. Crime on 6.9.2019 who in turn forwarded to Additional Commissioner of Police Crime on 11.9.2019, which

was further placed before Joint C.P. on 16.9.2019. On 25.9.2019, the said proposal after thorough scrutiny was placed before me. I had gone through

the entire material and documents and after careful scrutiny I came to the conclusion that it is a fit case to issue order against the detenu. Therefore I

gave my approval and dictated the grounds of detention. Thereafter the file was sent to the Senior Inspector of Police for the purpose for fair typing,

translation etc. On 4.10.2019 I once again perused the entire compilation of documents and issued the order of detention against the detenu. Thus

there is no delay in issuing order of detention.

If the averments in the aforesaid paragraph 9 are perused carefully, it is an undisputed position that C.R. No.42/2019 has been registered on

01/03/2019. In the said crime the Petitioner / Detenu was bailed out on 06/03/2019.. The 2nd Crime was registered on 23/05/2019 wherein the

Petitioner / Detenu was granted bail on 26/05/2019. It appears that after the Petitioner was bailed out on 06/03/2019 in C.R. No.42/2019, it is alleged

by the Respondents that, the detenu was involved in two incidents which are narrated by witnesses A and B in their in-camera

statements recorded on 29/07/2019 and 31/07/2019 respectively.. It is alleged that the Petitioner / Detenu continued his alleged activities even after he

was bailed out from two offences.

In the aforesaid paragraph 9 it is mentioned that proposal for the detention of detenu was submitted through proper channel firstly to the A.C.P.

Sinhgad Division, Pune on 08/08/2019.. The said authority verified the truthfulness and genuineness of the statements of witnesses A and

B on 12/08/2019, and forwarded the proposal to the Deputy Commissioner of Police Zone III, the said D.C.P. Zone III perused the proposal

and gave his endorsement and forwarded the same to the Additional Commissioner of Police, West Region, Pune on 15/08/2019. However, it appears

that the Additional Commissioner of Police, West Region, scrutinized the proposal and forwarded it to PCB Crime Branch Pune on 29/08/2019. It

appears that the said authority took 14 days time to scrutinize the said proposal and forward it to PCB Crime Branch, Pune. The said delay of 14 days

has not been explained in the affidavits filed by the Respondents.

It is further stated that, thereafter the Senior Inspector of Police, PCB Crime Branch prepared detailed note and submitted it to the ACP Prevention

on 03/09/2019. the ACP Prevention submitted it to DCP Crime on 06/09/2019 who in turn forwarded the same to the Additional Commissioner of

Police, Crime on 11/09/2019, which was further placed before Joint C.P. on 16/09/2019. However, the Additional Commissioner of Police, Crime sent

the said proposal on 25/09/2019 to the Commissioner of Police, Pune City, Pune. There is no explanation placed on record as to why the said proposal,

which was received by Joint C.P. on 16/09/2019, was forwarded after nine days from its receipt by Joint C.P. to the Commissioner of Police, Pune

City, Pune.

The Hon'ble Supreme Court in the case of Pradeep Nilkanth Paturkar v/s. S Ramamurthi and others AIR 1994 SC 656 in paragraph 9, has

referred its earlier judgment in T A Abdyul Rahman v/s. State of Kerala (1989) 4 SCC 741 wherein it has been held that when there is undue and long

delay between the prejudicial activities and the passing of detention order, the Court has to scrutinize 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.

In the facts of the present case, as observed herein above, delay of 14 days in forwarding the proposal by the Additional Commissioner of Police,

West Region, Pune to PCB Crime Branch Pune remains unexplained, so also there was 9 days delay in forwarding the said proposal by Joint

Commissioner of Police to the Commissioner of Police, Pune City, Pune also remains unexplained. Therefore keeping in view the exposition of law by

the Hon'ble Supreme Court in the case of Pradeep Nilkanth Paturkar (supra), and this Court in the case of Aalam Yosuf Shaikh (supra), it will

have to be held that, there was delay in passing the order of detention in as much as the said order of detention has been passed after registration of

C.R. No.42/2019 and C.R.No.129/2019 on 04/03/2019 and 23/05/2019 respectively (after about 4 months), and that too after the Petitioner / Detenu

was bailed out by the competent court. Secondly, as rightly submitted by the learned counsel appearing for the Petitioner that in-camera statements of

witnesses A and B were obtained only after the detenu became successful in getting bail orders in both the crimes i.e. C.R. No.42/2019

and C.R. No.129/2019 registered against him.

9. Now coming to the submission of the learned APP that even if there is no explanation for delay in passing the order of detention, that cannot be a

ground to cause interference in the order of detention in view of the observations of the Hon'ble Supreme Court in the case of Smt. Masuma

(supra), and also in the case of Rajendrakumar Natvarlal Shah (supra). At this stage, it would be apt to reproduce herein under Paragraph 10 of

Rajendrakumar Shah's case (supra) for the sake of ready reference :-

“10. Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that a distinction must be

drawn between the delay in making of an order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange &

Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Art. 22(5) of the Constitution. It has been

laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in cases of mere

delay in making of an order of detention under a law like the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974

enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large

resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the Courts should not merely on

account of delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference

that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely

reached. Taking of such a view would not be warranted unless the Court finds that the grounds are 'stale' or illusory or that there is no real nexus

between the grounds and the impugned order of detention. The decisions to the contrary by the Delhi High Court in *Anil Kumar Bhasin v. Union of*

India & Ors. (Crl. W. No. 410/86 dated 2.2.1987)(reported in 1987 Cri LJ 1632,) *Bhupinder Singh v. Union of India & Ors.* [1985] 28 Delhi LT 493,

Anwar Esmail Aibani v. Union of India & Ors. (Crl. W. No. 375/86 dated 11.12.1986) (reported in (1987) 3 IJ Rep 383), *Surinder Pal Singh v. M.L.*

Wadhawan & Ors., (Crl. W. No. 444/86 dated 9.3.1987) (1987 (2) Crimes 449), and *Ramesh Lal v. Delhi Administration*, (Crl. W. No. 43/84 dated

16.4.1984), and other cases taking the same view do not lay down good law and are accordingly overruled.

(emphasis supplied)

The case in hand is arising out of offences registered under the Indian Penal Code and not under the Conservation of Foreign Exchange and

Prevention of Smuggling Activities Act, 1974. The Hon'ble Supreme Court in paragraph 10, reproduced herein above, of the case of

Rajendrakumar Natvarlal Shah (supra) has made it clear for the guidance of the different High Courts that a distinction must be drawn between the

delay in making of an order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange & Prevention of

Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Art. 22(5) of the Constitution.

10. Therefore in the facts of the aforesaid case as rightly observed by the Hon'ble Supreme Court, the alleged activities of smuggling and foreign

exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security

of the nation, the Courts should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily

explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or

that such subjective satisfaction was not genuinely reached. As already observed, the facts of the present case are clearly distinguishable inasmuch as

the crimes i.e. C.R. No.42/2019 and C.R. No.129/2019 143, 147, 148, 149, 352, 427, 504, 506 of the Indian Penal Code r/w 4, 25 of Arms Act r/w

Section 37(1), 135 of the Maharashtra Police Act; and under Sections 354, 341, 504, 506 of the Indian Penal Code respectively have been registered

against the Petitioner / Detenu under the Indian Penal Code, and out of the said alleged offences, maximum sentence provided under Section 354 of

the Indian Penal Code is five years, and in both the crimes the Petitioner / Detenu has obtained bail orders from the Court of competent jurisdiction. In

said cases arising out of aforesaid crimes law will take its own course, and accused, if found guilty will be sentenced appropriately, and if there is

sufficient material to try the cases, there will be full-fledged trial.

11. The view taken by us herein above gets support from the authoritative pronouncement of the Hon'ble Supreme Court in the case of Pradeep

Nilkanth Paturkar (supra), and the following three judgments of this Court in Mohsin Ahmed S/o Mushtaque Ahmed (supra), Parvez Faizulla Khan

(supra) and Aalam Yosuf Shaikh (supra).

12. In that view of the matter an irresistible conclusion is that the order of detention impugned in this Writ Petition cannot be sustained, and therefore,

the impugned order is liable to be quashed and set aside. Hence the following order is passed :-

ORDER

A] The impugned order of detention bearing No.PCB/DET/3299/2019 dated 04/10/2019 issued under Section 3 of M.P.D.A. Act, 1981 by

Respondent No.1 is hereby quashed and set aside.

B]. The Petitioner / Detenu " Narendra @ Chotya Mahadev Balkawade be set at liberty forthwith, if not required in any other case.

C] The Writ Petition is accordingly allowed and Rule is made absolute in the aforesaid terms with no order as to costs.