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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3829 OF 2018

Vijaya Vijay Sharma @ Bijwa	]	
Age : 44 years, an Indian Inhabitant,	]	
Residing at Room No.202, 2 nd Floor, D Wing,	]	
Sai Darshan Building, Near Antop Hill Post Office,	]	..Petitioner/Wife of
Antop Hill, Mumbai – 400 037.	]	the Detenu

Versus

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|----|--|---|---------------|
| 1. | The State of Maharashtra, |] | |
| | Through Secretary |] | |
| | Home Department (Special), |] | |
| | Mantralaya, Mumbai – 400032. |] | |
| 2. | D.D. Padsalgikar, |] | |
| | The Commissioner of Police, |] | |
| | Brihan Mumbai Crime Branch, |] | |
| | 4 th Floor, The New Office of the |] | |
| | Commissioner of Police, |] | |
| | Mumbai - 400 001. |] | |
| 3. | The Superintendent of Nashik |] | |
| | Road Central Prison, Nashik. |] | |
| 4. | The Superintendent of Thane Central |] | |
| | Prison, Thane. |] | ..Respondents |

Mrs. A.M.Z. Ansari alongwith Mrs.Nasreen S.K. Ayubi for the Petitioner.
Mrs.M.H. Mhatre, APP for the Mr.H.S. Venegavkar, for the Appellant/Union of India.

**CORAM : INDRAJIT MAHANTY &
V.K. JADHAV, JJ.**

JUDGMENT RESERVED ON : 20th DECEMBER, 2018.
JUDGMENT PRONOUNCED ON : 22nd DECEMBER, 2018.

JUDGMENT [Per : INDRAJIT MAHANTY, J.]

1. A short point that arises for consideration in the present Writ Petition is as to whether the detaining authority had acted “forthwith” in sending the detention report to the State Government together with the grounds on which the order of detention had been passed.

2. Mrs.A.M.Z. Ansasri, learned counsel for the Petitioner submits that the order of detention under Section 3(1) 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 to as M.P.D.A. Act) which is at Exhibit A, directing detention of Shri Vijay Sheganram Sharma @ Bijwa dated 14th June, 2018 and the order of approval by the State Government of such detention dated 25th June, 2018

was liable to be quashed inter alia on the ground that the Detaining Authority had failed to act with due promptitude as required under Section 3(3) of the M.P.D.A. Act. For convenience Section 3 of the M.P.D.A. Act is extracted hereunder :

*“3. Power to make orders detaining certain persons.
(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.*

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed [six months], but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding [six months] at any one time.

(3) When any order is made under this Section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and so such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.

3. Learned counsel for the Petitioner further submits that although the State Government did grant its approval of detention by order dated 25th June, 2018 and yet the Detaining Authority had failed to act with due

promptitude in sending the report to the State Government “forthwith”. Reliance was placed by the learned counsel for the Petitioner on the averments made by the Petitioner in Ground No.viii, which is extracted hereinbelow :

“(viii) The Petitioner says and submits that if the impugned detention has been issued by the detaining u/s. 3(1) of the M.P.D.A. Act than according to Section 3(3) which states as follows :

*(3) When any order is made under this Section by an officer mentioned in sub-section (2), he shall **forthwith** report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and so such order shall remain in force for more than **twelve days** after the making thereof, unless, in the meantime, it has been approved by the State Government.*

The Petitioner says and submits that according to Section 3(3) of the M.P.D.A. the authority making the order of detention other than State Government have to sent report forthwith to the concerned Government which accompanied the ground on which the order has been made. The Petitioner says and submits that according to this Section the life of the order of detention will be only twelve days, unless it has been approved by the concerned State Government.”

4. It is further submitted that, in response, Affidavit of Datta D. Padsalgikar, Director General of Police is filed and in the said Affidavit in para 13 following has been noted :

“With reference to Grounds 5(vii) and 5(viii) of the petition, I offer no comments since it pertains State Government.”

5. Apart from above, another Affidavit has been filed by the State through Aniruddha Venkatesh Jewalikar, Deputy Secretary (In-charge) Government of Maharashtra, Home Department, where they have disclosed that while the order of detention of the detenu was passed on 14th June, 2018, the same was received by the State Government from the Detaining Authority on 20th June, 2018 and the order of approval was issued by the State Government on 25th June, 2018.

6. Further affidavit has come to be filed on behalf of the Detaining Authority through the Affidavit of one Sudarshan Chintamani Paithankar, Senior Inspector of Police, wherein, so far as averments made in para 5 are concerned, the following response in para 4 has been stated.

“With reference to paragraph 5 of the petition, I say that the Detaining Authority had issued the detention order within the frame work of the M.P.D.A. Act and also protecting the rights of the detenu as guaranteed under Article 22(5) of the Constitution of India, hence, the detenu is not entitled to challenge the said order by invoking the provisions of Article 226 of the Constitution of India.”

7. Placing reliance on the aforesaid grounds of challenge as well as response of the various authorities of the State Government, Mrs. Ansari placed reliance on the Judgment of the Hon'ble Apex Court in the case of **Hetchin Haokip vs. State of Manipur and others**, decided on 20th July, 2018 where three Judge Bench of the Hon'ble Supreme Court dealt with the similar issue and in particular dealt with expression “forthwith” stipulated in Section 4 of the National Security Act, 1980.

“16. The expression “forthwith” under Section 3(4) , must be interpreted to mean within reasonable time and without any undue delay. This would not mean that the detaining authority has a period of twelve days to submit the report (with grounds) to the State Government from the date of detention. The detaining authority must furnish the report at the earliest possible. Any delay between the date of detention and the date of submitting the report to the State Government, must be due to unavoidable circumstances beyond the control of the authority and not because of administrative laxity.

17. In the present case, the District Magistrate submitted the report to the State Government on the fifth day (17 July 2017), after the date of the detention order (12 July 2017). The reason for the delay of five days is neither mentioned in the State Government's order confirming the detention order, nor in the impugned judgment. It was for the District Magistrate to establish that he had valid and justifiable reasons for submitting the report five days after passing the order of detention. As the decision in **Joglekar** holds, the issue is whether the report was sent at the earliest time possible or whether the delay in sending the report could have been avoided. Moreover, as the decision in **Salim** holds, there should be no laxity in reporting the detention to the government. Whether there were administrative exigencies which justify the delay in sending the reports must be explained by the detaining authority. In the present case, as we shall explain, this was a matter specifically placed in issue before the High Court. The District Magistrate offered no explanation. This would vitiate the order of detention.

8. Learned APP submits that the ground No.(viii) taken by the Petitioner is vague, consequently, there was no occasion for the detaining authority to provide any explanation for taking 6 (six) days for serving copy of the detention order to the appropriate authority in the State Government on 20th June, 2018. In the absence of any specific averment and/or ground in the Petition, there was no occasion granted to the State Government to explain the same.

9. Learned counsel for the Petitioner submitted that ground No.(viii) as noted hereinabove specifically asserted and the Court may seek the records of the

proceedings and to ascertain and verify, whether the detaining authority had sent the report to the State Government “forthwith” and if not, to pass consequential orders therein. It is further explained that the “detenu” was not informed of the date on which the detaining authority sent the detention order to the approving authority. Although the approving authority approved the order of detention within the mandatory period of 12 days. But even the said order did not disclose/indicate, the date on which the approving authority had received a copy of the detention order and ground for its consideration. Therefore, it is submitted on behalf of the petitioner that since the Petitioner did not in fact know of the date on which the approving authority received the detention order, the specific dates could not be asserted in the writ application.

10. We have given our serious consideration to the submissions made by the learned counsel of the respective parties, the contentions raised as well as the judgment of the Hon'ble Supreme Court, referred hereinabove. On a detailed reading of the pleadings as noted hereinabove, it is abundantly clear that, there was no traverse to the submission of the Petitioner, that the detaining authority had not acted with due promptitude as required by law and had taken 6 days in communicating the order of detention dated 14th June, 2018 to the approving authority. The detaining authority has not accrued any reason whatsoever for having taken 6 days to report the detention of the detenu to the State Government. Counter affidavits filed by the detaining authority does not provide any reason whatsoever nor any justification for the delay in reporting detention to

the State Government.

11. In the light of the aforesaid findings and the judgment of the Hon'ble Supreme Court in the case of **Hetchin Haokip vs. State of Manipur and others**, we allow the Writ Petition, set aside the impugned order of detention and consequently direct immediate release of the detenu. Accordingly, the Writ Petition is made absolute.

Sd/-
(V.K. JADHAV, J)

Sd/-
(INDRAJIT MAHANTY, J)