

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.520 OF 2019

DHARANI RAJA PADYACHI)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA & ORS.)...RESPONDENTS

Mrs.A.M.Z.Ansari a/w. Mrs.Nasreen S.K.Ayubi, Advocate for the
Petitioner.

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

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

**DATE : RESERVED ON 22nd APRIL 2019
PRONOUNCED ON 2nd MAY 2019**

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

1 By this petition, the petitioner/detenu is challenging
the order of his detention dated 6th November 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 Dharani Raja Padyachi.

2 Though Mrs.Ansari, 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.(viii) raised by the petitioner/detenu needs to be reproduced for appreciating the contentions raised by the

learned counsel for the petitioner. According to her, there is delay in sending the report to the State Government after passing order of detention of the petitioner. The law mandates that the report should be submitted to the State Government forthwith and there is no plausible explanation for delay in submitting the report to the State, which infact, was received on 14th November 2018 by the State. The learned counsel for the petitioner urged that there is no plausible explanation for delay in not submitting the report forthwith to the State by the respondent no.1. The ground raised in this regard is found in paragraph (viii), which reads thus :

“(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(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 no 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. Act 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.

The Petitioner says and submits that the detaining authority should disclose to the State Government as to when such report if any has been send to the State Government as in the present case, the Sate Government had approved the impugned detention order on 10th day i.e. on 16.11.2018. The Petitioner says and submits that Petitioner is enable to give date of the said report of detaining authority U/s.3(2) of M.P.D.A. Act as in the approval order of State Government, it has not mentioned the date of report of the detaining authority. Hereto annexed and marked **Annexure “G”** is a copy of approval order dated 16.11.2018. The detaining authority

should place before the State Government, the relevant contemporaneous record so as to ascertain and verify as to whether the detaining authority has sent the report to the State Government forth-with and on failure of the detaining authority to place before this Hon'ble High Court such record, and adverse inference be drawn against the detaining authority than that case the impugned order of detention be held as malafide null and void.”

Reliance is placed by Mrs.Ansari, the learned counsel for the petitioner on the judgment of the Honourable Apex Court in the matter of Hetchin Haokip vs. State of Manipur and Others¹ Gora vs. State of West Bengal², S.K.Salim vs. State of West Bengal³ and Shamrao Vishnu Parulekar vs. The District Magistrate, Thane⁴ to buttress his contention that there is delay in reporting detention to the State.

4 To counter these submissions, Mr.Yagnik, the learned APP drew our attention to the affidavits filed on behalf of

1 2018 (9) SCC 562

2 [1975] 2 S.C.C. 14

3 [1975] 1 S.C.C.653

4 AIR 1957 SC 23

respondent no.2 Detaining Authority as well as by respondent no.1 State and contended that order of detention was issued on 6th November 2018 but there was Diwali Vacation from 7th November 2018 to 9th November 2018. 10th November 2018 and 11th November 2018 were non-working days i.e. 2nd Saturday and Sunday. The learned APP further argued that the petitioner was under judicial custody and therefore, report was submitted to the learned Judicial Magistrate First Class (JMFC) 3rd Court, Ulhas Nagar, by Shivaji Nagar Police Station, Ulhas Nagar, on 7th November 2018. As it was holiday, the learned JMFC orally directed to place the said report before the regular court and accordingly, on 12th November 2018, custody of the petitioner was handed over to the police as per the order of the concerned court. The petitioner, at that time, refused to accept the documents and thereafter, he was detained at Nashik Road Central Prison, Nashik, on 13th November 2018. By pointing out the affidavit of the Detaining Authority, the learned APP submitted that ultimately documents were served on the petitioner on 13th December 2018 at the Nashik Road Central Prison, Nashik. With

this, it was argued that report under Section 3(3) of the said Act was received by the State Government on 14th November 2018 and as such, it cannot be said that the report was not sent forthwith to the State by the Detaining Authority. Mr.Yagnik, the learned APP, drew our attention to Section 8 of the said Act and submitted that as per mandate of this provision of law, it is after detention of the detenu, within five days from the date of detention, grounds are required to be served on the detenu, and therefore, execution of the detention order is necessary for forwarding the report to the State Government. By relying on provisions of Section 3(3) of the Act, the learned APP submitted that after making of the order of detention, the Detaining Authority is required to forward report together with grounds on which the order has been made and such other particulars, as in the opinion of the Detaining Authority have a bearing on the matter. This, according to the learned APP, implies that, the detention order is required to be executed first and then the report is required to be forwarded to the State Government, in pursuant to the provisions of sub-section (3) of Section 3 of the said Act.

Therefore, according to the learned APP, as the detenu was transferred in custody of police by the learned JMFC on 13th November 2018 and as the report was received by State on 14th November 2018, it cannot be said that the said report was not sent forthwith.

5 We have considered the submissions so advanced and perused the record made available. Undisputedly, the detention order was made on 6th November 2018. As reflected from the affidavit of the State, report under Section 3(3) of the said Act was received by the State from the Detaining Authority on 14th November 2018. In the matter of **Hetchin Haokip (supra)** the Honourable Apex Court has interpreted the term “forthwith” by holding that this term does not mean instantaneous, but it means without undue delay and within reasonable time. Paragraphs 15 and 16 of the that judgment clinches the issue. Those read thus :

“15 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.”

“16 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* (AIR 1957 SC 28) 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* (1975 SCC (Cri) 290) 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.”

6 Perusal of provisions of sub-section (3) of Section 3 of the said Act makes it clear that upon making the order directing detention of the detenu, the specified officer is required to forthwith report that fact to the State Government together with the grounds on which the order has been made and such other particulars, as in the opinion of the Detaining Authority have a bearing on the matter. Thus, report is required to be sent forthwith to the State Government upon making an order directing detention of the detenu. Forwarding of such report is not required to be kept pending for execution of order of

detention. In the case in hand, order of detention was made on 6th November 2018 and from affidavit of the Detaining Authority, it is clear that from 7th November 2018 to 9th November 2018 there was Diwali Vacation and 10th November 2018 and 11th November 2018 were non-working days being 2nd Saturday and Sunday. As such, the delay up to 11th November 2018 got explained from the affidavit of the Detaining Authority. However, there was no reason with the Detaining Authority to not to sent the report in respect of making of order of detention to the State on 12th November 2018. However, it appears that, without any plausible reason, the report of making of order of detention was not sent to the State by the Detaining Authority on 12th November 2018 and 13th November 2018. Ultimately, it was sent to the State Government on 14th November 2018. The reason for not sending the report on these two days is totally irrelevant to the cause. It was not at all necessary for the Detaining Authority to wait for execution of order of detention by getting custody of the petitioner from the court. The Detaining Authority ought not to have waited for sending report to the State till taking custody of

the detenu and till lodging him in the Nashik Road Central Prison, Nashik.

7 Section 8 of the Act reads thus :

“8 (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.”

Mandate of Section 8 of the Act is to the effect that as soon as the person is detained, the Detaining Authority is duty bound to communicate to the detenu the grounds on which the order has been made. The detenu is required to be given the earliest opportunity to make a representation against the order of his detention. Outer time limit of serving grounds of detention is also

provided in Section 8. However, provisions of Section 8 of the Act cannot be made use of for withholding the report as envisaged by Section 3(3) till execution of the detention order. Section 8 of the Act operates in totally different field and it primarily deals with securing the right of the detenu in respect of making a representation against the order of detention at the earliest opportunity. For that purpose, it is provided by Section 8 of the Act that grounds of detention should be communicated to the detenu as soon as the detenu is detained by executing the order of detention. Early communication of grounds of detention to the detenu is with the object of effectively protecting his right of representation at the earliest possible opportunity. However, this has no relevance with reporting the fact of detention of detenu by the Detaining Authority to the State Government by sending report along with necessary documents. Sub-section (3) of Section (3) of the Act intends to ensure that the delegate acts within his authority fairly and properly and it also enables the State Government to exercise due and effective control over the delegate. While dealing with pari-materia provision of Preventive

Detention Act, the Honourable Apex Court in the matter of **Shamrao Vishnu Parulekar (supra)** has held thus :

“The authority making the order under Section 3(2) is accordingly required to report the fact of the order forthwith to the State along with the grounds therefor, and if the State does not approve of the order within twelve days, it is automatically to lapse. These provisions are intended to regulate the course of business between the State Government and, the authorities subordinate to it exercising its power under statutory delegation and their scope is altogether different from that of Section 7 which deals with the right of the detenu as against the State Government and' its subordinate authorities. Section 3(3) requires the authority to communicate the, grounds of its order to the State Government, so that the latter might satisfy itself whether detention should be approved. Section 7 requires the statement of grounds to be sent to the detenu, so that he might, make a representation against the order. The purpose of 'the two sections is so different that it cannot, be presumed that the expression "the grounds on which the order has been made" is used in Section 3(3) in the same sense which it bears in Section 7.

That the legislature could not have contemplated that the grounds mentioned in Section 3(3) should be, identical with those referred to in Section 7 could also be seen from the fact that whereas under Section 7(2) it is open to the authority not to disclose to the detenu facts if it considers that it would be against public interests so to do, it is these facts that will figure prominently in a report by the subordinate authority to the State Government under Section 3(3), and form the basis for approval. If the grounds which are furnished under Section 3(3) could contain matters which need not be communicated to the detenu under Section 7, the expression "grounds on which the order has been made" cannot bear the same meaning in both the sections."

8 It is, thus, clear that, the report as envisaged by sub-section (3) of Section 3 was not sent by the Detaining Authority to the State Government at the earliest and without loss of time. Sending of the report was delayed and the delay was avoidable. There appears to be laxity in report of the detention to the

Government by the Detaining Authority on the pretext that the detention order was to be executed by getting custody of the detenu transferred to it from the concerned Judicial Magistrate.

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

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)