(2021) 09 BOM CK 0055

Bombay High Court

Case No: Criminal Writ Petition No. 3035 Of 2021

Sanjeev @ Sanjay @ Tatyasaheb		APPELLANT
	Vs	
Commissioner Of Police Solapur And Others		RESPONDENT

Date of Decision: Sept. 30, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 21, 22(5)
- Maharashtra Prevention Of Dangerous Activities Act, 1981 - Section 3, 3(2)(Va)
- Indian Penal Code, 1860 - Section 143, 144, 147, 323, 324
- Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 - Section 3(1)(R)(S)

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

Bench: Division Bench

Final Decision: Disposed Of

Judgement

S.S. Shinde, J

1. This petition takes an exception to the order of Detention bearing No. D.O. No. 07/CB/DP/2021 dated 17.05.2021 issued under Section 3 of the

Maharashtra Prevention of Dangerous Activities Act, 1981 (Ã¢â‚¬Ëœ M.P.D.A. ActÃ¢â‚¬â„¢) by the Respondent No. 1.

2. During the course of hearing, the learned counsel for the petitioner restricted her arguments to the contentions raised in grounds (b) and (d).

3. It is submitted that there was delay in passing the order of detention. Learned counsel for the petitioner invites attention of this Court to the ground

no. (b), so also the affdavit fled by respondent and submits that there is a considerable delay in passing the order of detention and on that ground alone

the petition deserves to be allowed.

In support of aforesaid contention, the learned counsel pressed into service the judgments of HonÃ¢â‚¬â„¢ble Supreme Court in the cases of Pradeep

Nikant Paturakar Vs. S. Ramamurthi & Ors 1993 Supp (2) SCC 61, Shakeel Sait Vs. C.D. Singh & Ors Cr.W.P. No. 429/1996, Niyazuddin 2 Sonu

Ansari Vs. State of Maharashtra 2013 ALL MR (Cri) 3870, Mohsin Ahmed Vs. State of Maharashtra 2014 ALL MR (Cri) 2409, Parvez Faizulla

Khan Vs. A.K. Roy & Ors Cri.W.P. No. 1018 of 2007 and Aalam Yousuf Shaikh Vs. Commissioner of Police Pune Cri.W.P. No. 4180 of 2017

4. Learned counsel appearing for the petitioner further submits that it was incumbent upon the respondent authority to place on record the report

submitted by the investigating offcer in C.R. No. 127/2021, thereby adding Section 3(2)(Va) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989.

In support of aforesaid submission, the learned counsel for the petitioner placed reliance on the ratio laid down in the following judgments of

HonÃ¢â‚¬â„¢ble Supreme Court in the cases of V.C. Mohan Vs. UOI & Ors2002 SCC (Cri) 648, Kamlal K. Khushlani Vs. UOI 1981 SC 814 and UOI

Vs. Ramu Bhandari (2008) 17 SCC 348.

5. It is submitted that the detaining authority placed reliance upon the in-camera statements of two witnesses and one C.R. No. 127/2021 registered

with Faujdar Chawadi Police Station for the offences punishable under Section 143, 144, 147, 323, 324, 504, 506 of IPC read with Section 3(2)(Va) of

the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is submitted that the in-camera statements of two witnesses

recorded on 1st March 2021 and 3rd March, 2021 about the incidents alleged to be taken place in the month of January, 2021 and February 2021 and

detention order has been passed on 17th May, 2021. Therefore, there is a considerable delay in between the date of alleged incidents, recording of in-

camera statements and passing of order of detention. Therefore the said in-camera statements cannot be relied upon and in case those statements are

excluded from consideration what remains is only one offence (C.R. No. 127/2021) registered against the petitioner. Therefore, the learned counsel

appearing for the petitioner prays that the petition may be allowed.

6. On the other hand, the learned APP appearing for Respondent-State and its offcials relied upon the affdavit in replies fled by the Commissioner of

Police, Solapur City, Solapur and Deputy Secretary Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai and submitted

that the detention order has been passed in accordance with the procedure under the M.P.D.A. Act. It is submitted that the detaining authority

specifcally stated that the petitioner has committed offences which would fall within the Chapter XVI and XVII of IPC. The authority has also

perused the in-camera statements of witnesses and arrived at the subjective satisfaction and passed the order of detention. It is submitted the DCP

who scrutinized the proposal of detention was tested positive of Covid-19 and he was on medical leave from 26th February, 2021 to 18th March, 2021,

and, therefore, there was a delay in submitting the proposal onward to the detaining authority. Therefore, the learned APP submits that the petition

may be rejected.

7. We have given careful consideration to the rival submissions. With the able assistance of learned counsel for the petitioner and learned APP,

perused the pleadings and grounds taken in the petition, anenxures thereto, replies fled by the respondents and the original record maintained by the

offce of respondents in relation to the detention proceedings initiated against the petitioner.

Upon careful perusal of ground (b) taken in the petition and replies fled by the respondents it appears that in-camera statements of witness Ã¢â‚¬Ëœ Ã¢â‚¬â„¢

and Ã¢â‚¬Ëœ Ã¢â‚¬â„¢ were recorded and verifed in between 2nd and 4th March, 2021 for the incident occurred in the last week of January and frst week of

February, 2021. The proposal for detention was initiated on 5th March, 2021 and the detention order was passed on 17th May, 2021. If the delay from

initiation of proposal till passing of the detention order is taken into consideration, the same is not properly explained by the detaining authority. It

appears that DCP of concerned Zone scrutinized the proposal for detention and gave endorsement on 8th March 2021 and forwarded the proposal to

DCP (Crime) on the very same day. However, DCP (Crime) tested positive of Covid-19, so he was on medical leave from 22nd February, 2021 to

18th March, 2021. On 25th March, 2021 the said DCP (Crime) scrutinized the proposal. However, the delay from 18th March, 2021 till 25th March,

2021 remained unexplained. As already observed the proposal was scrutinized by the DCP (Crime) on 25th March, 2021, however, the said proposal

was submitted on 5th April, 2021. There was delay of 9 days which remained unexplained.

8. On 8th April, 2021 ACP (Crime) perused the proposal, all relevant documents and submitted to DCP (Crime) on the same day. On 15th April, 2021

DCP (Crime) perused the proposal, documents and applied his mind and with recommendation submitted the proposal to the detaining authority on the

same day. It shows that the delay between 8th April, 2021 to 15th April 2021 remained unexplained, when the perusal of the said report was done on

the same day. DCP (Crime) has submitted proposal to the detaining authority on 15th April, 2021. The detaining authority gave endorsement and

perused the proposal and documents on 5th May, 2021. Consequently, there was delay about three months in passing the order of detention.

There is no denial to the fact that the in-camera statements of witnesses were recorded on 1st March, 2021 and 3rd March, 2021 for the incidents

occurred in the month of January 2021 and February 2021, however, the order of detention was passed in the month of May, 2021, so there is

considerable gap between the recording of in-camera statements about alleged incident happened in the month of January & February 2021, and

passing of the impugned order of detention, while the C.R. No. 127/2021 was registered on 16th February, 2021 with the Faujdar Chawadi Police

Station. Even from the registration of aforesaid offence there is a delay of three months in passing the impugned order of detention. What matters is

the explanation offered by the respondent authorities for such considerable delay.

9. The HonÃ¢â‚¬â„¢ble Supreme Court in the case of Pradeep Paturakar (Supra) in Para 9 to 14 held thus:-

9. According to Mr. Gupte, the explanation given by the High Court for the delay that the ""procedure required sometime before the powers are

exercised"" is not the explanation offered by the detaining authority and there fore that explanation should not be accepted to the prejudice of the right

of the detenu. In support of his submission that the unexplained and undue delay in passing the order vitiates the impugned detention order, he drew

our attention to a decision of this Court in T.A. Abdul Rahman v. State of Kerala, to which one of us (S. Ratnavel Pandian, J.) was a party. In that

case after recapitulating the various decisions on this point the following dictum has been laid down: (SCC p. 748, para 10)

Ã¢â‚¬Å“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.Ã¢â‚¬‹

10. Reference also may be made to Hemlata Kantilal Shah v. State of Maharashtra, in which case this Court observed: (SCC p. 655, para 16)

Ã¢â‚¬Å“Delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be

unavoidable and reasonable.

What is required by law is that the delay must be satisfactorily explained by the detaining authority.Ã¢â‚¬‹

11. We feel that it is not necessary to refer to all the decisions on this point.

12. Countering the argument of Mr. Gupte, the learned Additional Solicitor General drew our attention to Rajendrakumar Natvarlal Shah v. State of

Gujarat, in which this Court held that the non-explanation of the delay between 2nd February and 28th May, 1987 could not give rise to legitimate

inference that the subject of satisfaction arrived by the District Magistrate was ; not genuine. In the same decision, the learned ' Judges have pointed

out ""It all depends on the nature of the acts relied on, grave and deter mined or less serious and corrigible, on the length of the gap, short or long, on

the reason for the delay in taking preventive action, like information of participation being available only in the course of an investigation"". A perusal of

the various decisions of this Court on this legal aspect shows that each case is to be decided on the facts and circumstances appearing in that

particular case.

13. Coming to the case on hand, the detention order was passed after 5 months and 8 days from the date of the registration of the last case and more

than 4 months from submission of the proposal. What disturbs our mind is that the statements from the witnesses A to E were obtained only after the

detenu became successful in getting bail in all the prohibition cases registered against him, that too in the later part of March, 1991. These statements

are very much referred to in the grounds of detention and relied upon by the detaining authority along with the registration of the cases under the Act.

14. Under the above circumstances, taking into consideration of the unexplained delay whether short or long especially when the appellant has taken a

specifc plea of delay, we are constrained to quash the detention order. Accordingly we allow the appeal, set aside the judgment of the High Court and

quash the impugned detention order. The detenu is directed to be set at liberty forthwith.

As already observed herein before that the respondents have not property explained the delay from the date of incident till order of detention was

passed. There is no plausible explanation given why there was gap in recording statements of witnesses Ã¢â‚¬ËœAÃ¢â‚¬â„¢ and Ã¢â‚¬ËœBÃ¢â‚¬â„¢ from the date of

alleged incident.

10. The learned counsel appearing for the petitioner pressed into service the ground (d) of the petition, which reads as under:-

d. The petitioner says and submits that the detaining authority has categorically stated in the grounds of detention at para 5.1 while narrating the facts

of C.R. No. 127/2021, that on Ã¢â‚¬Å“18.02.201 during the course of investigation in the said offence Sec. 3(1) (R) (S) of the Scheduled Caste and

Scheduled Tribe (Prevention of Atrocities Act) was added but the said section was not attracting so Sec 3(2) (VA) was proved in the said offence

and was added by submitting report to HonÃ¢â‚¬â„¢ble CourtÃ¢â‚¬. It is to be noted that even though a specifc mention of the said documents which is about

adding certain sectionsand deleting certain sections, by submitting report to the HonÃ¢â‚¬â„¢ble Court, (such report is a vital document) which is referred

to and relied on by the detaining Authority. No copy of such a vital document is given to the petitioner in the compilation of documents. As a result of

non-furnishing most relevant and vital document which is referred to and relief on in the grounds of detention the petitioner is unable to make any

effective representation. Non furnishing vital document also amounts to non-communication of grounds of detention, hence both the facets of Article

22(5) of the Constitution of India is violated. The order of detention is illegal and bad in law liable to be quashed and set aside.

11. In reply to the said ground (d) it is stated in the reply fled by the detaining authority that while issuing the detention order all the relevant documents

regarding detention order along with its Marathi translation was served to the petitioner at the time of detention. During the course of investigation in

C.R. No. 127/2021, Section 3(1)(R)(S) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act was added but the ingredients of

said section was not attracting, therefore, Section 3(2) (VA) was proved in the said offence. The said exercise was already mentioned in the remand

application furnished to the petitioner at the time of detention which is placed on page no. 62 of the compilation. Acknowledgment has also been

obtained regarding it from the petitioner.

12. It clearly appears that that no such copy of the report which is mentioned in Ground (d) was supplied to the detenu. There is a mention in the reply

that there was mention about said report in the remand application, but same was not supplied as per requirement in law.

13. The Supreme Court in the case of Kamla Khushlani (supra) in para 4 and 7 held as under:-

Ã, Ã¢â‚¬Å“4. The Court, therefore, clearly held that the documents and materials relied upon in the order of detention formed an integral part of the

grounds and must be supplied to the detenue pari passu the grounds of detention. If the documents and materials are supplied later, then the detenue is

deprived of an opportunity of making an effective representation against the order of detention. In this case, the court relied upon the ratio in Icchu

Devi ChorariaÃ¢â‚¬â„¢s case (supra) extracted above. We fnd ourselves in complete agreement with the view expressed by the two decisions of this

Court and we are unable to accede to the prayer of Mr. Rana for sending the case for reconsideration to a larger Bench. This Court has invariably

laid down that the before an order of detention can be supported, the constitutional safeguards must be strictly observed.

7. It is well settled that the Court frowns on preventive detention without trial because the detenu is deprived of the right of proving his innocence in a

trial by a court of law. It is, therefore, of the utmost importance that all the necessary safeguards laid down by the Constitution under Art. 21 of Art.

22 (5) should be complied with fully and strictly and any departure from any of the safeguards would void the order of detention. This is so because in

a civilised society, like ours, liberty of a citizen is a highly precious right and a prized possession and has to be protected unless it becomes absolutely

essential to detain a person in order to prevent him from indulging in anti-national activities like smuggling, etc. We are fortifed in our view by a

decision of this Court in Sampat Prakash v. State of J. and K., (1969) 3 SCR 574: (AIR 1969 SC 1153) where the following observations were made:

Ã¢â‚¬Å“that the restrictions placed on a person preventively detained must, consistently with the effectiveness of detention, be minimal.Ã¢â‚¬â€‹

14. Yet in another case Union of India Vs. Ranu Bhandrai (surpa), in para 27 it is held as under:-

Ã¢â‚¬Å“27. It has also been the consistent view that when a detention order is passed all the material relied upon by the detaining authority in making such

an order, must be supplied to the detenu to enable him to make an effective representation against the detention order in compliance with Article 22(5)

of the Constitution, irrespective of whether he had knowledge of the same or not. These have been recognised by this Court as the minimum

safeguards to ensure that preventive detention law, which are an evil necessity, do not become instruments of oppression in the hands of the

authorities concerned or to avoid criminal proceeding which would entail a proper investigation.Ã¢â‚¬â€‹

15. Therefore, it follows from the aforesaid two authoritative pronouncements of Supreme Court that the material or the documents relied upon by the

detaining authority while passing the order of detention needs to be supplied to the detenu so as to enable him to make an effective representation.

16. In the light of discussion in foregoing paragraphs, we are of the view that the detention order cannot be legally sustained. Hence, the following

order:-

ORDER

1. The impugned order of detention bearing No. 07/CB/DP/2021 dated 17.05.2021 passed by Respondent No. 1, is quashed and set aside.

2. The Petitioner is to be released forthwith, unless required in any other offence or proceedings.

3. Rule is made absolute to above terms.

4. The writ petition stands disposed of.

5. Parties to act upon an authenticated copy of this order.