



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

CRIMINAL WRIT PETITION NO. 2873 OF 2023

Ashwini Ganesh Waghmare
Inhabitant, residing at Rukmini Apartment,
Nawale Colony, Nashik. ... Petitioner

vs.

1. The State of Maharashtra
Through Secretary Home
Department (Special)
Mantralaya, Mumbai – 400 032.
2. Ankush Shinde,
The Commissioner of Nashik City,
Nashik.
3. The Superintendent of Nashik Road
Centre Prison, Nashik. ... Respondents

Mrs. Aisha Z. Ansari a/w. Mrs. Nasreen Ayubi for the Petitioner.
Mr. J.P. Yagnik, APP for the State.

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

DATED : 9th OCTOBER 2023

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

1. This petition is filed to challenge the order dated 4th May 2023, passed by respondent no. 2-Commissioner of Police, Nashik City, in exercise of the 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's husband – Ganesh @ Chakulya Madhukar Waghmare.

2. A perusal of the detention order indicates that the detaining authority has relied upon five complaints registered against the detenu, which are as follows:

I) CR No. 406 of 2022 dated 31st December 2022 for offences punishable under sections 452, 427, and 34 of the Indian Penal Code.

II) CR No. 71 of 2023 dated 14th February 2023 for the offences punishable under sections 324, 452, 504, 427, and 34 of the Indian Penal Code.

III) CR No. 73 of 2023 dated 15th February 2023 for the offences punishable under sections 326, 323, 504, 506, and 34 of the Indian Penal Code.

IV) CR No. 114 of 2022 dated 13th March 2023 for the offences punishable under sections 336, 504, 506, 427, and 34 of the Indian Penal Code read with section 135 of the Maharashtra Police Act.

V) CR No. 116 of 2023 dated 14th March 2023 for the offences punishable under sections 3/25, 4/25 of the Arms Act read with 135 of Maharashtra Police Act.

3. The detaining authority has also relied upon the in-camera statements of two witnesses. Thus, the detaining authority by relying upon the aforementioned CRs and in-camera statements of two witnesses, recorded a subjective satisfaction for detaining the petitioner's husband to prevent him from indulging in any prejudicial activity in future.

4. Learned counsel for the petitioner has raised various grounds to challenge the detention order; however, has pressed into service the ground raised in clause (x) of paragraph 5 of the petition, which reads as under:

“(x) The Petitioner says and submits that the detenu is submitting representation to the Nasik Road Central Prison where he has been detained which is addressed to the State Government. The Petitioner says and submits that on this Petition being admitted and Rule Nisi being issued, it will be incumbent upon the State Government to satisfy this Hon'ble Court whether any para wise comments were called from the sponsoring authority, if called when it has been called and that as to when the said para wise

comments were received by the State Government and also by which mode of communication it was sent. The State Government should disclose to this Hon'ble Court as when the representation was considered and as to when the result of the consideration was communicated to the detenu. The prison authority should disclose to this Hon'ble Court that the representation of the detenu was sent to the authority concerned without any delay or loss of time and also the prison authority should disclose to this Hon'ble Court as to by which mode of communication it was sent to the State Government.

The Petitioner says and submits that the prison authority should disclose to this Hon'ble Court whether the result of consideration of representation has been communicated to the detenu without any delay or loss of time, on the failure of the State Government and prison authority to satisfy this Hon'ble Court on the aforesaid count, the continued detention of the detenu be held as having been vitiated.”

5. Learned counsel for the petitioner submitted that the representation of the detenu was received by the State

Government on 18th August 2023. The State Government, on the same day, called for parawise remarks from the detaining authority. She submitted that the detaining authority received the communication from the State Government on 18th August 2023; however, the parawise remarks were forwarded by the detaining authority to the State Government on 28th August 2023. Learned counsel further submitted that after receiving the parawise remarks, the representation was processed further by the State Government, and it was rejected on 1st September 2023. The learned counsel for the petitioner submitted that the State Government has not explained the delay from 18th August 2023 to 31st August 2023 in deciding the representation. She submitted that except for keeping representation pending for want of parawise remarks from the detaining authority, the State Government has not come forward with any explanation for keeping the representation pending. She further submitted that the detaining authority has not explained the delay in forwarding parawise remarks as requested by the State Government.

6. The learned counsel, thus, submitted that keeping the representation pending for want of parawise remarks from the detaining authority has rendered the continued detention of the petitioner illegal and impermissible. She, therefore, submitted that the detention order be quashed and set aside and the petitioner be released forthwith.

7. Learned APP supported the detention order by relying upon the respective affidavits filed on behalf of the detaining authority and the State Government. Learned APP submitted that the detenu signed his representation before the jail authorities on 17th August 2023. She submitted that the State Government received the representation on 18th August 2023, and immediately on receiving the representation, the State Government had called for parawise remarks from the detaining authority and after receiving parawise remarks in the late evening of 28th August 2023, the Assistant Section Officer submitted the concerned file along with parawise comments before the Section Officer on 29th August 2023. She further submitted that the

Section Officer endorsed the file on 31st August 2023 and forwarded it to the Deputy Secretary (In- charge) on the same day. Thereafter, the Deputy Secretary (In-charge) endorsed the file on 31st August 2023 and forwarded it to the Additional Chief Secretary (Home) on the same day. She further submitted that the Additional Chief Secretary (Home), after considering the remarks of the detaining authority, decided the representation on 1st September 2023. Learned APP, thus, submitted that the representation is decided as expeditiously as possible, and there is no delay in deciding the representation as sought to be contended on behalf of the petitioner. Learned APP, therefore, submitted that there is no substance on the ground raised on behalf of the petitioner.

8. We have considered the submissions made by both the parties. We have perused the record of the petition as well as affidavits relied upon by the learned APP. There is no dispute that the representation of the detenu was kept pending by the State Government from 18th August 2023 till 28th August 2023 only for

want of remarks from the detaining authority. After receiving the parawise remarks, the representation of the detenu is decided immediately. However, except keeping the representation pending for want of parawise remarks from the detaining authority, there is no other explanation forthcoming on behalf of the State Government for keeping the representation pending for 10 days i.e. from 18th August 2023 till 28th August 2023. Thus, the representation of the petitioner was kept unattended for a period of 10 days for want of parawise remarks from the detaining authority. Except for the want of parawise remarks, there is no explanation given by the State Government for keeping the representation pending from 18th August 2023 till 28th August 2023.

9. The affidavit-in-reply filed on behalf of the detaining authority is bereft of any explanation for not sending the parawise remarks immediately. A perusal of the affidavit-in-reply submitted on behalf of the State Government indicates that the parawise remarks were called for from the detaining authority on

18th August 2023, which were received on the evening of 28th August 2023. The affidavit-in-reply further indicates that, thereafter, immediate steps were taken to decide the representation. The explanation in the affidavit-in-reply on behalf of the State Government refers to only the steps taken after receipt of the parawise remarks. Except for the explanation that parawise remarks were called for from the detaining authority, there is no other explanation forthcoming on behalf of the State Government for keeping the representation pending for a period of 10 days. Thus, it is apparent that there is an unexplained delay of more than 10 days in deciding the detenu's representation on 1st September 2023.

10. The State Government, after receiving the parawise remarks, has decided the representation in 3 days. However, the delay of 10 days for keeping the representation pending from 18th August 2023 to 28th August 2023 is not explained by the State Government. It is well well-settled principle of law that any unexplained delay in deciding the representation results in

continued detention of detenu illegal and impermissible, thereby violating the rights under Article 22(5) of the Constitution of India.

11. In the aforesaid facts, it is necessary to refer to the decision of the Hon'ble Supreme Court in the case of ***Harish Pahwa Vs. State of U.P. and Others***,¹ where it was held that delay in considering representation caused in soliciting comments from other departments and allowing the representation to lie unattended would render the detention unconstitutional. The Hon'ble Supreme Court, in the case of ***Harish Pahwa***, in paragraph 5, has held as under:

“5. In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of representations made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on June 4, 5 and 25, 1980. It is also not clear what consideration was given by the government to the representation

¹ (1981) 2 SCC 710

from June 13, 1980 to June 16, 1980 when we find that it culminated only in a reference to the Law Department, nor it is apparent why the Law Department had to be consulted at all. Again, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it)

until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith.

Emphasis Applied

12. This Court, in the case of ***Riyaz Ahmed Batatawala Vs. The State of Maharashtra and Others***² have relied upon the principles laid down by the Hon'ble Supreme Court in the case of ***Harish Pahwa*** and held that continuation of order of detention stands vitiated, when delay in submitting parawise comments is not satisfactorily explained. This Court thus allowed the petition in the said case, by holding that Constitutional safeguard under clause 5 of the Article 22 of Constitution has been violated.

13. In the present case, it is not disputed that the representation was kept pending for more than 10 days only for want of parawise comments from the detaining authority. There is no explanation coming forthwith from the detaining authority for

² 2015(2) BOM CR 599 (CRI)

not forwarding the parawise comments immediately. Thus, in the facts of the present case, the principle of law laid down in the aforesaid decision is squarely applicable to the present case.

14. Considering the aforesaid facts, we find that there is no satisfactory explanation given for keeping the representation pending. Thus, in our view, keeping the representation pending for want of parawise remarks from the detaining authority has rendered the detention order unconstitutional. The unexplained delay in deciding the representation has rendered the continued detention of the detenu illegal and impermissible. Thus, there is a violation of detenu's right under Article 22(5) of the Constitution of India.

15. Hence, for the reasons stated above, following order is passed :

- (i) The Petition is allowed and Rule is made absolute in terms of prayer clause (a);
- (ii) The order of Detention dated 4th May, 2023 bearing

No. 2023/MPDA/DET-03/CB-33 passed by the respondent No. 2 as against the Detenue – Ganesh @ Chakulya Madhukar Waghmare 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, is quashed and set aside;

(iii) The Detenue – Ganesh @ Chakulya Madhukar Waghmare 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.)