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

CRIMINAL WRIT PETITION NO. 1590 OF 2023

Akshay Mukund Gaikwad
Age: 25 years R/o Bldg. No. 15
Room No. 420, Ankush
Anand Society, Siddharth
Nagar, Ota Scheme, Nigdi,
Pune (At present lodged at
Yerwada Central Prison Pune) ...Petitioner

Versus

1. Commissioner of Police
Pimpri Chinchwad
2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department,
Mantralaya, Mumbai
3. The Superintendent
Yerwada Central Prison, Pune. ...Respondents

Ms. Jayshree Tripathi Advocate for the petitioner
Ms. M. H. Mhatre, APP for the State

**CORAM: REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 20th JULY 2023.

JUDGMENT: (PER: GAURI GODSE, J.)

1. By this petition, the petitioner prays for quashing and setting aside the order of detention bearing No. OW. No./PCB/DET/14/2023 dated 27th January 2023 issued 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 passed by respondent no. 1-Commissioner of Police, Pimpri Chinchwad, for detaining the Petitioner.

2. The order of detention is passed by relying upon two CRs registered against the petitioner vide CR No. 443 of 2022 dated 15th June 2020, for the offences punishable under sections 324, 323, 504 read with 34 of the Indian Penal Code and CR No. 742 of 2022 dated 25th October 2022 for an offence punishable under sections 394 of the Indian Penal Code read with section 4(25) of Arms Act. The detaining authority has further relied upon two in-camera statements recorded on 31st October 2022 and 5th November 2022, referring to incidents that occurred in the last week of September 2022 and on 24th October 2022,

respectively. The detaining authority, by relying upon the aforesaid two CRs and two in-camera statements, has recorded a subjective satisfaction for holding that the allegations against the petitioner are serious in nature and indicates the tendencies and inclination of the petitioner to perpetuate criminal activities which are prejudicial to the maintenance of public order and therefore, issued the order of detention for detaining the petitioner.

3. The petitioner has raised various grounds for challenging the order of detention; however, it is not necessary to consider all the grounds raised by the petitioner, in as much as the petition ought to succeed only on the grounds raised in clauses (e) of paragraph 5 of the petition which read as under:

“(e) The petitioner says and submits that a representation of the petitioner dated 17.02.2023 was sent to the Superintendent Yerwada Central Prison, Pune for further sending it to the State Government for expeditious consideration, revoke and communication. The petitioner says and submits that so far no communication has been received from the State Government as regards to the

consideration of the said representation by the State Government, thereby the State Government has delayed in considering the representation of the petitioner expeditiously and diligently and communicating the result to the petitioner. All respective authorities are called upon to explain the delay, if any, occurred from the date of representation till today to the satisfaction of this Hon'ble Court failing which the continued detention will be held as illegal and bad in law, liable to be quashed and set aside.”

4. Learned counsel for the petitioner submitted that the representation was received by the State Government on 21st February 2023; however, the same was decided only on 3rd April 2023, after more than a month and ten days. She submitted that the State Government has only explained the time taken after receiving the parawise remarks from the detaining authority on 29th March 2023. The State Government has not given any satisfactory explanation for keeping the representation pending from 21st February 2023 till 29th March 2023. The only explanation given by the State Government is that though parawise remarks from the detaining authority were called for on 21st February

2023, the same was received only on 29th March 2023. The affidavit filed on behalf of the detaining authority does not mention any reason for not sending the parawise remarks immediately. The State Government rejected the representation on 3rd April 2023. She thus submitted that the unexplained delay in deciding the representation has rendered the order of detention illegal and bad in law and hence liable to be quashed and set aside.

5. Learned APP supported the order of detention by relying upon the affidavit dated 13th May 2023 of Rani Bhosale, Superintendent, Yerawada, Central prison, affidavit dated 1st June 2023 of Mr. Anil Eknath Kulkarni, Joint Secretary, Government of Maharashtra, (Special) and affidavit dated 14th June 2023 of Mr. Vinay Kumar Choubey, Commissioner of Police, Pimpri Chinchwad on behalf of the detaining authority. The Learned APP submitted that the State Government had immediately called for parawise remarks from the detaining authority; however, the same were received only on 29th March 2023. Thereafter the concerned Assistant Section Officer submitted the file containing remarks along with the representation to the Section Officer on 29th

March 2023. Thereafter 30th March 2023, being a holiday, Section Officer endorsed the papers on 31st March 2023 and forwarded it to the Joint Secretary (In-charge) on the same day. She submitted that the Joint Secretary In-charge had endorsed it on the same day, i.e. on 31st March 2023, and forwarded it to the Additional Chief Secretary (Home). However, 1st April 2023 (Saturday) and 2nd April 2023(Sunday) being holidays, Additional Chief Secretary (Home) considered the remarks of the detaining authority and rejected the representation on 3rd April 2023. The learned APP thus submitted that immediate steps were taken to decide the representation, and there is no delay. Thus, there is no substance in the ground of challenge raised on behalf of the Petitioner.

6. We have considered the submissions made by both parties. We have perused the papers of the petition as well as the affidavits relied upon by the learned APP. For considering the ground of challenge raised on behalf of the petitioner, it is necessary to consider the relevant dates as follows:

- 27th January 2023: the order of detention was issued.

- 17th February 2023: the petitioner filed his representation to the jail authorities.
- 21st February 2023: the jail authorities received the representation, and after taking the signature of the petitioner, it was forwarded to the State Government on the very same day. State Government on the very same day called for the remarks from the detaining authority.
- 29th March 2023: Para-wise remarks from the detaining authority were received by the State Government.
- 3rd April 2023: Representation was rejected.

7. By referring to the aforesaid dates, learned counsel for the petitioner submitted that the delay from 21st February 2023 till 29th March 2023 is not explained by the State Government for keeping the representation pending. A perusal of the reply submitted on behalf of the State Government indicates that the State Government had called for parawise remarks from the detaining authority on 21st February 2023; however, the same were received on 29th March 2023. The affidavit filed on behalf of the detaining authority indicates that parawise comments were prepared and forwarded to the State Government on 29th March

2023. The State Government rejected the representation on 3rd April 2023. Except for indicating the aforesaid dates, no explanation has been given for not forwarding parawise remarks immediately. A perusal of the affidavit on behalf of the State Government explains only the time taken after 29th March 2023 to decide the representation on 3rd April 2023.

8. Thus, the affidavit filed on behalf of the State Government shows that the only reason for keeping the representation pending from 21st February 2023 till 29th March 2023 is sought to be explained on behalf of the State Government only for want of parawise remarks from the detaining authority. Thus, it is apparent that there is a delay of almost one month and ten days in deciding the representation of the petitioner on 3rd April 2023. The affidavit filed on behalf of the State Government and the detaining authority shows that after receiving the intimation from the State Government calling for parawise remarks, the detaining authority forwarded the parawise remarks after a period of one month and eight days. The State Government, after receiving the parawise remarks, decided the representation within a period of four days. However, after receipt of the representation, the State Government kept

the representation pending for more than a month only on the ground of want of parawise remarks from the detaining authority.

9. Learned counsel for the petitioner has relied upon the decision of this Court in the case of *Rushikesh Sunil Bagul Vs. Commissioner of Police, Pune City and others*¹ in support of the ground raised by the petitioner for challenging the order of detention. In the case of *Rushikesh Bagul*, this Court has relied upon the decision of the Hon'ble Supreme Court in the case of *Rajammal Vs. State of Tamil Nadu and Another*² and *Harish Pahwa Vs. State of U.P. and others*, and have held that keeping the representation pending for want of parawise remarks from the detaining authority renders the order of detention unconstitutional. Thus, in the said decision, this Court held that unexplained delay in deciding the representation results in continued retention of the detenu illegal and impermissible, thereby violating the Constitutional right under Article 22(5) of the Constitution of India.

10. The facts of the case in the decisions of the Hon'ble Supreme

¹ Criminal Writ Petition No. 1031 2023 dt. 8th June 2023

² 1999 (1) LJ (SC) 265

Court, as well as this court referred to and relied upon in the case of *Rushikesh Bagul*, are similar to the facts of the present case. In the present case, the representation of the petitioner was not decided in time for want of parawise remarks from the detaining authority. In the present case, there is a delay of one month and eight days in sending the parawise remarks, and there is a delay of more than one month and ten days in deciding the representation. On perusal of the undisputed facts of the present case, as referred to herein above, we find that after the representation was forwarded to the State Government, there was a delay by the detaining authority in preparing and sending the parawise remarks. The delay in receiving the parawise remarks has resulted in the delay in deciding the representation.

11. Considering the aforesaid facts, we find that there is no satisfactory explanation given on behalf of the State Government for keeping the representation pending. In our view, keeping the representation pending will render the detention order unconstitutional and shall result in the continued detention of the petitioner, illegal and impermissible. Thus, in the present case, there is violation of the petitioner's right under Article

22(5) of the Constitution of India. For the reasons stated above, the petition is allowed by passing the following order.

ORDER

- i. The petition is allowed and Rule is made absolute in terms of prayer clause 'b', which reads as under:-

“b. The order of Detention bearing No. OW No./PCB/DET/14/2023. Pimpri Chinchwad dated 27.01.2023 issued under Section 3 of M.P.D.A. Act 1981 by the Respondent No. 1 be quashed and set aside and on quashing the same the Petitioner be ordered for release forthwith.”

- ii. The petitioner be released forthwith, if not required in any other case.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.