

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.45 OF 2019

ARBAJ @ BABAN IQBAL SHAIKH)...PETITIONER

V/s.

**THE COMMISSIONER OF POLICE,)
PUNE AND OTHERS)...RESPONDENTS**

Mr.Udaynath Tripathi a/w. Ms.Jayashree Tripathi, Advocate for the Petitioner.

Mr.J.P.Yagnik, APP for the Respondent - State.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

ATE : 19th JUNE 2019

JUDGMENT : (PER : A.M.BADAR, J.)

1 By this petition, the petitioner/detenu is challenging

the order of his detention dated 3rd December 2018 passed by the first respondent 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 referred to as “the said Act” for the sake of brevity). By the said impugned order passed under Section 3(2) of the said Act, by recording satisfaction that the petitioner is a dangerous person and it is necessary to detain him in order to prevent him from acting in a manner prejudicial to maintenance of public order, the respondent no.1 had ordered detention of petitioner/detenu Arbaz Baban Iqbal Shaikh.

2 Though Mr.Tripathi, the learned counsel appearing for the petitioner raised several legal contentions in order to challenge the order of detention passed by the respondent no.1 and its subsequent approval by the State, in our view, in the facts of the present case, this criminal writ petition deserves to be allowed only on the ground which we indicate hereinafter.

3 Ground No.5(h) raised by the petitioner/detenu needs to be reproduced for appreciating the contentions raised by the learned counsel for the petitioner. According to him, there is delay in considering the representation sent to the State and the law mandates that such a representation should be decided within reasonable dispatch as per mandate of Article 22(5) of the Constitution of India. The learned counsel for the petitioner urged that there is no plausible explanation for inordinate delay in deciding the representation. The relevant portion of ground raised in this regard is found in paragraph 5(h), which reads thus :

“The petitioner says and submits that a representation of the detenu is submitted the State Government on 18.12.2018 for expeditious consideration and to revoke the order of detention as well as to furnish certain vital documents to the detenu for making effective representation. The Petitioner says and submits that so far the detenu nor his Advocate has received any communication as regards the consideration of the said representation of the detenu, thereby the said authority has delayed in considering the

representation of the detenu. The State Government is called upon to explain the said delay, if any, to the satisfaction of this Hon'ble Court, failing which the continued detention will be held as illegal and bad in law. The order of detention is illegal and bad in law, liable to be quashed and set aside.”

4 To counter this submission, Mr.Yagnik, the learned APP drew our attention to the affidavit filed by the Detaining Authority as well as the State from time to time and submitted that because of incorrect address on the representation, it was belatedly received by the concerned Officer. By relying on duly sworn affidavit of the Deputy Secretary to the Home Department of the State, it is urged by the learned APP that representation dated 18th December 2018 of the detenu was received by the Home Department on 27th December 2018. It was sent to the concerned desk by the Registry of the Home Department on 4th January 2019 and the same was received by the concerned branch SB-3B on 5th January 2019. It is further argued that, thereafter,

remarks were called from the Detaining Authority vide letter dated 5th January 2019 and those were received on 8th January 2019. The representation was considered and rejected on 8th January 2019 itself by application of mind, and therefore, there is no delay in deciding the representation of the detenu. The learned APP further urged that though it was informed to the detenu, while supplying grounds of detention, vide communication dated 3rd December 2018, that he may make representation which should be addressed to the Additional Chief Secretary (Home), Home Department (Special), Mantralaya, the representation was wrongly addressed to the Additional Chief Secretary (Home) without addressing it to the Home Department (Special). This caused delay in receiving the representation by the concerned branch.

5 In order to appreciate the contentions so raised, we have called for record and proceedings from the State, and today, the learned APP has placed before us the record and proceedings including the representation of the petitioner/detenu received by

the State. We have also considered the submissions, so advanced, before us, by both parties.

6 Undisputed facts emerging on record do show that the petitioner/detenu had sent representation dated 18th December 2018 against the order of detention to the State Government, which was received by the Home Department of the State on 27th December 2018. However, this representation ultimately came to be decided on 8th January 2019. There is no plausible explanation for this delay in deciding the representation of the petitioner /detenu. The detenu is required to be given the earliest opportunity of making a representation against the order of detention and his representation is required to be decided expeditiously, as per mandate of Article 22 of the Constitution of India.

7 The State Government has come up with a stand that representation dated 18th December 2018 of the petitioner/detenu is decided by the State with reasonable dispatch. As noted in

foregoing paragraph, it was orally urged that the representation was not properly addressed, thereby causing delay in receiving the same by the concerned desk. Perusal of the record and proceedings shows that representation of the petitioner/detenu was received by Mantralaya, Mumbai, on 21st December 2018. It is seen to have been sent to the Home Department on 27th December 2018. The record and proceedings further reveal that the representation was then sent to the Special Branch-3B on 1st January 2019. Then, there is an endorsement dated 5th January 2019 on the said representation to the effect that it is received 'today' by SB-3B. This makes it clear that the Special Branch – 3B of the Home Department, which deals with the representations of detenu, had received the representation on 1st January 2019 and there is no plausible explanation as to why no action was taken on the said representation till 5th January 2019, when as per reply affidavit of the State, letter came to be sent to the Detaining Authority i.e. Commissioner of Police, Pune, for seeking remarks on the representation. Record and proceedings, thus, make it clear that, even Desk 3B of the Special Branch, dealing with

representation of the detenu, had received the representation of the petitioner/detenu on 1st January 2019 and it was kept pending without any action till 5th January 2019.

8 At this juncture, it is apposite to quote observations of the Hon'ble Apex Court found in paragraphs 12 to 20 in **Rama Dhondu Borade vs. V. K. Saraf, Commissioner of Police and Others**¹ relied by the learned counsel for the petitioner/detenu.

Those read thus :

“12 We shall now examine the proposition of law relating to the delayed consideration and disposal of the representation of a detenu with reference to the judicial pronouncements.

13 There is a line of decisions of this Court dealing with this aspect of law of which we shall make reference to a few.

14 **In Jayanarayan Sukul v. State of West Bengal**, [1970] 1 SCC 219 the following observation has been made:

“It is established beyond any measure of doubt that the appropriate authority is bound to

1 (1989) 3 Supreme Court Cases 173

consider the representation of the detenu as early as possible. The appropriate Government itself is bound to consider the representation as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities."

15 This Court in [Niranjan Singh v. State of Madhya Pradesh](#), [1973] 1 SCR 691 expressed the view that it is incumbent on the State to 197 explain the inordinate delay in considering and rejecting the representation of the detenu and satisfy the Court that there was justification in that delay.

16 While dealing with the constitutional requirement of expeditious consideration of the

detenu's representation by the Government as spelt out from Clause 5 of [Article 22](#) of the Constitution this Court, after referring to the decisions in [Abdul Karim and Others v. State of West Bengal](#), [1969] 1 SCC 433 and [Pankaj Kumar Chakraborty and Others v. State of West Bengal](#), [1969] 3 SCC 400 has stated in [Rashik Sk. v. State of West Bengal](#), [1973] 3 SCC 476, as follows:

“It is undoubtedly true that neither the Constitution nor the Act expressly provides for consideration of a detenu's representation by the State Government within any specified period of time. The constitutional requirement of expeditious consideration of the petitioner's representation by the State Government has, however, been spelt out by this Court from clause (5) of [Article 22](#) of the Constitution....."The use of the words "as soon as may be" (occurred in [Article 22\(5\)](#) of the Constitution) is important. It reflects the anxiety on the part of the framers of the Constitution to enable the detenu to know the grounds on which the order of his detention has been made so that he can make an effective representation against it at the earliest. 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..... Now, whether or not the State Government has in a given 198 case considered the representation made by the detenu as soon as possible, in other words, with reasonable dispatch, must necessarily depend on the facts and circumstances of that case, it being neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases. The Court has in each case to consider judicially on the available material if the gap between the receipt of the representation and its consideration by the State Government is so

unreasonably long and the explanation for the delay offered by the State Government so unsatisfactory as to render the detention order thereafter illegal."

17 Chinnappa Reddy, J. speaking for the bench in [Smt. Shalini Soni and Others v. Union of India & Ors.](#), [1980] 4 SCC 544 has emphasised the constitutional obligation on the part of the authorities concerned in dealing with the representation of a detenu as follows:

"Quite obviously, the obligation imposed on the detaining authority, by [Article 22\(5\)](#) of the Constitution, to afford to the detenu the earliest opportunity of making a representation, carries with it the imperative implication that the representation shall be considered at the earliest opportunity. Since all the constitutional protection that a detenu can claim is the little that is afforded by the procedural safeguards prescribed by Article 22(5) read with [Article 19](#), the Courts have a duty to rigidly insist that preventive detention procedures be fair and strictly observed. A breach of the procedural imperative must lead to the release of the

detenu."

18 See also [B. Sundar Rao and Others v. State of Orissa](#), [1972] 3 SCC 11; [Jnanendra Nath Roy v. The State of West Bengal](#), [1972] 4 SCC 50; [Frances Coralie Mullin v. W.C. Khambra and Others](#), [1980] 2 SCC 275; [Vijay Kumar v. State of Jammu and Kashmir & Ors.](#), [1982] 2 SCC 43; [Raisuddin alias Babu Tamchi v. State of Uttar Pradesh and another](#), [1983] 4 SCC 537 and [Mohinuddin alias Moin Master and Ors. v. D.M. Beed](#), [1987] 4 SCC 58.

19 The propositions deducible from the various reported decisions of this Court can be stated thus:

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.

20 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 or' 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.”

9 Similarly, it is apposite to quote observations of the Hon'ble Supreme Court in paragraph 3 in the matter of **Harish Pahwa vs. State of Uttar Pradesh and Others**² which read thus :

“3In 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 4th, 5th and 25th of June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 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

2 AIR 1981 Supreme Court 1126

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 279 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.”

10 In the light of this legal position crystallized by the Hon'ble Apex Court, it needs to be put on record that

representation of the petitioner/detenu was not decided with a reasonable dispatch by the State. Though it was incumbent on the part of the State to deal with the said representation continuously, it was lying with the Desk 3B of the Special Branch from 1st January 2019 to 4th January 2019 without there being any action thereon. The reasons put forth justifying the delay in disposal of the representation are totally unsatisfactory and reflect sorry state of affairs. The State Government cannot choose to delay in deciding the representation by putting forth the reason of clerical mistake in handling the representation of the petitioner/detenu. Ultimately, the question is of opportunity to a citizen and such matters need to be handled with due caution and sensitivity. Undue delay in disposal of the representation of the petitioner/detenu vitiates the order of detention.

11 In this view of the matter, the writ petition deserves to be allowed. Accordingly, Rule is made absolute in terms of Prayer Clause (9b). It is ordered that the petitioner be released forthwith if he is not required in any other offence or proceeding. No costs.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)