

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.850 OF 2015

Shailesh s/o. Dnyaneshwar Kedar
aged 26 years, r/o. Santi Road,
Itwari, P.S. Lakadganj, Nagpur City
(At present detained at Nashik Road
Central Prison, Nashik)

...Petitioner.

versus

1. The Commissioner of Police
Nagpur city.
2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department
Mantralaya, Mumbai)
3. The Superintendent
Nashim Road Central Prison,
Nashik.

..Respondents.

.....
Mr. U.N. Tripathi for the Petitioner.
Mrs. P.H. Kantharia, APP for the State.

.....
CORAM : B.R. GAVAI &
A.S. GADKARI, JJ.

Judgment reserved on : 30th April, 2015.

Judgment pronounced on : 8th May, 2015.

JUDGMENT (PER A.S. GADKARI, J.) :

The Petitioner has filed the present Writ Petition for a writ of Habeas Corpus thereby challenging the order dated 23rd November,

2014 bearing D.O.No.DET/MPDA/Zone-III/PCB/11/2014 passed by the Respondent No.1 in exercise of the powers conferred by Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (for short 'the M.P.D.A. Act') thereby directing the Petitioner to be detained, with a view to preventing him from acting in any manner prejudicial to the maintenance of the public order.

2. The circumstances under which the impugned detention order dated 23rd November, 2014 was issued and the material on the basis of which the detaining authority drew its subjective satisfaction are set out in detail in the grounds of detention annexed with the detention order. That the entire facts of the present case are not required to be reproduced and/or narrated herein. However, from the grounds of detention supplied to the detenu, it is apparent that the impugned detention order has been passed on the basis of three crimes registered against the Petitioner within the jurisdiction of the Respondent No.1 and also on the basis of two in-camera statements whereby the Respondent No.1 i.e. the detaining authority has come to the conclusion that the Petitioner is a 'dangerous person' as contemplated under the provisions of Section 2(b-1) of the M.P.D.A. Act and arrived at a subjective satisfaction that with a view to prevent the detenu from acting in any manner prejudicial to the maintenance of

public order, it is necessary to make an order, directing the detenu to be detained under the M.P.D.A. Act, by its order dated 23rd November, 2011 which is impugned herein.

3. Heard Mr. U.N. Tripathi, learned counsel for the Petitioner at length and Mrs. P.H. Kantharia, learned APP for the State. We have also perused the original record produced before us by the learned APP. Though the Petitioner has raised several grounds, while assailing the order of detention, in the Petition, the learned counsel appearing for the Petitioner restricted his arguments to, two grounds, which according to him are the only important points in this Petition and the same have been raised in ground Nos.5(h) and (d) respectively. The learned APP on the other hand supported the impugned order of detention. After service of notice of Petition Mr. Namdev. K. Bhosale, Deputy Secretary, Government of Maharashtra, Home Department (Special), has filed a detailed affidavit dated 31st March, 2015 on behalf of the State of Maharashtra dealing with ground 5(h) of the Petition. The Commissioner of Police, Nagpur, the Respondent No.1 herein has also filed a detailed affidavit dated 9th April, 2015 and an additional affidavit dated 20th April, 2015 in response to the Petition.

4. The learned counsel appearing for the Petitioner has raised a contention in ground No.5(h) of the Petition, that the detenu submitted

a representation dated 18th February, 2015 to the State Government for considering it expeditiously and for revocation of the order of detention. However, till date of the filing of the Petition, neither the Petitioner nor his lawyer received any communication from the State Government and therefore, there is an inordinate delay in considering the representation of the detenu expeditiously and diligently which makes the order of detention, illegal and bad in law and liable to be quashed and set aside. He further contended that though in their affidavit in reply the State Government and the detaining authority have tried to explain the so called delay, the said authorities have failed to explain the said delay which had occurred at their instance satisfactorily which violates the constitutional mandate guaranteed under Article 22(5) of the Constitution of India. In support of his contention the learned counsel for the Petitioner has relied on two judgments, firstly, in Criminal Writ Petition No.643 of 2014 dated 2nd May, 2014 (**Riyaz Ahmed Batatawala v. The State of Maharashtra and others**) and in particular paragraph Nos.6, 7 and 9. In the said case, at paragraph No.6 the Division Bench of this Court was pleased to observe that, in the affidavit of the sponsoring authority, not even an effort is made to explain the delay of six days in preparing the para-wise comments and the detaining authority has not explained as to why the para-wise comments of the sponsoring authority were required. The Division Bench further came to the

conclusion that there is no explanation whatsoever for the delay in disposal of the representation of the detaining authority so also with the State Government and therefore, the detaining authority proceeded to allow the petition.

It is to be noted here that in the said case relied upon by the learned counsel for the Petitioner, the Division Bench of this Court had reached to a conclusion and therefore, recorded a specific finding that the delay occurred at the instance of the detaining authority and also the sponsoring authority was not at all satisfactorily explained which had resulted into the continuous detention of the Petitioner as vitiated.

The second authority relied upon by the learned counsel appearing for the Petitioner in support of his contention is in the case of **Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police and others**, reported in **(1989) 3 SCC 173**. The learned counsel appearing for the Petitioner in particular relied upon paragraph Nos.10 and 11 of the said judgment. The Supreme Court in the said case was considering a delay of fourteen days in passing the information required by the third respondent therein and the Supreme Court therefore came to the conclusion that the explanation given by the respondent therein was not at all satisfactory and was further pleased to observe that the Supreme Court left it with an impression that the first and second respondents had not diligently collected the

information required by the third respondent and thereby caused a considerable delay which had further delayed the consideration and disposal of the representation of the detenu by the third respondent. In the premise after analyzing the various facts of the case, the Supreme Court was pleased to allow the appeal thereby directing the detenu to be set at liberty forthwith.

It is to be noted here that the Supreme Court in the said celebrated judgment itself, in paragraph Nos.20 and 21 has observed as under :

“20. The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly, there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty--the highly cherished right--which is enshrined in Article 21 of the Constitution.

21. True, there is no prescribed period either under the

provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the word "as soon as may be" occurring in Article 22(5) of the Constitution reflects that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention."

In our humble opinion, the observation of the Supreme Court in paragraph Nos.20 and 21 is the ratio laid down by it in the said judgment.

5. In response to ground (h) of the Petition, Mr. Namdev K. Bhosale, Deputy Secretary, Government of Maharashtra, Home Department (Special) has filed a detailed affidavit dated 31st March, 2015 thereby explaining the steps taken by the Respondent No.2, the State of Maharashtra in deciding the representation of the Petitioner. The said authority in paragraph 2 of its affidavit dated 31st March, 2015 has stated that the representation of the detenu dated 18th February, 2015 was received in the M.P.D.A. desk on the same day. The concerned

assistant submitted the file to the Section Officer on 18th February, 2015 in order to place the representation before the Additional Chief Secretary (Home) and to ascertain the need for calling the remarks of the detaining authority. The Section Officer endorsed it on 18th February, 2015 itself and forwarded it to the Deputy Secretary on the same day. The Deputy Secretary endorsed it on 18th February, 2015 and forwarded it to the Additional Chief Secretary on the same day. The Additional Chief Secretary called for the remarks from the detaining authority vide its letter dated 18th February, 2015 and by a subsequent reminder dated 25th February, 2015. That the remarks of the detaining authority by its letter dated 24th February, 2015 were received on 3rd March, 2015. The Additional Chief Secretary after taking into consideration the remarks received from the detaining authority, considered the representation of the detenu and rejected the same on 5th March, 2015. The said rejection of representation was communicated to the detenu as well as to his advocate vide letter dated 5th March, 2015.

It is to be noted here that from 18th February, 2015 to 3rd March, 2015 there were in all four holidays, which are to be taken into consideration while considering the movement of the files from the detaining authority and the State Government. Thus, it can be seen that out of the alleged fourteen days delay, there were four holidays and therefore, the concerned authorities appear to have processed the

representation within a period of ten days. The learned counsel appearing for the Petitioner had on an earlier date of hearing raised a contention that the detaining authority had failed to explain the delay on its part for forwarding the said para-wise remarks / comments to the State Government though the State Government had informed the detaining authority by its letter dated 18th February, 2015 about the same. The Commissioner of Police, Nagpur, the Respondent No.1 has filed an additional affidavit on 20th April, 2015 dealing with the said contention of the Petitioner. It has been stated in the said affidavit, dated 20th April, 2015 that the representation made to the State Government vide letter dated 18th February, 2015 by the Petitioner was received by the detaining authority i.e. the Commissioner of Police, Nagpur city on 19th February, 2015. The said representation was sent through proper channel downwards to call for the para-wise comments from the M.P.D.A. Cell Branch through the Additional Commissioner of Police (Crime) and after perusing the same and after preparing the para-wise comments the said authority through proper channel sent the para-wise remarks to the detaining authority on 24th February, 2015. It was contended on behalf of the Petitioner that here there was six days delay in preparing the para-wise comments and the same has not been explained properly. It is to be noted here that between 18th February, 2015 and 24th February, 2015, there were two holidays and a benefit of the said two holidays has to be given to the

Respondents. Therefore, it appears to us that the said authority prepared the para-wise comments within a period of four days and forwarded it to the State Government through e-mail on 24th February, 2015. It has been further stated in the said affidavit that a hard copy was also sent to the State Government which was received by the State Government on 3rd March, 2015. It is further stated that between 24th February, 2015 and 3rd March, 2015 there was a Saturday and Sunday i.e. two holidays and therefore, the hard copy reached to the State Government on 3rd March, 2015. Here also after giving benefit of the said two days, to the Respondent No.1 while sending the hard copy of the para-wise comments to the State Government physically, the alleged delay of five days, in our opinion, has been properly explained by the said authority. Thus, in our considered opinion, both the authorities stated above have properly and satisfactorily explained the alleged inordinate delay on their behalf.

6. The learned APP while supporting the stand taken by the State Government has relied upon two decisions. The first decision relied upon by the learned APP is in the case of **Rajendrakumar Natvarlal Shah v. State of Gujarat and others** reported in **(1988) 3 SCC 153** and in particular paragraph Nos.8 and 10, wherein the Supreme Court has held as under :

“8. There is an inexorable connection between the obligation on the part of the detaining authority to furnish the 'grounds' and the right given to the detenu to have an 'earliest opportunity' to make the representation. Since preventive detention is a serious inroad on individual liberty and its justification is the prevention of inherent danger of activity prejudicial to the community, the detaining authority must be satisfied as to the sufficiency of the grounds which justify the taking of the drastic measure of preventive detention. The requirements of Article 22(5) are satisfied once 'basic facts and materials' which weighed with the detaining authority in reaching his subjective satisfaction are communicated to the detenu. The test to be applied in respect of the contents of the grounds for the two purposes are quite different. For the first, the test is whether it is sufficient to satisfy the authority, for the second, the test is whether it is sufficient to enable the detenu to make his representation at the earliest opportunity which must, of course, be a real and effective opportunity. The Court may examine the 'grounds' specified in the order of detention to see whether they are relevant to the circumstances under which preventive detention could be supported e.g. security of India or of a State, conservation

and augmentation of foreign exchange and prevention of smuggling activities, maintenance of public order, etc. and set the detenu at liberty if there is no rational connection between the alleged activity of the detenu and the grounds relied upon, say public order.

10. View from this perspective, we wish to emphasize and make it clear for the guidance of the different High Courts that distinction must be drawn between the delay in making an order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution. It has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the

nation, the courts should not merely on account of delay in making an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the court finds that the grounds are 'stale' or illusory or that there is no real nexus between the grounds and the impugned order of detention. The decisions to the contrary by the Delhi High Court in Anil Kumar Bhasin V. Union of India [Cri W No.410 of 1986 decided on February 2, 1987 (Del HC)] Bhupinder Singh v. Union of India [1985 DLT 493], Anwar Esmail Aibani v. Union of India [Cri W No.375 of 1986 decided on December 11, 1986 (Del HC), Surinder Pal Singh v. M.L. Wadhawan [Cri W No.444 of 1986 decided on March 9, 1987 (Del HC)] and Ramesh Lal v. Delhi Administration [Cri W No.43 of 1984 decided on April 16, 1984 (Del HC) and other cases taking the same view do not lay down good law and are accordingly overruled.

7. The second decision relied upon by the learned APP is, in the case of **Abdul Nasar Adam Ismail v. State of Maharashtra and**

others reported in **(2013) 4 SCC 435** and in particular paragraph No.16 of the said decision, which reads as under :

“16. The principles which have been laid down by the Constitution Bench and the other judgments which we have referred to earlier can be summarised. Article 22(5) of the Constitution casts a legal obligation on the Government to consider the detenu's representation as early as possible. Though no time-limit is prescribed for disposal of the representation, the constitutional imperative is that it must be disposed of as soon as possible. There should be no supine indifference, slackness or callous attitude. Any unexplained delay would be a breach of the constitutional imperative and it would render the continued detention of the detenu illegal. That does not, however, mean that every day's delay in dealing with the representation of the detenu has to be explained. The explanation offered must be reasonable indicating that there was no slackness or indifference. Though the delay itself is not fatal, the delay which remains unexplained becomes unreasonable. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So

the test is not the duration or the range of delay, but how it is explained by the authority concerned. If the inter-departmental consultative procedures are such that the delay becomes inevitable, such procedures will contravene the constitutional mandate. Any authority obliged to make order of detention should adopt a procedure calculated towards expeditious consideration of the representation. The representation must be taken up for consideration as soon as such 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."

Thus, after taking into consideration the replies filed on behalf of the State Government and the detaining authority and the ratio laid down by the Hon'ble Supreme Court in the aforesaid two judgments i.e. in the case of **Rajendrakumar Natvarlal Shah** (supra) and **Abdul Nasar Adam Ismail** (supra), we are of the considered opinion that the alleged delay while deciding the representation of the Petitioner dated 18th February, 2015 has been satisfactorily and properly explained by the said authorities and there is no substance in the said ground 5(h) taken by the Petitioner while assailing the order of detention.

8. The Petitioner has thereafter pressed into service the ground 5(d) taken in the Petition. While assailing the order of detention, the Petitioner has contended that, no satisfaction of the detaining authority as regards the truthfulness of the incident mentioned in the in-camera statements are true, is recorded and therefore, the order of detention is illegal and bad in law for non-recording of the satisfaction of the detaining authority. It is further contended that the satisfaction of the detaining authority is a condition precedent to exercise power under Section 3(1) of the M.P.D.A. Act and in the absence of the same, the order of detention is liable to be quashed and set aside. In support of his contention, the learned counsel for the Petitioner relied upon a judgment of this Court in the case of **Vijaya Raju Gupta v. R.H. Mendonca and others** reported in **2001 ALL MR (Cri) 48** and in particular paragraph 6 of the said decision. That in the case of **Vijaya Raju Gupta** (supra), it was observed by the Division Bench, that the Assistant Commissioner of Police has only verified that the statement made by the witness was actually made by him and therefore, on the basis of mere verification and without there being something more by way of contemporaneous document of material, the detaining authority believed the in-camera statement to be true. The Division Bench in that case was therefore of the opinion that the detaining authority was not subjectively satisfied that the assertions made in the

in-camera statements were true and therefore, it was held that the detention order vitiates.

9. The detaining authority in the present case, in its affidavit dated 9th April, 2015 in response to ground (d) of the Petition has stated that the in-camera statement of witnesses A and B have been recorded by the Police Inspector, Police Station Lakadganj who is a gazetted officer. The truthfulness of these in-camera statements has been recorded by a police officer of the rank of Assistant Commissioner of Police who is also a Special Executive Magistrate. The said officer has found the said in-camera statements to be true. It is further stated that the detaining authority has taken into consideration this aspect while recording its subjective satisfaction in paragraph 10 of the grounds of detention. That the detaining authority after taking into consideration all relevant necessary record and after careful examination of the facts related to the case and in-camera statements, arrived at the subjective satisfaction and subsequent thereto the detention order has been passed.

It is to be noted here and it is also necessary to place the fact on record that as per our direction the learned APP produced the original in-camera statements of the witnesses "A" and "B" in the Court. We have perused the original in-camera statements of witnesses "A" and "B". The record further discloses that the Assistant

Commissioner of Police, Lakadganj Division, Nagpur City who is the senior police officer, has in fact verified the two in-camera statements dated 31st October, 2014 and 1st November, 2014 on 7th November, 2014 and 8th November, 2014 respectively and has endorsed that he has personally verified the original statements in the presence of the said two witnesses and is satisfied that the said statements given by the said witnesses are true and correct. He has further recorded his satisfaction by way of verification that the Petitioner detenu has spread a reign of terror in the said area. After reading the in-camera statements and the verification effected by the Assistant Commissioner of Police, Lakadganj Division, Nagpur city, we find no fault with the verification statement recorded by the said authority. Apart from the said fact, we must also note here that the detaining authority on the internal page No.11 at paragraph No.10 of the detention order has, in unequivocal terms recorded its subjective satisfaction with respect to the crimes registered against the detenu and the in-camera statements recorded by the sponsoring authority and verified by the Assistant Commissioner of Police, Lakadganj Division, Nagpur city while arriving at the subjective satisfaction that the Petitioner is a "dangerous person" as defined under the provisions of the M.P.D.A. Act. The detaining authority has further recorded its subjective satisfaction that he is fully satisfied that the activities of the detenu are extremely prejudicial to the maintenance of the public

order.

The learned APP in support of the reply of the detaining authority relied on a judgment of the Division Bench of this Court in the case of **Zebunnisa Abdul Majid v. M.N. Singh and others** reported in **2001 Cri. L.J. 2759** and in particular paragraph Nos.22, 23 and 24 of the said decision. It is necessary to note here that the Division Bench in the case of **Zebunnisa Abdul Majid** (supra) has taken into consideration the decision in the case of **Vijaya Raju Gupta** (supra) and has distinguished the same on facts. The Division Bench of this Court in the case of **Zebunnisa Abdul Majid** (supra) has relied upon the judgment of the Supreme Court reported in the case of **State of Gujarat v. Sunil Fulchand Shah** reported in **AIR 1988 SC 723**, wherein the Supreme Court has stated that, it is not necessary for the detaining authority to mention in the grounds his reaction in relation to every piece of evidence placed before him. The Division Bench has further held that a similar view has been taken by a Division Bench of this Court in Criminal Writ Petition No.542 of 1995 dated 7th June, 1996 / 11th June, 1996.

This Division Bench in Criminal Writ Petition No.611 of 2015 decided on 24th April, 2015 has also distinguished the judgment in the case of **Vijaya Raju Gupta** (supra) on facts and while following the ratio in the case of **Santosh s/o Bhagwan Patil v. The State of Maharashtra and others** reported in **2014 ALL MR (Cri) 53** in

paragraph No.23 has come to the conclusion that, the law is settled, that if in-camera statement discloses verification about truthfulness of such statement and the identity of the person concerned to the satisfaction of the officer verifying the statement, no challenge could be entertained on the ground that the verification was defective. We therefore hereby reiterate that the Division Bench of this Court in the case of **Vijaya Raju Gupta** (supra) has proceeded on the basis of the facts involved in the said case and the said judgment cannot be said to be a binding precedent for subsequent decisions of this Court by a Bench of equal strength. This is the precise reason the Division Bench of this Court in the case of **Zebunnisa Abdul Majid** (supra) while distinguishing the said judgment on the basis of the facts mentioned therein, has rejected the contention raised by the learned counsel at its threshold.

10. The learned APP in furtherance of her arguments and in response to the contention of the Petitioner about verification and truthfulness of the in-camera statements submitted that the subjective satisfaction recorded by the detaining authority in paragraph No.10 has been arrived at correctly and properly. She further submitted that it is not permissible for the learned counsel for the Petitioner, to read a particular sentence without referring to its context. She submitted that the subjective satisfaction recorded by the detaining authority in

paragraph 10 has to be read in its totality and cannot be read in pieces. We find substance in the contention of the learned APP. It is to be noted here that what is to be seen from the detention order is the subjective satisfaction arrived at by the detaining authority. It is now the settled position of law that, this Court in its writ jurisdiction cannot go into the question, as to whether the subjective satisfaction was properly recorded by the detaining authority. In writ jurisdiction this Court is concerned with the decision making process followed/ adopted by the detaining authority while arriving at the subjective satisfaction. In the present case, we find that the detention order does not suffer from any infirmity and is correctly passed.

11. After taking into consideration the entire material available on record, we find that there is no substance in the contention of the Petitioner and the Petition fails. The order of detention is therefore perfectly justified and we do not find any infirmity in it. The Petition therefore deserves to be dismissed and is accordingly dismissed.

Rule is discharged.

(A.S. Gadkari, J.)

(B.R. Gavai, J.)