Ravi Hanumant Thorat Vs The State of Maharashtra, Mr. Gulabrao Pol, The Superintendent of Prison, Yerwada Central Prison and The Superintendent of Prison, Nasik Road Central

Court: Bombay High Court

Date of Decision: March 14, 2013

Acts Referred: Arms Act, 1959 â€" Section 4(25)
Bombay Police Act, 1951 â€" Section 135, 37(1), 56(b)
Constitution of India, 1950 â€" Article 22, 22(5)
Criminal Procedure Code, 1973 (CrPC) â€" Section 110(e)
Penal Code, 1860 (IPC) â€" Section 143, 147, 148, 149, 153A(1)

Citation: (2013) 3 ABR 492 : (2014) ALLMR(Cri) 2168 : (2013) 2 BomCR(Cri) 714

Hon'ble Judges: A.S. Oka, J; A.P. Bhangale, J

Bench: Division Bench

Advocate: Aisha Zubair Ansari assisted with Mrs. N.S.K. Ayubi, for the Appellant; J.P. Yagnik, APP for the State, for the Respondent

Final Decision: Dismissed

Judgement

A.P. Bhangale, J.
Heard submissions at the bar and perused affidavits filed on record. The Petitioner questions validity of detention of the

detenu vide order bearing D.O. No. 5012/PCB/Detention/2012 dated 27-08-2012 issued by Commissioner of Police, Pune City, against

Sahadeo @ Sada Laxman Dhavare. Detention was ordered on 27-08-2012 the ground that detenu Sahadeo is involved in illegal activities causing

breach of public peace and was required to be detained u/s 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers,

[Drug-Offenders, Dangerous Persons and Video Pirates] Act, 1981 (Mah. Act No. LV of 1981, hereinafter referred as ''the Act''). At the outset,

brief facts are required to be mentioned that on 17-07-2012, Senior Inspector of Police Khadak Police Station, Pune has submitted the proposal

for the detention of Sahadeo @ Sada Laxman Dhavare under the Act. The proposal with in-camera statements of four witnesses was duly verified

by the Asst. Commissioner of Police, South Region on 21-07-2012. On 26-07-2012, the proposal was routed through D.C.P. Zone-I to the

Additional Commissioner of Police. It was considered and on 30-07-2012 sent to Law Officer, Zone-I for perusal of the record and returned on

31-07-2012 for to send it to detaining authority. It was submitted before the detaining authority on 03-08-2012. After subjective satisfaction that

the detenu is dangerous person within the meaning of Section 2(b-1) of the Act on the basis of in-camera statements of four witnesses, the

Detaining authority accepted the proposal on 10-08-2012 and issued the impugned order of detention on 27-08-2012 after deeply studying the

proposal. The detention order and committal order were served upon the detenu on 27-08-2012 with all the 14 documents (Page no. 1 to 316 in

record) relied upon by the detaining authority for his subjective satisfaction, under detenu''s written acknowledgement in presence of Senior

Inspector of Police, Khadak Police Station, Pune. Representation dated 03-11-2012 was submitted by the petitioner as is confirmed in the

affidavit of Mr. P.H. Wagde, who stated that it was received on 05-11-2012 through the office of the Superintendent, Nashik Road Central

Prison, Nashik. The remarks of the detaining authority were called for which were received by the Home Department (Special) of the State

Government on 20-11-2012. The same were submitted to the Deputy Secretary on 21-11-2012 and through him to the Additional Chief

Secretary, who considered the representation and para-wise reply from the detaining authority on 23-11-2012 and rejected it on the same day.

There was holiday on 24-11-2012 for Moharram followed by Sunday on 25-11-2012. The file was received by the Desk on 26-11-2012. The

communication to the detenu was made by the Speed-Post on 26-11-2012. It was received by the Nasik Prison Superintendent on 30-11-2012

which the prison authority has communicated to the detenu on 01-12-2012. Accordingly, compliance report was received by the Home

department on 06-12-2012. Shri Wagde, Deputy Secretary of the State Government stated on affidavit that there was no delay in view of the

record of communications as above.

2. In order to appreciate the rival submissions, it is necessary to reproduce 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 ''the Act'').

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 three

months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to

lime by any period not exceeding three 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 Slate

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.

The provision thus provides for preventive detention so as to prevent dangerous activities prejudicial to maintenance of public order. The persons

having resources and influence and carrying on dangerous activities clandestinely organized to violate laws in the State particularly in urban areas,

are prevented from such activities by order of detention u/s 3 of the Act which requires satisfaction of the State Government for to make an order

to prevent a person engaged in activities affecting adversely or likely to affect adversely maintenance of public order. The slumlords, bootleggers,

drug offenders, dangerous persons and video pirates are covered under the Act who may directly or indirectly cause or by calculated activities

cause any harm, danger or alarm or feeling of insecurity amongst general public or section thereof or may carry on widespread or grave activities

which may be dangerous to life or public health. Thus, it is a condition precedent for the Detaining Authority before passing an order of preventive

detention to satisfy itself that such order is required to be passed to prevent activities of slumlord or bootlegger or drug offender or dangerous

person or video pirate, as the case may be.

3. Learned Counsel Mrs. Ansari made reference to the galaxy of rulings to submit on behalf of the Petitioner that there was delay in both issuing

and also communicating the impugned order of detention. Mrs. Ansari cited the ruling in Mohinuddin alias Moin Master Vs. District Magistrate,

Beed and Others, . In Para. 7, Hon"ble Supreme Court observed thus-

----There is in fact no explanation offered as regards the delay in disposal of the representation in the Secretariat. We have already extracted the

relevant portion from the affidavit of Vishwasrao, Desk Officer. It is accepted that the representation made by the appellant to the Chief Minister

on September 22, 1986, forwarded by the Superintendent, Aurangabad Central Prison on the 24th, was received in the Home Department on the

26th which in its turn forwarded the same to the detaining authority i.e. the District Magistrate on the same day i.e. 26th for his comments. The

District Magistrate returned the representation along with his comments dated October 3, 1986 which was received by the Government on the 6th.

It is said that thereafter the representation was processed together with the report of the Advisory Board and was forwarded to the Chief

Minister"s Secretariat where the same was received on October 23, 1986. It is enough to say that the explanation that the Chief Minister was

pre-occupied with very important matters of the State which involved tours as well as two Cabinet meetings at Pune on October 28 and 29, 1986

and at Aurangabad on November 11 and 12, 1986"" was no explanation at all why the Chief Minister did not attend to the representation made by

the appellant till November 17, 1986 i.e. for a period of 25 days. There was no reason why the representation submitted by the appellant could

not be dealt with by the Chief Minister with all reasonable promptitude and diligence and the explanation that he remained away from Bombay is

certainly not a reasonable explanation. In view of the wholly unexplained and unduly long delay in the disposal of the representation by the State

Government, the further detention of the appellant must be held illegal and he must be set at liberty forthwith.

4. Mrs. Ansari also made reference to the observations made by the Apex Court in Para. 14 of the ruling in Kundanbhai Shaikh Vs. Magistrate,

Ahmedabad and others, as under:-

14. From the above, it will be seen that the right to make representation against the order of detention is not only a constitutional right but a

statutory right as well. Since the Constitution as also the Act specifically provide that the detenu shall be given the earliest opportunity of making a

representation against the order of detention, it is implicit that there is a corresponding duty on the authorities to whom the representation is made

to dispose of the representation at the earliest or else the constitutional and the statutory obligation to provide the earliest opportunity of making a

representation would lose both its purpose and meaning.

In Para. 18 of the same ruling the ratio of the earlier rulings on the point of delay in disposal of the representation from the detenu is stated thus-

18. Turning now to the main question relating to the early disposal of the representation, we may immediately observe that this Court, in a large

number of cases, has already laid down the principle in clear and specific terms that the representation has to be disposed of at the earliest and if

there has been any delay in the disposal of the representation, the reasons for the delay must be indicated to the court or else the unexplained delay

or unsatisfactory explanation in the disposal of the representation would fatally affect the order of detention, and in that situation, continued

detention would become bad. This has been the consistent view of this Court all along.

5. Mrs. Ansari also referred to the observations in Para. 11 of the ruling in Ummu Sabeena Vs. State of Kerala and Others, as under:-

11. Going by the aforesaid precedents, as we must, we hold that the procedural safeguards given for protection of personal liberty must be strictly

followed. The history of personal liberty, as is well known, is a history of insistence on procedural safeguards. Following the said principle, we find

that delay in these cases is for a much longer period and there is hardly any explanation. We, therefore, have no hesitation in quashing the orders of

detention on the ground of delay on the part of the Central Government in disposing of the representation of the detenus.

6. Mrs. Ansari submitted that three crimes registered as C.R. no. 134 of 2008 dated 15-06-2008 reported to Khadak Police Station u/s 324 read

with Section 34 of IPC, C.R. No. 210 of 2010 dated 16-10-2010 reported to Khadak Police Station under Sections 143, 147, 148, 149, 337,

387, 323, 504 of IPC and C.R. No. 3275 of 2010 dated 17-10-2010 u/s 153-A (1) IPC considered by the detaining authority were stale and

remote ground. While in C.R. No. 45 of 2012 dated 09-03-2012 reported at Khadak Police Station under Sections 143, 147, 148, 149, 452,

324, 337, 509, 354, 506(2), 323, 504 of IPC read with Section 4(25) of the Arms Act and Section 37(1) read with Section 135 of the Bombay

Police Act on the complaint by Smt. Chandramma Nagappa Yelmel but the sponsoring authority had not produced the cross complaint lodged by

Ravi Hanumant Thorat against Chandramma Nagappa Yelmel in which police had recorded the statement of detenu on 10-03-2012 as witness

vide C.R. No. 46 of 2012 at Khadak Police Station under Sections 143, 147, 148, 323, 324, 504, 506, 337, 452, 427 of IPC and Section 37(1)

read with Section 135 of the Bombay Police Act, the detenu was granted bail on 12-03-2012 while the impugned order was issued on 27-08-

2012. According to Mrs. Ansari statement of the detenu before police ought to have been brought to the notice of the detaining authority. Mrs.

Ansari therefore submitted that vital documents ought to have been placed before the detaining authority, as non-consideration of vital documents

can result in non-application of mind on the part of detaining authority. Mrs. Ansari submitted that the vital documents were not furnished to the

detenu and it amounted to non-communication of the grounds of detention. Further according to Mrs. Ansari, Detention order was not issued

promptly and vigilantly and it was delayed by 5 months and 6 days from the date of his release on bail. It is submitted by Mrs. Ansari that live link

between the alleged prejudicial activities and the grounds of detention was thus snapped and credibility of the claim by the detaining authority was

broken, hence detaining authority ought to have refrained from issuing the detention order which is per se punitive in character rather than

preventive. Learned Advocate for the detenu, thus criticized the impugned order to argue that it is in breach of Article 22(5) of the Constitution of

India. Mrs. Ansari argued that the detenu could not make purposeful representation at earliest hence impugned order is malafide, null and void.

The submission though attractive is not persuading us to accept it. It is settled principle that there is no universal rule that irrespective of facts and

circumstances of the case it would be imperative to place all the documents before the detaining authority despite the fact that they are irrelevant. In

our view all the documents need not be supplied but only those documents which are relevant and vital in the case. This principle was stated in the

ruling of Sunila Jain Vs. Union of India (UOI) and Another, . In our opinion, in a given case assuming that the sponsoring authority withheld the

material which is irrelevant and the fact did not affect the decision of the detaining authority, the preventive detention order cannot be rendered

malafide or void.

7. The next contention of Mrs. Ansari is that after detenu was released on bail on 12-03-2012 in C.R. no. 45 of 2012 of Khadak Police Station,

in-camera statements of four witnesses which were recorded by the sponsoring authority are false and fabricated by the sponsoring authority to

detain the detenu under M.P.D.A. Act and thus subjective satisfaction reached by the detaining authority was sham and unreal. We have

considered the record and the impugned order and also affidavits filed before us. We cannot share the same view as canvassed by the learned

counsel for the Petitioner considering the material relied upon by the detaining authority in this case. As regards the contention of non-disclosure of

identity of witnesses whose statements were recorded in-camera, it is fact of common knowledge that witnesses would be afraid of their life and

are most hesitant and reluctant to come forward and complain against anti-socials; weapon-wielding elements who, by their conduct, are indulging

in creating reign of terror, so also illegal activities i.e. criminal intimidation, extortion etc. which create fear in the mind of public and does affect

public order and tranquility of the society. At the same time, it is necessary for the Detaining Authority to verify genuineness or otherwise of the

allegations or accusations made against the detenu and record its subjective satisfaction. Non-disclosure of identity of witnesses whose statements

may have been recorded in-camera, in order to ensure their personal security and shield them from the rage of ruffians is not by itself, fatal to the

detention order, if such truth and genuineness of such statement made was duly verified by the Detaining Authority. In the present case, it is alleged

that the detenu is carrying on dangerous activities and to prevent his activities, the order has been passed for detention which is impugned herein.

8. The next argument by Mrs. Ansari is that it was obligated on the part of the detaining authority to disclose as to when the proposal of the

detention was received and time taken to scan the material and to formulate the grounds of detention as detention authority ought to have acted

promptly and vigilantly to issue the detention order. She submitted that any inaction, indolence, inertia on the part of detaining authority can render

the detention order void. In our opinion the detention order cannot be expected to be prepared overnight. It is a continuous process because the

proposal along with the material placed before the detaining authority has to be scanned and examined by the authority concerned. Detaining

Authority is expected to apply its mind to the relevant material placed before it on record. The detaining authority is further required to record its

independent subjective satisfaction about the compelling necessity to pass an order of the Preventive detention.

9. Mrs. Ansari then submitted that the detaining authority ought to have considered that action under normal punitive laws would adequately meet

the ends of justice and there was no need to resort to extraordinary action under Preventive detention law. This submission ignores settled legal

position that even a single act having propensity of affecting tempo of life and public tranquility, being prejudicial to maintenance of public order

would be sufficient for preventive detention.

10. Mrs. Ansari argued that the detaining authority ought to have disclosed the date of receipt of proposal of detention and also the list of number

of documents including additional documents received, if any and piecemeal scrutiny thereof as the grounds of detention formulated by the

detaining authority and to place the relevant contemporaneous record before the Court. According to Mrs. Ansari detenu could not make effective

representation before the detaining authority as non-paging of bunch of papers had confused him. She contended that adverse inference be raised

against the detaining authority for not placing the material before this Court and impugned order be treated a null and void. All procedural

requirement as contemplated under Article 22(5) of the Constitution of India are to be complied with strictly. Relevant and vital documents are

required to be placed before the Detaining Authority which the Detaining Authority can take into consideration. The relevant material documents

must also be supplied to the detenu to enable him to make an effective representation in view of Article 22(5) of the Constitution. Non-supply of

relevant material documents vitiates the order if Detaining Authority has relied upon those documents. In our opinion, all the documents which are

placed before the Detaining Authority are not required to be supplied. Only relevant and vital documents are required to be supplied to the detenu

before preventive detention order is passed. In other words, if any irrelevant material which did not affect decision of the Detaining Authority is

withheld it would not be fatal to the detention order. If the requirements of fairness are complied with, the detention order would not be vitiated

and will not require interference. The sponsoring authority withheld material which if otherwise irrelevant, would not affect the decision of detaining

authority. It is not fatal defect so as to set aside the Preventive detention order as held in the ruling of D. Anuradha Vs. Jt. Secretary and Another, .

Irrelevant documents need not be placed before the detaining authority by the sponsoring authority. Furthermore, all the documents placed before

the detaining authority need not be required to be supplied. Only relevant and vital documents are required to be supplied vide ruling reported in

Sunita Jain (supra).

11. According to Mrs. Ansari C.R. no 134 of 2008 at Khadak Police Station was lodged by Rahul Mahadeo Bhise who expired on 28-11-2010

while C.R. no. 210 of 2010 dated 16-10-2010 was lodge by one Raju Baburao More who died on 07-08-2012. The vital documents such as

death certificates of the complainants could have been placed by the sponsoring authority before the detaining authority which could have

influenced the decision of the detaining authority one way or the other and the detaining authority may have refrained from issuing the impugned

order. In our opinion nothing prevented the detenu from producing the death certificates which were within his knowledge while making the

representation.

12. Mrs. Ansari then submitted that activity of the detenu cannot be labeled as prejudicial to the maintenance of Public order as C.R. No 134 of

2008 dated 15-06-2008, C.R. No. 210 of 2010 dated 16-10-2010 and C.R. no. 45 of 2012 dated 09-03-2012 did not endangered

maintenance of public order and subjective satisfaction of the detaining authority was vitiated. According to Mrs. Ansari in C.R. no. 134 of 2008,

Raju Baburao More had stood as surety for the detenu but the same Baburao had lodged FIR against the detenu in C.R. No. 210 of 2010. This

shows that the complaint by Baburao was false and concocted. In our view this submission assumes that the surety would have no cause at all to

file complaint against the detenu after gap of two years. The submission deserves to be stated and rejected.

13. It is also urged by Mrs. Ansari that the sponsoring authority ought to have opposed the bail applications tooth and nail and bail orders ought to

have been challenged in superior Courts rather than resorting to the drastic action of the preventive detention. It is also contended that the detenu

was detained since 27-08-2012 but the spouse of the detenu was not informed in writing about his place of detention. This submission has no

force as the affidavits on record adequately refuted this contention. When the detaining authority has applied its independent mind to the relevant

material place on the record and recorded its subjective satisfaction as to the relevant material the fact that the bail orders were not challenged by

the sponsoring authority in the superior Courts would not, by itself, militate against the valid preventive detention order. This is so because when

emergent steps are required to be taken to prevent recurrence of criminal acts by the subject who is known to have frequently indulged in criminal

acts, the authority concerned is not expected to resort to time consuming process to propose for cancellation of bail orders granted. It is well

settled that the cancellation of bail can be on proof of overwhelming ground when the court may cancel the bail order only when there is necessity

for the cancellation of bail in rare cases.

14. In the instant case, there was no snapping of live-link between the anti-social, dangerous and prejudicial activities indulged into by the detenu

and the impugned detention order as the span of time was reasonable. Learned APP made reference to the ruling in Shri Indrajit Goswami Vs. Shri

R.H. Mendonca Commissioner of Police and others, . Delay between 20.12.1997 and 16.4.1998 was held reasonably well-explained in that case.

It is held that delay in order to snap the live-link must be between the date of commission of series of incidents to the passing the order of

detention. The Bombay High Court had referred to the ruling in Rajendrakumar Natvarlal Shah Vs. State of Gujarat and Others, which held that

mere unexplained delay will not ipso facto give rise to legitimate inference that the subjective satisfaction arrived at by the District Magistrate was

not genuine or that there was no rational connection between the grounds and the impugned order of detention. Reference may be made to the

ruling in Abdul Salam alias Thiyyan Vs. Union of India and others, , in which delay of one month and five days held was not fatal to the detention

order in disposal of the representation in absence of negligence, callous inaction, avoidable red-tapism.

15. Division Bench of this Court in the ruling in Abdul Nasar Ismail Vs. The State of Maharashtra W.P. no. 2613 of 2012 decided on 23-01-

2012 (authored by one of us Shri A.S. Oka J) succinctly stated in para. 16 thus-

---The settled law seems to be that the test of proximity is not a rigid or mechanical test which can be applied by merely counting number of

months between the offending acts and the order of detention. However, the Court has to scrutinize whether the detaining authority has

satisfactorily examined such delay and afforded a reasonable explanation for the delay. Thereafter the court has to examine whether the casual

connection has been broken in the circumstances of each case.

16. In the ruling in Smt. K. Aruna Kumari Vs. Government of Andhra Pradesh and Others, the Apex Court in Para. 7 observed that the delay

cannot by itself vitiate the decision to detain a person.

7. It is undisputable proposition of law that delay in disposal of representation, though may not be long, is required to be explained satisfactorily,

otherwise it becomes unreasonable. The detaining authority and approving authority concerned must be cautious, reasonably prompt and exhibit

requisite care to consider the representation from the detenu because any unexplained delay may be considered not only as unreasonable for want

of satisfactory explanation, but also a breach of mandate under Art. 22 of the Constitution of India. In such case continuing detention would be

contrary to law. In our view it is only in case where on account of delay, the live-link between the prejudicial activities of the detenu and the

necessity of clamping the detention order on him is snapped, the delay will vitiate the order. If there is material to show that propensity and

potentiality of the detenu to commit prejudicial activities was there even on the date of execution of the order then despite the unexplained delay in

issuance of detention order the live-link between the prejudicial activities of the detenu and rationale of clamping the order of detention will not be

lost. We are not merely concerned with the procedural formalities to issue and execute the preventive detention order but also the merits thereof as

to why it was issued and executed by the detaining authority.

17. Regarding merits of the preventive detention order the Apex Court in the ruling in Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and

another, in Para. 21 observed thus-

21. The rule laid down is that a prosecution or the absence of A it is not an absolute bar to an order of preventive detention; the authority may

prosecute the offender for an isolated act or acts of an offence for violation of any criminal law, but if it is satisfied that the offender has a tendency

to go on violating such laws, then there will be no bar for the State to detain him under a Preventive Detention Act in order to disable him to repeat

such offences. What is required is that the detaining authority is to satisfy the Court that it had in mind the question whether prosecution of the

offender was possible and sufficient in the circumstances of the case. In some cases of prosecution it may not be possible to bring home the culprit

to book as in case of a professional bully, a murderer or a dacoit, as witnesses do not come forward to depose against him out of fear, or in case

of international smuggling, it may not be possible to collect all necessary evidence without unreasonable delay and expenditure to prove the guilt of

the offender beyond reasonable doubt.

18. Learned A.P.P. cited the ruling in Kamarunnissa and Others Vs. Union of India and another, in Para. 7 following observations appears:-

7. It appears that there was postal delay in the receipt of the communication by the detenus but for that the detaining authority cannot be blamed. It

is, therefore, obvious from the explanation given in the counter that there was no delay on the part of the detaining authority in dealing with-the

representations of the detenus. Our attention was drawn to the case law in this behalf but we do not consider it necessary to refer to the same as

the question of delay has to be answered in the facts and circumstances of each case. Whether or not the delay, if any, is properly explained would

depend on the facts of each case and in the present case we are satisfied that there was no delay at all as is apparent from the facts narrated

above. We, therefore, do not find any merit in this submission.

19. It appears from the facts and circumstances of the case that the detaining authority did apply its mind to the material on record to record its

subjective satisfaction as to necessity of the issuance and execution of the preventive detention order and furthermore there was no abnormal delay

to dispose of the representation of the detenu.

20. We have perused the rulings cited. According to learned counsel, since the last crime registered against the detenu on 09-03-2012 the

impugned order of detention was passed after 5 and half months. She submitted that the alleged crimes reported against the detenu were on stale

grounds and the detaining authority have not furnished proper explanation for the delay in issuance of the detention order. Further according to

Mrs. Ansari the sponsoring authority was free to challenge the bail order in the higher court instead of resorting to the law of preventive detention.

She submitted that there was further delay in considering the representation dated 03-11-2012 made through the Superintendent of Jail Nasik

Road Central Prison. It was dispatched on 04-11-2012. The detaining authority is required to send the report to the State Government for

approval of the detention order and such order without the approval of the State Government will remain in force not exceeding 12 days.

21. Mrs. Ansari refereed to the ruling in Pradeep Nikanth Paturkar Vs. S. Ramamurthi and others, . There was delay of five months and 8 days

from the registration of the last case against the detenu and gap of four moths from the date of submission of the proposal. The statements of

witnesses were obtained after the detenu was released on bail in all cases.

22. Learned A.P.P. on the other hand submitted that in fact there was no delay considering the intervening non-working days and holidays as

stated in the affidavits on record and assuming that there was delay it is sufficiently explained by the sponsoring as well as the detaining authority.

23. It is true that Article 22(5) of the Constitution of India imposes an obligation on the authority making an order of preventive detention to

communicate to the person concerned, as soon as may be, the grounds on which such order is made and also to afford him the earliest opportunity

of making a representation against that order (emphasis supplied). This obligation can be meaningful only if such representation is also considered

with the same sense of urgency with which the authority is required to communicate the grounds and afford the early opportunity to the detenu to

meet the grounds stated. The question of the effect of undue delay on the part of the State Government in considering a detenu''s representation

has come up before the Apex Court on frequent occasions. It has been consistently held that no hard and fast line can be drawn and that in each

case it has to be seen if on the facts and circumstances the State Government can be said to have considered the representation with reasonable

dispatch and promptitude realising the importance that our Constitution attaches to an individual''s right to personal liberty.

24. The contentions on behalf of the Petitioner as to delay in passing the order and then for considering the representation cannot be accepted for

justified reasons in the facts and circumstances of the present case stated as under:-

Senior Inspector of Police, Khadak police station, submitted a proposal dated 17-07-2012 for detention of Shri Sahadeo @Sada Laxman

Dhavare under M.P.D.A. Act. Detaining authority after scrutiny of the material produced which included the statement of witnesses recorded in-

camera proceedings, recording subjective satisfaction that the proposed subject detenu is dangerous person and activities of the proposed detenu

were prejudicial to the maintenance of the Public order and necessity to detain him with a view to prevent him from acting in such manner in future,

the impugned detention order was passed directing his detention in Nasik Central prison by a detailed reasoned order(supra). It is alleged that the

detenu became threat to public peace, is of violent nature, tends to use dangerous weapons like swords, knives, sickle fearlessly, indulging in

terrorizing and offensive activity with his associates in the limits of Khadak police station causing fear in the mind of residents in the area and

causing danger to their lives and property. In the past, u/s 56(b) of the Bombay Police Act, pursuant to proposal from the Khadak police station,

the detenue was externed for two years pursuant to order bearing no 02 of 2005 passed by Deputy Commissioner of Police, Zone-1, Pune with

effect from 11-01-2005 and for period of one year with effect from 30-04-2010 (later order was set aside by Bombay High Court in Cri. A. no

16059 of 2010 by order date 07-10-2010). The detenu was also proceeded against in chapter case no. 04 of 2011 u/s 110 (e) and (g) of

Cr.P.C. and on 17-01-2011 was required to execute the bond in the sum of Rs. 10,000/- to maintain peace and good behaviour. The detaining

authority also cited instances in details of the incidents occurred in the recent past when the detenu and his associates using weapons, hurled filthy

abuses at people complaining against him and indulged in offensive acts as below:-

25. Criminal acts recently alleged against the detenu are listed as under:-

Affidavit of the detaining authority made reference to the statement of various witnesses recorded in camera to cite the recent offensive and

terrorizing acts of the detenu and his associates and his subjective satisfaction that the detenu is a dangerous person within meaning of Section 2(b-

1) of the MPDA Act and needed to be detained for maintaining peace and order in the area, the detention order and committal order was served

upon the detenu on 27-08-2012 in Marathi language known to him, on the very day. The detenu made representation dated 03-11-2012 which

was communicated and received on 07-11-2012 in the office of the Commissioner of Police, Pune City through speed post and inwarded

according to procedure on 09-11-2012 before the Deputy Police Commissioner of Police concerned. There were non-working Saturday and

Sunday on 10-11-2012 and 11-11-2012 and Diwali Holidays on 13-11-2012 & 14-11-2012. Thus, parawise comments of the detaining

authority could be prepared on 15-11-2012. Senior P.I. sent para-wise comments on 16-11-2012 to Deputy Commissioner of Police, Zone-1

and on the very day the letter was sent to the Additional commissioner of Police, south region. On 17-11-2012 the letter was received by the

detaining authority. On 18-11-2012 it was holiday as it was Sunday. Thus para-wise comments prepared on 19-11-2012 were forwarded to the

Home Department on 20-11-2012 for further decision by the Government of Maharashtra. The detaining authority also sworn affidavit dated 10-

01-2013 and 08-02-2013 to explain that there was no undue delay to consider the representation of the detenu received on 05-11-2012 through

the Superintendent of Nasik Road Central prison which was, placed before the detaining authority for its para-wise comments, forwarded to the

Deputy Secretary with remarks of the detaining authority, who in turn sent it to the Additional Chief Secretary on 22-11-2012 who after

considering it rejected on 23-11-2012 and communicated to the detenu on 26-11-2012 by the speed post through the Superintendent of Nasik

Central Prison.

26. When we have perused the facts stated in the affidavits sworn before us delay which occurred appears neither deliberate nor intentional. It is

acceptable and understandable in normal course of communications. It appears explained adequately and satisfactorily due to intervening non-

working days and holidays when no official is expected to leave home and attend the office by compulsion.

27. Thus it is clear that there was no unwarranted or unjustified delay in communications made to the detenu in the present case. In our view even if

the ratio from the rulings cited are applied with strictness, the delay was explained sufficiently in the facts and circumstances of the present case.

28. We have carefully considered the contentions advanced on behalf of the detenu. The arguments appeared attractive at the first blush but were

found misconceived and without force in the facts and circumstances of the present case. In our view Preventive detention is not punitive but

precautionary measure. Possibility of criminal prosecution or absence of it is not an absolute bar for Preventive detention. Otherwise valid order

may be rendered invalid due to acts of the detenu to avoid arrest and making himself scarce. Furthermore, every kind of material in possession of

the sponsoring authority need not be placed before detaining authority as observed in the ruling in reported in Vinod K. Chawla Vs. Union of India

(UOI) and Others, as under:-

8. We would like to clarify here that the law does not require that every document or material in possession of sponsoring authority must

necessarily be placed by him before the detaining authority and in every case where any such document or material is not placed by the sponsoring

authority before the detaining authority, the formation of opinion and the subjective satisfaction of the detaining authority would get vitiated.

Vague nature of one of the ground would not vitiate the entire detention order if there are severable grounds. Detention order as a whole is not

invalid as it stands on other ground as held in D. Anuradha Vs. Jt. Secretary and Another, as under:-

It is true that this Court in series of decisions has held that if there is any serious delay in disposal of the representation, the detention order is liable

to be set aside.

Nevertheless, it may be noticed that if the delay is reasonably explained and that by itself is not sufficient to hold that the detenu was bad and

illegal.

In the case in hand we find the exceptionally detailed and reasoned order, listing the criminal acts of the detenu with reference to the details of the

statements of witnesses filthily abused and terrorized by the detenu, exhibited the dangerous tendency of the detenu to use variety of dangerous

weapons like sword, knife, wooden log etc. Reign of terror unleashed by the detenu and his associates. The detaining authority has considered

details of statements made by the four witnesses who came forward and gave statements on condition of anonymity-to keep their names secret.

Normally no one would venture due to fear to come forward to give his statement against the habitual or professional criminal or offender who may

indulge in acts of terrorizing the people in the locality concerned.

29. We have perused the affidavits of Shri P.H. Wagde, Deputy Secretary, Government of Maharashtra, Home Department (Special) Mantralaya,

Mumbai and the detaining authority Shri Gulabrao D. Pol, Commissioner of Police, Pune City, Pune sworn affidavit before us. We find that they

have adequately refuted the contentions advanced on behalf of the detenu. Shri Pol, Detaining Authority sworn on affidavit that he had gone

through the proposal of Preventive detention detenu in this case, carefully considered and scrutinized the material inclusive of in-camera statements

of witnesses and documents placed before him and was subjectively satisfied that the activities of the subject-detenu were prejudicial to the

maintenance of Public order and he was dangerous person within the meaning of M.P.D.A Act. He also stated about the procedural compliance

that the detention order and committal order as also the grounds of detention and the material in support thereof were served upon the detenu and

his signature was obtained in acknowledgement. We find from the affidavits on record that there was substantial compliance of the procedural

requirements to hear the detenu, to furnish the documents and the material relied upon against him, to allow him the opportunity to make

representation. The detaining authority was subjectively satisfied that the detenu is a dangerous person as defined in Section 2(b-1) of the MPDA

Act and his activities had unleashed a reign of terror in the area of Khadak Police Station, Pune and action taken against him under the normal law

was found insufficient and ineffective. Thus it cannot be said that the action of Preventive detention in the present case is based upon the stale

incident. The deponent appears to have gone through the documents, and the statement of witnesses, recorded his subjective satisfaction before

the impugned detention order was issued. Considering the intervening holidays as stated there was no any undue delay to communicate the

decision on representation to the detenu.

30. In the result, we must conclude that all the arguments on behalf of the Petitioner including that there was unexplained delay in issuing the

preventive detention order under the Act and for deciding the representation stood adequately refuted. Genuineness of the in-camera statements of

those who were apprehensive of the detenu to come forward to give evidence and preferring to keep their identity secret, cannot be easily brushed

aside for the purpose of recording subjective satisfaction that the subject is a dangerous person and need to be prevented from indulging in crimes

in the area concerned. The public interest and the due precaution for safety of persons in the area concerned demands that the names of such

witnesses ought not to be disclosed to the detenu for their safety. We do not find any serious infirmity in the subjective satisfaction recorded in this

case which do have co-relevance.

31. For the reasons mentioned aforesaid, we are of the opinion that the grounds canvassed before us so as to challenge the order of preventive

detention in the present case, are not sustainable considering the material placed before the detaining authority, its subjective satisfaction that

detenu is dangerous person and detailed affidavits sworn on behalf of the respondents. The submission on behalf of the detenu that his further

detention cannot continue further must be rejected in the facts and circumstances of the case before us. In sequel to the above discussion, we must

dismiss the Petition and accordingly it is dismissed. Rule is discharged. No order as to costs.