



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION(STAMP) NO. 7365 OF 2023

Mohsin Anwar Khan @ Shaikh

R/o. Jijamata Nagar, Navi Khadki,

Pune.

... Petitioner

vs.

1. Commissioner of Police, Pune.

Agarkar Nagar, Pune City.

2. The State of Maharashtra

Yerwada Police Station, Pune

3. The Superintendent of Jail

Nashik Central Prison, Nashik

... Respondents

Mr Ibrahim Shaikh a/w. Mr Ashraf Ali Shaikh, for the Petitioner.

Mrs. S.D. Shinde, A.P.P for the State.

CORAM : REVATI MOHITE DERE &

GAURI GODSE, JJ.

RESERVED ON : 18th AUGUST, 2023

PRONOUNCED ON : 30th AUGUST, 2023

JUDGMENT (PER: GAURI GODSE, J.) :-

1. This petition is filed to challenge the order of detention dated 24th February 2023, passed by respondent No.1 – The

Commissioner of Police, Pune, in the exercise of power conferred 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 Essential Commodities Act, 1981 ('MPDA Act') for detaining the petitioner.

2. Perusal of the order of detention indicates that the detaining authority has relied upon C.R No. 516 of 2022, dated 4th November 2022, registered against the petitioner for the offences punishable under sections 307, 504, 506 of the Indian Penal Code and under sections 37(1)(3)/135 of Maharashtra Police Act and under section 4(25) of the Arms Act. The allegations against the petitioner in the said CR are that the petitioner had abused and threatened the complainant and tried to assault the complainant by using weapons. In the said CR, the allegation against the petitioner is that when the complainant was returning home, he saw the petitioner with an axe trying to assault a local resident and when the complainant questioned the

petitioner as to why he was abusing the local resident, the petitioner threatened him. It is further alleged that on the same day again, the petitioner approached the complainant armed with an axe and started abusing the complainant and tried to assault the complainant and thus the complainant, out of fear started shouting. Hence, the petitioner brandished an axe on the complainant's head which he defended, however, was hurt in the said attack. It is further stated that everyone in the locality tried to prevent the petitioner, however, he threatened everyone by waving an axe in the air and thus, out of fear, everyone ran away. It is further the case of the complainant that the parents of the complainant, who had come to rescue the complainant also ran away to save their life. The detaining authority has further recorded that during the investigation of the said CR, statements of the witnesses were recorded, spot panchanama, memorandum of panchanama was also made and the petitioner was arrested on 4th November 2022 and was remanded to police custody and further to magistrate custody. The order of detention further indicates that the petitioner was granted bail on 7th February 2023. Charge-sheet in the said case was submitted on 31st

January 2023 and the same is pending trial.

3. The detaining authority further relies upon two in-camera statements recorded on 10th January 2023 and 14th January 2023, referring to the incidents of 5th October 2022 and 23rd October 2022, respectively. The witnesses of the in-camera statement made allegations against the petitioner that he brandished iron koyta on the front glass of his vehicle and broke it and thereafter assaulted the complainant and forcibly extorted money from the complainant. Similar allegations are made by the second witness of the in-camera statement. It is alleged by the witness of the second in-camera statement that the petitioner had assaulted the witness by raising a sword at him and threatened him. Thus, detaining authority by relying on the aforesaid CR as well as the in-camera statements recorded subjective satisfaction that since the petitioner is a dangerous person as defined under the MPDA Act and the petitioner's activities are prejudicial to the maintenance of the public order. The order of detention further records that since the petitioner is released on bail, considering the inclinations reflected in the offences committed by the

petitioner, and the incidents recorded in the in-camera statements, his activities are prejudicial to the maintenance of public order in future, and thus, it is necessary to detain the petitioner.

4. The learned counsel for the petitioner has raised various grounds to challenge the order of detention. However, has pressed into service, the grounds raised in clauses (E), (Z) and (BB) of paragraph 14 of the petition, which reads as under:

“E. The Petitioner further submits that, the eye witnesses of the above alleged offence namely Umar @ Pappu Riyaz Khan & Shahrukh Firoz Khan are themselves culprits as they have been constantly abusing, harassing and assaulting the mother of the Petitioner as a result of which the mother of the Petitioner had time and again filed multiple NC against them and their entire family for offence punishable under sections 323, 504, 506, 420, etc. This shows that the said witnesses were already having grudge and enmity against the Petitioner and his family and therefore this false and frivolous case is registered against the

innocent Petitioner merely to harass him and his family. (Hereto marked and annexed the copies of the NC's lodged by the mother of the Petitioner against the witnesses in the above matter as 'Exhibit-B-Colly').

Z. The statements of the in-camera witnesses cannot be relied upon, since the alleged incidents are having a huge delay being dated back to 4 months, 19 days & 4 months, 1 day respectfully, of issuing the order of detention against the Petitioner. Moreover, the period between recording the statements and the date of detention order has a huge unexplained gap.

BB. The activities of the Petitioner are not prejudicial to the maintenance of public order since all the offences mentioned in the detention order are allegedly committed against independent individuals and not public at large, hence the said claim does not fulfill the requirement of Sec. 2(a)(iv) of the said Act.”

5. The learned counsel for the petitioner submitted that the alleged incident relied upon by the detaining authority is prior to

more than four months of the detention order and the in-camera statements cannot be relied upon as the period between the recording of the statements and the date of the detention order has an unexplained gap. Learned counsel further submitted that the allegations against the petitioner do not amount to any prejudicial activities having threat to maintenance of public order as the allegations against the petitioner are against individuals and not towards the public at large. He further submitted that eye witnesses with respect to the allegations made against the petitioner in the said CR are themselves culprits, and they have assaulted the mother of the petitioner, and thus multiple complaints are filed against them and their entire family. Learned counsel, thus, submitted that the witnesses in the said CR were already having a grudge against the petitioner and their family and hence filed a complaint against the petitioner.

6. Learned counsel, therefore, submitted that the order of detention is vitiated on the ground of delay and that the allegations against the petitioner are individual in nature, which does not create any threat to the public at large. He therefore

submitted that the continued detention of the petitioner is illegal and the order of detention be quashed and set aside, and the petitioner be released forthwith. In support of his submissions, the learned counsel relied upon the decision of this Court in the case of *Rashid Sahukat Husain Sayyed@ Jagga v/s the State of Maharashtra and others*¹

7. Learned APP supports the order of detention by relying upon the affidavit dated 16th May 2023 of Retesh Kumaarr, Commissioner of Police, Pune City, affidavit dated 14th June 2023 of Anil Eknath Kulkarni, Government of Maharashtra, Home Department(Special), Mantralaya, Mumbai as well as the additional affidavit dated 31st July 2023 of Retesh Kumaarr, Commissioner of Police, Pune City. By relying upon the aforesaid affidavits, the learned APP submitted that there is no delay in the issuance of the detention order as contended by the petitioner. She submitted that after the in-camera statements were recorded on 10th January 2023 and 14th January 2023, Sponsoring Authority submitted the proposal on 20th January 2023 to the Assistant Commissioner of Police, Yerwada Police Station, for

¹ 2018(2) AIR Bom. R(Cri) 300

verification of the in-camera statements. She relied upon paragraph no. 7 of the additional affidavit dated 31st July 2023 filed on behalf of the Commissioner of Police, Pune City. Learned APP, thus, submitted that all the steps taken are explained in the said affidavit. She submitted that due to G-20 Summit to be held on 15th January 2023 to 17th January 2023 in Pune, preparation of bandobast started on 12th January 2023 and ended on 19th January 2023. There were public holidays on 21st January 2023 and 22nd January 2023, and thus on 23rd January 2023, the Assistant Commissioner of Police, Yerwada Division, Pune, personally visited the spots mentioned in the in-camera statements and thereafter verified the genuineness and truthfulness of the statements of in-camera witnesses on 24th January 2023 and forwarded the copy of proposal along with the compilation of documents to the Deputy Commissioner of Police, Zone IV, Pune. Thereafter, due to the Republic Day celebration on 26th January 2023, there was heavy bandobast. Thus, the Deputy Commissioner of Police went through all the papers and, after perusal and scrutiny, endorsed the proposal on 27th January 2023. Thereafter, the proposal was forwarded to the

Additional Commissioner of Police, East Region, on the same day, who endorsed the same after careful consideration on 31st January 2023 and forwarded the same to the Senior Inspector of Police(Preventive Crime Branch) on 1st February 2023 as there was a holiday on 29th January 2023 being Sunday.

8. Learned APP thus submitted that 5th February 2023 was a holiday, and other two proposals were also pending for scrutiny, the Senior Inspector of Police(Preventive Crime Branch), after scrutinising the proposal, submitted a report to the Assistant Commissioner of Police Crime-I on 6th February 2023. As the ACP Crime-I was busy in the investigation of the two MCOC cases, and in bandobast, the endorsement was made by the Assistant Commissioner of Police on 10th February 2023. Thereafter, the file was placed before the Deputy Commissioner of Police on 11th February 2023; there was a holiday on 12th February 2023 being a Sunday. The Deputy Commissioner of Police Crime scrutinised and considered the proposal and endorsed on the proposal on 15th February 2023, and thereafter on the same day proposal was placed before the Additional

Commissioner of Police, Crime, who endorsed it on 18th February 2023. The said affidavit further indicates that due to Shiv jayanti bandobast, Additional Commissioner of Police, Crime was busy in bandobast and hence proposal, along with the documents were forwarded to the Joint Commissioner of Police, and he made his endorsement on 21st February 2023 and finally entire file was placed before the detaining authority on 22nd February 2023. Thus, the detaining authority, after perusing and scrutinising the entire record, reached to subjective satisfaction and passed an order of detention on 24th February 2023. Learned APP, thus submitted that there is no delay in issuance of the order of detention.

9. With respect to the other two grounds of challenge raised by the learned counsel for the petitioner are concerned, learned APP submitted that the allegations against the petitioner are of extortion. Incidents narrated by the witnesses specifically recorded in the statements show that the petitioner has created terror and fear amongst the public. She therefore submitted that there is no substance in the submission made on behalf of the

petitioner that the allegations against the petitioner are individual in nature and are not against the public at large. With respect to the ground of challenge as raised in clause (E) is concerned, the learned APP submitted that the said ground pertains to the merits of the CR registered against the petitioner, and hence, the same cannot be considered as a ground of challenge to the order of detention. Learned APP, thus, supported the order of detention and submitted that there is no substance in the grounds raised by the petitioner. In support of the submissions, learned APP relied upon the decision of this Court in the case of *Nagnarayan Saryu Singh Vs. A. N. Roy & Ors.*²

10. We have considered the submissions made by both parties. We have perused the papers. A perusal of the detention order reveals that the CR registered against the petitioner and two in-camera statements are relied upon by the detaining authority for passing the detention order. For considering the ground raised by the learned counsel for the petitioner that there is a delay in the issuance of the detention order, it is necessary to note the following dates:

² 2006 ALL MR (Cri) 2147

- ◆ 5th October 2022
23rd October 2022: Dates of incidents and referred to in the in-camera statements
- ◆ 4th November 2022: CR No. 516/2022 is registered against the petitioner for the offences punishable under sections 307, 505, and 506 of IPC, sections 37(1)(3)/135 of Maharashtra Police Act and under section 4(25) of the Arms Act. On the same day, the petitioner was arrested.
- ◆ 10th January 2023
and 14th January 2023: In-camera statements were recorded.
- ◆ 20th January 2023 : Proposal was submitted by the sponsoring authority.
- ◆ 7th February 2023 : The petitioner was released on regular bail with reference to the aforesaid CR.
- ◆ 24th February 2023: Order of detention was passed.

11. Perusal of the aforesaid dates and events show that the in-camera statements were recorded when the petitioner was in custody. The incidents referred to in the in-camera statements are

prior to the date of the registration of the aforesaid CR and the date of arrest of the petitioner. A perusal of the dates and events referred to in paragraph 7 of the additional affidavit dated 31st July 2023 filed by the Commissioner of Police, Pune City, explains in detail the steps taken after the Sponsoring Authority submitted the proposal on 20th January 2023. Though the date of the incident i.e. registration of CR as well as the incidents of in-camera statements, have occurred in the month of October and November 2022, the in-camera statements were recorded on 10th January 2023 and 14th January 2023 when the Petitioner was in custody. The proposal was submitted on 20th January 2023.

12. The said additional affidavit explains in detail all the steps taken on various dates for verification of the in-camera statements and further scrutiny. The explanation in the said paragraph is satisfactory. Thus, there is no merit in the submissions made on behalf of the petitioner that there is a delay in the issuance of the detention order.

13. The decision of this court in the case of *Rashid Sahukat Husain Sayyed @ Jagga* relied upon by the learned counsel for

the petitioner is of no assistance to the petitioner, in view of the different facts in the present case. A perusal of the facts of the said case reveals that the explanation given by the detaining authority with respect to the steps taken was not accepted by this Court, and hence, the ground of challenge raised on the basis of delay in issuance of the detention order was accepted. This Court, in the said decision, recorded that there was no explanation for the delay, and the explanation provided was vague and general in nature. Thus, the decision in the case of *Rashid Sahukat Husain Sayyed @ Jagga* relied upon by the learned counsel for the petitioner is of no assistance in the facts of the present case.

14. In the case of *Nagnarayan Saryu Singh*, the detaining authority had relied upon a CR dated 19th January 2005; where the detenu was granted bail on 29th January 2005; incidents of in-camera statements were of February 2005; the in-camera statements were recorded on 24th, 25th, 26th, and 27th May 2005 and on the basis of proposal dated 30th May 2005, detention order was passed on 22nd June 2005. Hence, the ground of

challenge raised by the detenu was that there was delay of more than four months from the date of CR and incidents of in-camera statement, in issuing detention order. Thus, this Court while considering the challenge to the detention order on the ground of delay held that unless the in-camera witnesses had indeed suffered at the hands of the detenu, there would be no reason for the witnesses to come forward and give statements against the detenu. This Court held that verification of in-camera statements by an officer of the rank of the Assistant Commissioner of Police would provide a sufficient check and would lend sufficient assurance that the statements are genuine. This Court, after referring to various steps taken by the detaining authority held that the delay will have to be computed from the date of the last material came to be known to the sponsoring authority by way of in-camera statements recorded on 27th May 2005 and the proposal was dated 30th May 2005 based on which the order of detention was issued on 22nd June 2005. Thus, by referring to the aforesaid, this Court held that the order of detention would not stand vitiated on the ground of delay.

15. In the present case, detention order is passed within one month and ten days of the last in-camera statement recorded. The detaining authority in the additional affidavit has in detail explained the various steps taken for verification and scrutiny of the in-camera statements and the proposal of the sponsoring authority. Thus, the relevant dates and events of the present case, coupled with the fact that the in-camera statements are recorded when the petitioner was in custody, supports the genuineness of the in-camera statements. Considering the facts of the case, it cannot be said that the incidents are stale or that the live link between the prejudicial activities and the order of detention is snapped. Thus, considering the facts of the present case, the principles of law laid down by this Court in the case of *Nagnarayan Saryu Singh* are squarely applicable.

16. So far as the grounds raised with respect to the allegations against the petitioner being individual in nature and not against the public at large is concerned, we do not find any merit in the same. A perusal of the detention order reveals in detail the nature of the allegations against the petitioner. We have already

referred to in detail the allegations against the petitioner as reflected in the detention order. Perusal of nature of allegations against the petitioner cannot be termed as only law and order problem, but the same are a public order situation as correctly assessed by the detaining authority, as is required to safeguard and protect the interest of public. Perusal of the incidents mentioned in the ground of detention substantiates the subjective satisfaction arrived at by the detaining authority as to how the activities of the petitioner are prejudicial to the maintenance of the public order. Hence, there is no substance in the ground raised on behalf of the petitioner that the allegations against the petitioner are individual in nature and not against the public at large.

17. So far as the ground raised in clause (E) is concerned, the learned APP is right in submitting that the same is with respect to the merits of the CR, and hence, the same cannot be a ground of challenge to the detention order. The submissions made on behalf of the petitioner in the ground of challenge as raised in clause (E) of the petition are purely with regard to the merits of

the allegations against the petitioner in the CR registered against him. The detention order reveals that the charge-sheet is already filed in the said case and the same is pending trial. It is settled law that the merits of the allegations in the CR registered against the detenu cannot be a ground of challenge to the detention order. Hence, there is no substance in the ground raised in clause (E) of the petition.

18. Thus, for the reasons recorded above, we do not find any merits in the grounds of challenge raised by the petitioner.

19. Hence, the petition is dismissed. Rule is discharged.

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)