

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4883 OF 2017

Anil Vitkar,
An Indian National, aged 32 Years,
residing at 3, Lal Chawl, Gokhale Nagar,
Pune 16

.. Petitioner
Brother in law
of the detenu

V/s.

- 1) The State of Maharashtra,
through Additional Chief
Secretary (Home),
Government of Maharashtra,
Home Department (Special)
Mantralaya, Mumbai
- 2) Rashmi Shukla,
The Commissioner of Police,
Pune.
- 3) The Inspector of Police,
Pimpri Police Station, Pune
- 4) The Superintendent of
Nashik Road Central Prison,
Nashik.

.. Respondents

.....

Mrs. Aisha Mohd. Zubair Ansari a/with Ms Nasreen Ayubi
for Petitioner.

Mr. J.P. Yagnik APP for Respondents.

.....

**CORAM : S.C. DHARMADHIKARI AND
SMT. BHARATI H. DANGRE, JJ.**

DATED : 29th JANUARY, 2018.
(Order Reserved on : 17.01.2018)
(Order Pronounced on : 29.01.2018)

JUDGMENT (Per SMT.BHARATI H. DANGRE, J.):

1. The present petition filed by the petitioner who is brother-in-law of one Shri Ganesh Narayan Mane, who has been detained by the Commissioner of Police, Pune by an order of detention dated 08.09.2017, assails the order of detention and after quashing and setting aside the same, prays to release the detenu forthwith.

For effective adjudication of the present petition, we find it necessary to cull out the necessary facts and events leading to file the present Writ Petition:-

The respondent No.2, Commissioner of Police, Pune on being satisfied that Shri Ganesh Narayan Mane needs to be detained 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 (hereinafter in short as "M.P.D.A. Act, 1981), with a view to prevent him from acting in any manner prejudicial to the maintenance of public order passed an order of detention on 08.09.2017 in exercise of power conferred by Sub-section (2) of Section 3 of the Act directed that the detenu be detained under the said Act for a period of one year from the date of service of order upon him. On the same date, the Detaining Authority passed committal order directing detention of the detenu in Nashik Central Prison, Nashik under the conditions including conditions as to maintenance of discipline and punishment for breach of discipline laid down in the M.P.D.A Act, 1981. The detention order was served on the detenu on 08.09.2017 and he was detained in Nashik Road, Central Prison. On 08.09.2017 itself the detenu was served with grounds of detention as contemplated under Section 8 of the M.P.D.A. Act, 1981.

The grounds of detention set out that the criminal record of the detenu was reflective of his conduct of

indulging himself in selling illicit liquor and thereby endangering human life and ruining poor families. The grounds of detention reveal that the detenu was habitually committing offences under the Bombay Prohibition Act, 1949 and he was engaged in bootlegging activities and the detenu was clamped as "Bootlegger" as defined in Section 2(b) of the Act and the said activities are found to be prejudicial to the maintenance of the public order. The Detaining Authority referred to the past activities of the detenu for passing the detention order but had relied on a crime registered in the recent past vide CR. No.247/2017 under Section 65(F) of the Bombay Prohibition Act, 1949. Reliance was also placed on nine in-camera statements which came to be recorded in the background, that no person was ready to complain against the detenu because of fear of retaliation and when certain residents of the area were taken into confidence and were assured that their names would not be disclosed and they would not be summoned to give evidence in any court or any other forum and these witnesses then got their statements recorded.

Taking into consideration bootlegging record and in-camera statements of the witnesses, the Detaining Authority arrived at a conclusion that a detenu is a habitual and dangerous bootlegger and his activities of bootlegging was reflecting ascending trend and in order to prevent the detenu from indulging into such activities and in order to curb the bootlegging activities, the Detaining Authority was satisfied that it necessary to detain Shri Ganesh Narayan Mane. The detenu was supplied with the material on which the Detaining Authority had formed the subjective satisfaction and detenu was made aware of the Constitutional safeguards available to him as a detenu and he was also made aware of his right to make representation to the Detaining Authority and to the State Government. The detenu was also informed that the State Government would make a reference to the Advisory Board and it was open to the detenu to make any representation before the Advisory Board against the order of detention and he can avail the right of being heard in person by the Advisory Board and he would be accordingly intimated of the date of

such hearing.

2. It is this order of detention which is a subject matter of the present writ petition. The impugned order of detention dated 08.09.2017 is challenged by the detenu on several grounds but the grounds on which more emphasis is laid are as under:-

(a) The petitioner says and submits that according to the provision of Section 3 of the M.P.D.A. Act and also according to the Scheme of the Act, the mention of the period of 1 year as the period of detention in the impugned order of detention issued Under Section 3 of the Act is impermissible and this mention by itself vitiate the order of detention. The petitioner further says and submits that the period for which a person is to be detained under the M.P.D.A is not to be determined and specified at the time of

making the original order of detention Under Section 3(1) of the M.P.D.A Act. The petitioner says and submits that according to the scheme of the Act period for detention of a person is to be specified or determined at the time of confirming the order of detention under Section 12 of the act and after receiving the report of the Advisory Board.

(b) The petitioner says and submits that detenu was arrested on 22.05.2017. The petitioner further state that he was granted bail on the same day i.e on 22.05.2017 which was availed by him on the same day i.e on 22.05.2017; where as the impugned order of detention was issued on 08.09.2017 after a period of 3 ½ months whilst denying that the impugned order of detention was warranted to be issued promptly and vigilantly without any delay or

loss of time. The petitioner says and submits that if at all the impugned order was warranted to be issued as such it ought to have been issued without any delay. The petitioner says and submits that the impugned order has been issued after an inordinate and in excusable delay.

(c) The petitioner says and submits that the detenu has filed representation through the prison authorities which was addressed to the State Government. The petitioner says and submits on this petition being admitted and Rule Nisi being issued, it would be incumbent upon the State Government to satisfy this Hon'ble Court as to whether the said representation of the detenu was considered by the State Government expeditiously, and as to whether its reply was communicated to the detenu

without any loss of time. The petitioner says and submits that on the failure of the State Government and the prison authority in so satisfying this Hon'ble Court on the aforesaid Courts, the impugned order of detention be held as violative of Article 22(5) of the Constitution.

3. We have heard learned counsel Mrs. Ansari representing the petitioner. Learned counsel for the petitioner would argue before us that the order of detention needs to be quashed and set aside on various grounds. She emphasised that there is a delay in passing the order of detention and the Detaining Authority has not acted promptly and vigilantly and therefore the live-link between the activities of the detenu was snapped when the detention order was passed. Mrs. Ansari also took us to the material relied on by the Detaining Authority and according to her there was no sufficient material on the basis of which the Detaining Authority has arrived at a subjective satisfaction

that the detenu is a “Bootlegger”. She would argue that in-camera statements centred around an individual act and it cannot be said that the activities of the detenu had affected the public at large and according to her activities of the detenu at the most would fall under the category “Law and Order” issue and does not affect the public order. Mrs. Ansari also vehemently argued that on the issue as to what is the effect of a detention order which mentions period of detention and she painstakingly invited our attention to various judgments on the said issue to support her contention that the order of detention is vitiated when the Detaining Authority mentions the period of detention in the same order and according to the learned counsel this renders her right to make representation to the State Government otiose. According to the learned counsel for the petitioner, in view of period of detention being mentioned in the order of detention itself, the detenu was under a confusion as to where and to whom the representation is to be made and this caused great prejudice to the detenu. Learned counsel took us to the scheme of enactment and she

would argue the order is passed by the Detaining Authority which requires to be approved within a period of 12 days by the State Government and thereafter a reference is to be made to the Advisory Board within 12 days. She would also submit that State Government would require to make a reference to the Advisory Board within a period of three weeks from the date of detention and the Advisory Board is obliged to submit a report within seven weeks from the date of detention specified its opinion as to whether there is sufficient cause for detention of the detenu and on receipt of the said report from Advisory Board the Government has a power to revoke the detention order if no sufficient cause is shown for detention or it may confirm the order of detention and at this stage and it should specify the period of detention. According to the learned counsel for the petitioner there is no Constitutional and statutory obligation upon the State Government until after the report of Advisory Board to decide the period of detention.

Mrs. Ansari would also stress on the ground raised by her in the petition as ground No.9 namely the

representation filed by the detenu being not decided promptly and she would argue that on failure of the State Government to decide the representation, which is a valuable right vested in the detenu, the continued detention is liable to be quashed.

4. Learned Assistant Public Prosecutor Shri Yagnik representing the Detaining Authority has placed reliance on affidavit filed by the Detaining Authority on 10.01.2018. Shri Yagnik would argue that activities of the detenu were prejudicial to the maintenance of public order and the Detaining Authority had recorded the subjective satisfaction reached on the basis of material placed before her that the detenu was bootlegger and he was indulging in the activity of brewing illicit liquors which has endangered human life and his activities are detrimental to the interest of the society. Shri Yagnik invited our attention to the activities of detenu, to warrant his detention under the provisions of M.P.D.A. Act, 1981.

As regards the grounds raised by the counsel for petitioner that the Detaining Authority need not specify the period of detention while passing the order of detention, Mr. Yagnik invited our attention to the provisions of Section 3 and according to him Section 3(1) confers on the State Government to delegate the power to the Commissioner or the District Magistrate and he placed heavy reliance on the judgment of the Hon'ble Apex Court in case of Mrs. T. Devaki Vs. Government of Tamil Nadu 1990 2 SCC 456 for the proposition that “neither sub-section (1) nor sub-section (2) of Section 3 of the Act require the detaining authority to specify the period of detention for which a detenu is to be kept under detention”. Mr. Yagnik also relied on the affidavit to demonstrate the sufficiency of the material placed on the basis of which the Detaining Authority has arrived at a subjective satisfaction. The affidavit of the Detaining Authority denies the allegations that there was delay in passing the order of detention and the live-link was thus snapped and the Detaining Authority has offered an explanation in the affidavit as to the steps taken from the

date of receipt of proposal of detention till the date when the detention order was served on the detenu. The Detaining Authority has stated in affidavit that due care and caution is taken for scrutiny and evaluation and analysis of the material by the Detaining Authority and the said period cannot be said to be an inordinate delay.

5. Though counsel for petitioner assailed the ground of order of detention on various grounds and we have considered all those grounds in details, we, however, find substance in the ground canvassed by the petitioner that there is delay in deciding the representation and the State Government ought to have decided the representation of the detenu expeditiously. The petitioner has contended that the representation was preferred by the petitioner on 23.11.2017 and it came to be rejected on 16.12.2017 and was so communicated to the detenu. It is the grievance of the petitioner that there is inordinate delay in deciding the said representation and in view such delay, the continued detention of the detenu becomes illegal and the petitioner be released forthwith. It is also argued counsel for the

petitioner that no explanation is offered for the said delay and that is the reason why it is fatal.

Since we find substance in the said ground raised by the counsel for petitioner we called upon the learned Assistant Public Prosecutor to deal with the said ground. He invited our attention to the affidavit of the Deputy Secretary, Government of Maharashtra, Home Department (Special) Mantralaya, Mumbai filed before this Court on 10th January, 2018. In the said affidavit in para 2 it is stated as under :

“With reference to para 6 (ix) of the Petition, it is submitted that the representation of the detenu dated 23.11.2017 was received in the MPDA desk on 24.11.2017. Thereafter, the remarks were called for, from the Detaining Authority, Commissioner of Police, Pune vide letter dated 24.11.2017. The Detaining Authority was asked to submit its remarks immediately. The remarks from Detaining Authority were received on 16.12.2017 vide letter dated 16.12.2017. The concerned Assistant Section Officer submitted file containing remarks of Detaining Authority alongwith the representation of the detenu to the Section officer on 16.12.2017. The Section Officer endorsed it on 16.12.2017 and forwarded it to the Additional Chief Secretary (Home) on that day as the Deputy Secretary was on official duty at Nagpur for Assembly Session. The Additional Chief Secretary

(Home) considered the representation of the detenu and the remarks of the detaining authority and rejected the representation on 16.12.2017 by applying his mind. The rejection of representation was communicated to the detenu vide letter dated 16.12.2017. Thus the representation of the detenu was considered by the State Government as expeditiously as possible. Hence, the contention of the petitioner raised in this paragraph is not true and denied in toto.”

He also invited our attention to the affidavit filed by the Detaining Authority dealing with the said grounds where she has stated as below:-

“16. With reference to Para 6(x) (xi) of the petition, I denied all the contents therein.

I say that the Detenu has filed his representation, November, 2017 (date not mentioned) before the State Government. Thereafter the State Government has sent this representation by E-mail to the Commissioner of Police, Pune City office to prepared para wise comments. The said representation was received to Crime Branch, P.C.B. Office on 24.11.2017. in the period there were six government holidays (i.e 25.11.2017, 26.11.2017, 1.12.2017, 3.12.2017, 09.12.2017 and 10.12.2017), the representation was placed before me in the morning of 27/11/2017. Thereafter, I perused the said para-wise comments and I had also discussed with Sponsoring Authority as well as Law officer of my office. Then I had given dictation. The said para-wise comments was finalized by me on 12.12.2017

and the hard copy of the said para-wise comments sent to the State Government on 13.12.2017. The representation of Petitioner/ Detenu was rejected by the government on 16.12.2017. Therefore there is not delay from my office and in any manner the detenu's right is not prejudice to make any effective representation and in any other manner the same is not effecting any other right of the Detenu."

6. It is not in dispute that the law relating to the preventive detention is a drastic law as it authorises detention of an individual which resultantly deprives the individual of his liberty without conduct of a trial in a competent court of law. In fact such preventive detention is in a way encroachment on the person's liberty and freedom. The Constitution of India has recognised the liberty guaranteed to a citizen as enshrined under Article 21 of the Constitution of India to be sacred and sacrosanct and the Constitution makers as well its implementors and interpreters have always placed the liberty of a citizen on the highest pedestal and has always viewed it as such. No doubt it is true that in order to have an orderly society, laws have been enacted depriving individual of his liberty and preventive detention being one such enactment where a

person can be preventively detained on a suspicion that the person is likely to act in a manner detrimental to the interest of the public at large. The Constitution itself has provided minimum safeguards for protection of the rights of such an individual who is to preventively detained. Such safeguards which are enshrined in the Constitution are expected to be zealously watched and stringently adhered to.

The Constitutional safeguards provided under Article 22 and those which are included in the Enactment relating to preventive detention deriving its force from Article 22 mandates that when any person who is detained by an order made under any permitting preventive detention, it is imperative to inform the detenu the grounds on which the order has been made so as to afford him an opportunity of making a representation against the order and on communication of grounds of detention, the detenu has a right to make a representation against the order. The authority to whom the representation is to be made is not specified in the order of detention.

The Constitutional safeguards of limiting the

period of detention as provided under clause 4 of Article 22 which mandates that the law providing for preventive detention shall not authorise a detention of person for a longer period than three months unless, the Advisory Board has reported before expiration of said period of three months that in its opinion there is sufficient cause for such detention. The detenu therefore has a right of consideration of his representation and of getting it decided expeditiously. Since life and liberty of the detenu being at stake, utmost promptitude is expected in taking a decision on the said representation. The delay in passing an order of detention has a different connotation than the delay in deciding the representation, the delay in former case may vitiate the subjective satisfaction reached by the Detention Authority, if it is found that the detention order is passed when the live-link between the activities of the detenu and the order of detention is snapped, whereas in the latter case on account of inordinate delay, in deciding the representation the continued detention becomes bad in law.

In the present case the argument of the counsel for

petitioner as raised in ground No.10 is about the delay in deciding the representation and therefore it would have no effect on the subjective satisfaction arrived by the Detaining Authority but it would have its implication on the continued detention of the detenu, subsequent to the order detaining him.

7. Coming to the provisions of M.P.D.A. Act, 1981, which is a law providing for preventive detention of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing and for preventing from dangerous activities prejudicial to the maintenance of public order, the scheme of the enactment mandates that after passing the order of detention under sub-Section (2) of Section 3 of the MPDA Act, to forthwith forward the report to the State Government together with the grounds on which the order of detention has been made and such order continues to remain in force for 12 days after making thereof unless in the meantime it has been approved by the State Government. Thus, under the scheme of the Act

where an order has been made by a delegate of the State Government, he is expected to obtain approval of the State Government to the said order of detention within a period of 12 days. Further in every case where detention order has been made under the Act, it is imperative on the part of the State Government to place the order before the Advisory Board constituted by it under Section 9 of the Act, within a period of three weeks from the date of detention of person under the order and if a representation is made by the detenu the said representation would also be forwarded to the Advisory Board. The Advisory Board constituted under Section 9 of the M.P.D.A. Act, 1981 is duty bound to consider the material placed before it and it may call for such information as is necessary from the State Government or from any person called for through the State Government or from the person concerned and it may also afford an opportunity of hearing the detenu in person and then it would submit its report to the State Government within seven weeks from the date of detention of person concerned. The Advisory Board would specify whether in its opinion

there is sufficient cause for continuing the detention and in such contingency the State Government would confirm the detention order and continue the detention of the person concerned for such a period not exceeding the maximum period prescribed by Section 13. In case where an Advisory Board has reported that there is no sufficient cause for detention, the State Government shall revoke the order of detention and the detenu is entitled to be released forthwith. In the entire scheme of the enactment there is no time limit prescribed by the legislature within which the representation preferred is to be decided. However, since the detenu is deprived of his liberty and freedom, it is expected that the authority to whom the representation is made should act with swiftness and that there is no inaction or lethargy in consideration of the said representation. Since, the legislature has not prescribed the period within which the representation has to be decided, by applying the principle of administrative law, it would have to be decided within a reasonable period. However, since the detenu is deprived of his liberty, it is expected that the decision on the

said representation should be taken with extreme expediency and if it is found that there is an undue delay in deciding the same, the continued detention is liable to be declared as unsustainable. No straight jacket formula can be laid down as to what would amount to undue delay in deciding the representation and while examining whether the representation was decided by the authorities with promptness, it would be necessary to look into the reasons cited by the authorities explaining the period consumed / delay in considering the said representation.

It would be useful to make a reference in this connection to the Constitutional Bench decision of the Apex Court in K.M.Abdulla Kunhi and B.L.Abdul Khader -Vrs- Union of India and others (1991) 1 SCC 476. The Constitution Bench, after taking note of the provisions contained in sub clause (4) and (5) of Article 22 was pleased to hold that neither the Constitution nor under the relevant statutory provisions, any time limit has been fixed for consideration of representation made by the detenu. The time limit according to the Constitution Bench has been

deliberately kept elastic, Hon'ble Court led emphasis on the expression "as soon as may be" in sub clause 5 of Article 22 and held that said expression sufficiently makes clear that the representation should be decided expeditiously and disposed off with sense of urgency without any unavoidable delay. The Hon'ble Apex Court in Para 12 has observed thus:

"..... there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of the representation would be a breach of constitutional imperative and it would render the continued detention impermissible and illegal.

The Hon'ble Bombay High Court dealing with the issue of effect of delay in deciding the representation under the preventive detention law in full bench judgment in case of Mrinal Namdev Waghmare -Vs- Smt. Reva Nayyar & Ors. reported in 2001 ALL MR (Cri) 1583 has observed as follows in Paragraphs 22 & 23:-

"22. Having carefully perused the two Division Bench judgments of this Court, we do not find that there is any inconsistency so far as the ratio of the two decisions is concerned. In both the

cases, it was rightly held, relying upon a catena of decisions of the Supreme Court, that the representation made by the detenu has to be disposed of at the earliest, and if there has been any delay in the disposal of the representation, the concerned authority must furnish a satisfactory explanation for the same. Only such delay as is unexplained, or where the explanation offered is found to be unsatisfactory, would adversely affect the continued detention of the detenu. The Bench noticed the decisions of the Supreme Court which lay down the principle that there is no hard and fast rule to measure the time taken by the Appropriate Authority for consideration and disposal of the representation, and the question whether the authority has considered the representation with reasonable despatch, must necessarily depend on the facts and circumstances of each case, it being neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases. Having done so, the learned Judges considered the material on record, and while in the case of Rafiq Abdul Karim Merchant, recorded a finding that the delay was not sufficient to fault the continued detention of the detenu on the anvil of laches or indolence or red-tapism in the disposal of the representation, in the case of Bishnoi , found the delay to be inordinate, and the explanation furnished for the delay to be untenable and unconvincing. Both the cases have been decided on their own facts, and rightly so.

23. It is open to the Court to consider the explanation furnished and the material on record, and come to its conclusion as to whether the delay in the disposal of the representation, if any, has been satisfactorily explained. We do not find that the two decisions of the Division Bench lay down any other principle inconsistent with each other.

8. In the backdrop of the law laid down by the Hon'ble Apex Court and our Court, let us turn to the facts involved in the present case in hand. According to the petitioner, the representation was referred by the detenu on 23.11.2017 and the State Government through the Additional Chief Secretary (Home) rejected the representation on 16.12.2017. The period consumed by the authority to decide the representation, according to the petitioner amounts to inordinate delay. We have already reproduced the ground raised in this regard by the petitioner.

The State Government has sworn an affidavit and the contents of the affidavit are also reproduced above. It is admitted that the representation of the detenu was received in the M.P.D.A desk on 24.11.2017. According to the affidavit of the State Government on receipt of the said representation, remarks were called for from the Detaining Authority, Commissioner of Police, Pune by forwarding a letter on 24.11.2017 Detaining Authority was asked to

submit the remarks immediately. As per the said affidavit, the remarks of the Detaining Authority were received on 16.12.2017. The Assistant Section Officer submitted the file containing the remarks of the Detaining Authority alongwith representation of the detenu to the Section Officer on 16.12.2017, who endorsed it on the same day and forwarded to the Additional Chief Secretary (Home) as the Deputy Secretary was on official duty at Nagpur Assembly Session and it is then stated in the affidavit, that on considering the representation of the detenu and the remarks of the Detaining Authority, the representation was rejected on its due consideration. Thus, according to the State Government it had acted with utmost urgency and there was no delay in deciding the said representation.

It was therefore incumbent upon the Detaining Authority to explain the period consumed when the file was forwarded from the Home Department on 24.11.2017 for remarks of the Detaining Authority and till the time when the file was remitted back on 16.12.2017. The Respondent

No.2 Detaining Authority in the affidavit has stated that she received the representation by e-mail from the State Government for preparation of parawise comments. It is also stated by the Detaining Authority that the representation was received by the Crime Branch on 24.11.2017. We have already reproduced that portion of the Detaining Authority's affidavit where she has attempted to offer some explanation for the period consumed by her in remitting her remarks to the State Government as sought. Though she has boldly stated that there is no delay from her office and this did not in any manner prejudice the right of detenu to make representation, we are not ready to accept the statement of the Detaining Authority that there is no delay on her part. The Detaining Authority has stated that the representation was placed before her on 27.11.2017. She states that she perused the parawise comments and discussed with the Sponsoring Authority as well as Law Officer in her office and then she give dictation. She states that the parawise comments were finalised by her on 12.12.2017 and hard copy of parawise comments sent to the

State Government on 13.12.2017. We fail to see any promptness or eagerness on the part of the Detaining Authority in offering her comments when the file was with her. The Detaining Authority in the affidavit has failed to explain the period from 27.11.2017 to 12.12.2017 that is a period of 16 days, except making a bald statement that she was discussing with Sponsoring Authority and Law Officer and then she gave dictation. There is no other explanation, except stating that after giving dictation so much time was consumed to get the matter ready so as to be placed before her for perusal. She offers no explanation for the period consumed from 27.11.2017 till 11.12.2017 and on the contrary she made a bold statement that there is no delay on her part. We are surprised by such an attitude of high ranking officer who is authorised by State Government to pass the order of detention and to deal with the liberty of an individual and expected to be conscious of the drastic consequence of preventive detention. Forget the promptitude or the utmost expendency, the Detaining Authority has acted callously and in a slipshod manner in

keeping the case pending with her from 27.11.2017 till 12.12.2017 unmindful of the fact that she is depriving a citizen of his valuable right of having his representation being considered with utmost expendency.

We are conscious of the fact that it is not the law as stated by the Hon'ble Apex Court as well as this Court that each and every days delay is called upon to be explained and we are quite conscious that being a high ranking official it is expected that she was also entrusted with other enormous responsibilities, but the minimum expectation is some explanation on the part of the Detaining Authority for the delay of 16 days. We are surprised at the casual approach of the respondent No.2 and we are at pains to observe that though the Detaining Authority has taken sincere and worthy efforts to arrive at a subjective satisfaction that the detenu was a 'bootlegger' and to detain him preventively to safeguard larger public interest, all her earlier efforts are a sheer waste since, we are required to set forth such a detenu at liberty only on account of delay in taking a decision on the representation which has not been

explained by the Detaining Authority. We expected the Detaining Authority to have offered a semblance of justification in the affidavit explaining the period consumed by her for transmitting the file from its receipt by her till the time when she remitted it to the Mantralaya with her remarks and then it was permissible for us to look into whether the reasons are sufficient or not. However, here we are confronted with a case where Detaining Authority offers no explanation for a period of 15 days. In light of settled proposition of law, we are constrained to declare that the continued detention of the detenu is bad in law.

9. The Hon'ble Apex Court in Aslam Ahmed vs. Union of India reported in 1989(3) SCC 277 was pleased to observe as follows in paragraphs 6, 7 and 9:-

6. This view was reiterated in Rashid S.K. v. State of West Bengal while dealing with the constitutional requirement of expeditious consideration of the petitioner's representation by the Government as spelt out from Article 22(5) of the Constitution observing thus: The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned,

for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty-the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion.

7. It is neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases within which period the representation of detenu has to be disposed of with reasonable expedition but it must necessarily depend on the facts and circumstances of each case. The expression 'reasonable expedition' is explained in Sabir Ahmed v. Union of India as follows:

What is 'reasonable expedition' is a question depending on the circumstances of the particular case. No hard and fast rule as to the measure of reasonable time can be laid down. But it certainly does not cover the delay due to negligence, callous inaction, avoidable red-tapism and unduly protracted procrastination.

9. Thus, when it is emphasised and re-emphasised by a series of decisions of this Court that a representation should be considered with reasonable expedition, it is imperative on the part of every authority, whether in merely transmitting

or dealing with it, to discharge that obligation with all reasonable promptness and diligence without giving room for any complaint of remissness, indifference or avoidable delay because the delay, caused by slackness on the part of any authority, will ultimately result in the delay of the disposal of the representation which in turn may invalidate the order of detention as having infringed the mandate of Article 22(5) of the Constitution.

The Apex Court in the said case after considering supine indifference, slackness or callous attitude on the part of the Jail Superintendent who had unreasonably delayed the transmission of the representation, ultimately causing undue delay in disposal of the representation had quashed the continued detention and held the same to be constitutionally impermissible. Further the Hon'ble Apex Court in case of Usha -Vrs- State of Andhra Pradesh, 1994 SCC (Cri), 1408 while dealing with preventive detention held that there was an inordinate delay in consideration of the representation made by the detenu resulting in violation of the constitutional imperative contained in Article 22 (5) of the Constitution and relied upon the judgment in case of K.M.Abdulla Kunhi and B.L.Abdul Khader -Vrs- Union of

India and others. It held that unexplained, inordinate delay in consideration of the detenu's representation is alone sufficient to render invalid the continued detention of the detenu since it has not been shown that the delay was unavoidable in the circumstances of the case.

The Apex Court as well as this Hon'ble Court have consistently held that the constitutional protection conferred on a detenu who is divested of his liberty, to make a representation against the detention, as mandated in Article 22(5) of the Constitution also compels the authority to whom the representation is made to deal with the same with utmost expediency. The representation is to be so considered expeditiously keeping in view the fact that detention of a detenu is based on subjective satisfaction of the authority concerned and infringement of this right conferred under Article 22(5) of Constitution would invalidate the continued detention. The personal liberty guaranteed under Article 21 of the Constitution is so high in scale in the Indian Constitution and it is expected that the

Detaining Authority and the Government follow mandate of law stringently. Since in case of preventive detention, no charge is to be framed nor any evidence is required to be adduced and the justification of such detention being suspicion, authority must be mindful of the fact that by invoking the preventive detention law a person is to be deprived of his personal liberty and therefore the law calls for meticulous compliance of the procedural safeguards. The State, cannot act in arbitrary fashion or with callousness since the State itself is responsible for safeguarding fundamental rights of a citizen. It is no doubt true that when the State Government has to consider the representation, it is required to follow the procedure as prescribed by the rules of conduct of business and file necessarily has to be moved from one table to another. In the whole procedure, as we have seen in the present case when the representation was made to the State Government, it called for parawise comments from the Detaining Authority, we do not find any fault in following such a procedure and it is for the State Government to decide its

own procedure. However, we expect every officer involved in the entire process to act with swiftness and be conscious of the fact that they are dealing with the sacred right of an individual's life and liberty and there should be no shifting of responsibility at the different stages of this process. But we would like to remind the authorities that they should avoid the callousness or lethargy and all those involved in the process should garner themselves to protect the most cherished value of the Constitution that is a freedom of an individual.

In the present case we noted there is no explanation offered by the Detaining Authority for holding on the file for a period of 15 days though she has attempted to offer an explanation that on receipt of the file by her on 24.11.2017, there happened to be holidays on 25.11.2017 and 26.11.2017 being Government Holidays and further on 01.12.2017, 03.12.2017 cannot being a Government Holiday and 09.12.2017 and 10.12.2017 being Saturday and Sunday. However, we do not expect from the highest police officer of

a City to count the holidays which intermitted in the working days and to have a shelter of holidays when whole 11 working days were available to the Detaining Authority and there is no explanation given by the Detaining Authority about these days why the exercise of offering the comments could not be completed. We are of the clear opinion that the delay caused at the level of the Detaining Authority, resultantly delay caused in deciding the representation by the State Government, is fatal and the State has failed to safeguard precious right of the detenu in the form of his freedom and liberty and though there is no thumb rule of universal application as to within what time the representation is to be disposed of, we are of the opinion that there is clear callousness in not deciding the representation with utmost urgency and though after discounting the Government Holidays falling within that period, excluding such holiday, we feel the delay is unexplained and we observe with distress, that the Respondent State has failed to act with promptitude.

9. In the light of aforesaid discussion, we are of the

opinion that the continued detention of the detenu is unsustainable in law and detention order passed on 08.09.2017 cannot be continued and the detenu is entitled to set at liberty forthwith, if not required in any other case. We allow the Writ Petition. Rule is made absolute accordingly.

(SMT. BHARATI H. DANGRE, J) (S.C. DHARMADHIKARI, J.)