

(2020) 02 BOM CK 0143

In the Bombay High Court

Case No : Criminal Writ Petition No. 93 Of 2020

Sharmin Hussainali Badami

APPELLANT

Vs

State Of Maharashtra & Ors

RESPONDENT

Date of Decision : 24-02-2020

Acts Referred:

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 — Section 3, 3(2)
Indian Penal Code, 1860 — Section 34, 392
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 BOM CK 0143

Hon'ble Judges : S.S. Shinde, J;V.G. Bisht, J

Bench : Division Bench

Advocate : Sandeep R. Waghmare, M.H. Mhatre

Final Decision : Dismissed

Judgement

V.G. Bisht, J

1. Heard.

2. Rule. Returnable made returnable forthwith. By consent of the parties the petition is taken up for final hearing.

3. Through this petition preferred under Article 226 of the Constitution of India, the petitioner who describes herself as mother of the detenu - Zainul

Abbas Shabbir Rajan has impugned the detention order dated 10th October, 2019 passed by Respondent no.2 - Shri Ravindra Sengaonkar,

Commissioner of Police, Railways, Mumbai, detaining the detenu under sub-section (2) 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 as "MPDA Act"). The detention order of (Exhibit-A), Committal order (Exhibit-B) and

grounds of detention order (Exhibit-C) along with documents and statements were served on the detenu on 10/10/2019. True copies of the aforesaid

documents are annexed to this writ petition. The validity of the impugned order has been challenged on various grounds raised in the petition but only

ground pressed into service by learned counsel for the detenu during the course of argument is inordinate and in-excusable delay while issuing the

order of detention.

4. The object and scope of detaining a person under section 3 of MPDA Act is maintenance of public order and tranquility. The detaining authority in

the order of detention has also recorded as under :

"Whereas the Commissioner of Police, Railways, Mumbai is satisfied with respect to the person known as Shri Zainul Abbas Shabbir Rajan, age

29 years, Address " Musa Kasam Building No.3, 3rd Floor, Room No.26, Mumbra Market, Mumbra, Dist.Thane that with a view to prevent him

from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order directing him to be detained under 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, (No.LV of 1981) (Amendment-1996, 2009 & 2015)".

5. Thus, while passing the order of detention, the paramount consideration in the mind of detaining authority was in accordance with section 3 of

MPDA Act as noted hereinabove.

6. Mr.Waghmare, learned counsel for the petitioner, vehemently submitted that there are no sufficient grounds for detention and the only incident

dated 15/08/2019 bearing No.1907/2019 by Dadar Railway police station was taken into consideration by the detaining authority. Apart from that the

impugned order dated 10/10/2019 came to be passed after around two months from the date of incident as well as from the date of arrest of detenu.

Thus, there being inordinate and in-excusable delay it is in itself is ground for setting aside the order of detention.

7. Learned counsel also placed reliance in Pradeep Nilkanth Paturkar vs. S. Ramamurthi and Others AIR 1994 SC 656; Ganesh Sawant vs. L.

Hinglinga and Others Cri.Writ Petition No.548 of 1990 dated 03/08/.1990 and Narendra Balkawade vs. The Commissioner of Police, Pune City Cri.

Writ Petition No.6041 of 2019 dated 09/01/2020.

8. Mrs.Mhatre, learned APP, opposed the submissions by contending that there is absolutely no delay in passing the order of detention and invited our

attention to the affidavit-in-reply wherein it is elaborately explained as to how within reasonable time the order of detention came to be passed.

According to the learned APP there being no merit in the contention as also in the present petition, the same is liable to be rejected.

9. In the light of above submissions, the question which falls for consideration is as to whether the delay in passing the detention order has vitiated the

said order. Before that, it would be apt and useful to note the ratio laid down by the Honâ??ble Apex Court in T. A. Abdul Rahinan vs. State of

Kerala (AIR 1990 SC 225):

â??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 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 casual connection has been broken in

the circumstances of each case.â??

10. Needless to say the delay ipso facto in passing the order of detention after incident is not fatal to detention of a person, for, in certain cases the

delay may not be unavoidable and reasonable. What is necessarily required by law is delay must be satisfactorily explained by the detaining authority.

11. Coming to the case in hand, firstly, it is desirable to go through facts and circumstances leading to passing of detention order and then we will

switch over to alleged ground of delay in passing the same.

12. It is apparent from the reasons for detention (Exhibit-C) served on detenu that the detaining authority has taken into consideration Crime No.A-

1907/2019 registered on 15/08/2019 by Dadar Railway police station, Mumbai. The said crime number deals with section 392 read with 34 of IPC

wherein the statement of material witnesses came to be recorded. Then there are in-camera statements of the witnesses A and B dated

11/9/2019 and 12/09/2019. From in-camera statement of A, it is apparent that the detenu allegedly by putting A under threat of knife

snatched away Rs.1,000/- while statement of B shows similar type of activity at the hands of detenu. The truthfulness of these statements were

duly verified by ACP CSMT Division, Railway Mumbai.

13. It is also worth mentioning that the above said materials were duly placed before the detaining authority and after reaching subjective satisfaction,

the same was referred by ACP, CSMT Division, Railway, Mumbai to the Advisory Board. Therefore, to say that there was no valid ground for

passing of detention order is without any substance.

14. Coming to the aspect of delay, at the outset we make it clear that delay, if any, will have to be reckoned from the date of recording of in-camera

statements. Those statements (A and B) came to be recorded on 10/09/2019 and 11/09/2019 respectively. After recording those in-

camera statements, the proposal for detention of the detenu through proper channel, firstly, was moved before the ACP CSMT, Railways on

16/09/2019 who in turn forwarded the proposal to the Deputy Commissioner of Police on 20/09/2019. It then can be seen from the affidavit in reply

that the said D.C.P. after putting detailed note forwarded it to the ACP (Crime) Railways, who on his part directed Senior Inspector of Police, Crime

to scrutinise the proposal, who carried out same in between 25/09/2019 to 29/09/2019 and then again put his detailed note before A.C.P. (Crime) on

29/09/2019. After putting the endorsement, the same was moved by concerned A.C.P (Crime) to the office of Commissioner of Police on 30/09/2019.

Thereafter, the detaining authority considered the proposal, relevant entire material and documents and after careful scrutiny came to the conclusion

that this is a fit case to issue detention order against the detenu. Accordingly, he gave approval and dictated the grounds of detention on 04/10/2019

and after translating the same, the same was put up before the Senior Inspector of Police (Crime) and on 10/10/2019 the detaining authority passed

the order of detention. If chronology of the events are considered in proper perspective, in our view, there was not such delay as is hyped and made

ground by learned counsel for the petitioner. Therefore, we are constrained to reject the ground of delay.

15. No other point is pressed before us by Mr.Waghmare, learned counsel for the petitioner.

16. We have carefully gone through judgments relied upon by petitioner. Those judgments are almost on the point of delay and in those cases indeed

there was no explanation for the delay. However, as pointed out by us, in case in hand there is no such obtaining situation and in such a situation the

judgments do not in any manner further the case of the petitioner.

17. We, therefore, conclude that no case is made out to cause interference in the impugned order of detention. In the result, this petition is dismissed

and Rule is discharged.