

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2000 OF 2019

Govindsing Papulsing Tak	}	
residing at 429/30, Dias Plot,	}	
Gultekadi, Pune.	}	...<u>PETITIONER</u> / (Detenu)

VERSUS

1. The Commissioner of Police	}	
Pune.	}	
2. The State of Maharashtra	}	
(Through Addl. Chief Secretary	}	
to Government of Maharashtra	}	
Mantralaya, Home Department	}	
Mantralaya, Mumbai	}	
3. The Superintendent	}	
Yerwada Central Prison,	}	
Pune	}	
4. The Secretary,	}	
Hon'ble Advisory Board	}	
Constituted under Section 9 of	}	
M.P.D.A. Act, 1981, Mantralaya	}	
Mumbai – 400 032.	}	...<u>RESPONDENTS</u>

Mr. Udaynath Tripathi a/w Ms. Jayshree Tripathi for the Petitioner.
Ms. M.M. Deshmukh, APP for Respondent - State

CORAM : S. S. SHINDE &
N. B. SURYAWANSHI, JJ.

RESERVED ON : 18th NOVEMBER 2019
PRONOUNCED ON : 11th DECEMBER 2019

JUDGMENT (PER S. S. SHINDE, J)

1. Heard both sides.
2. The Petitioner / Detenu Govindsing Papulsing Tak has preferred this Petition questioning the preventive detention order passed against him on 22nd February 2019 by Respondent No. 1 – Commissioner of Police, Pune City. The said detention order has been passed under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders, Dangerous persons and Video Pirates Act, 1981 (hereinafter referred to as 'MPDA Act'). The said detention order has been issued as the Detenu is a Dangerous person whose activities are prejudicial to the maintenance of public order. The detention order is based on two Crimes i.e. C.R. No. 450 of 2018 registered with Swargate Police Station, Pune for the offences punishable under Sections 394, 323, 504, 506 of the Indian Penal Code, and another incident occurred on 19th December 2018 vide C.R. No. 403 of 2018 registered with Swargate Police Station, Pune for the offences punishable under Sections 354, 354(A), 324, 451, 34 of the Indian Penal Code, and two in-camera statements of witnesses 'A' and 'B', recorded on 07th January 2019 and 10th January 2019 respectively.
3. Though the number of grounds have been raised in the

present petition whereby the detention order has been assailed, however, the learned counsel appearing for the Petitioner / Detenue has pressed only two grounds before us i.e. ground nos. 'c' and 'g'. Those grounds are reproduced herein below in verbatim.

c. The Petitioner says and submits that the detaining authority has taken into consideration two criminal cases registered against the Petitioner on 06.11.2018 and 19.12.2018, whereas the order of detention is passed on 22.02.2019 belatedly. In order to fill up the gap of this delay two in-camera statements were recorded on 07.01.2019 and 10.01.2019. Thereafter, there are no cases. Thereby there is delay in passing the order after the last incident of in-camera statement. As a result, there is a delay of about seven weeks took place and the authority has not taken any prompt action to pass an order of detention immediately. The order of detention is illegal and bad in law, liable to be quashed and set aside.

g. The Petitioner says and submits that a

representation of the detenu was sent to the Superintendent, Yerwada Central Prison, Pune to obtain the signature of the detenu on his representation and for onward submission to the State Government for consideration expeditiously. The detenu has so far not received any intimation about the consideration of his representation, thereby the State Government has delayed in considering the said representation. 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. The order of detention is illegal and bad in law, liable to be quashed and set aside.

4. Learned counsel appearing for the Petitioner – Detenu submits that, the detaining authority has taken into consideration two criminal cases registered against the Petitioner – Detenu on 6th November 2018 and 19th December 2018, whereas the order of detention is passed on 22.02.2019 belatedly. In order to fill up the gap of this aforesaid delay two in-camera statements were recorded on 07th January 2019 and 10th January 2019. In support

of the aforesaid contention, learned counsel appearing for the Petitioner – Detenu placed reliance on two decisions of the Division Bench of the Bombay High Court at Principal Seat in the case of Parvez Faizulla Khan Vs. A.N. Roy¹ and in the case of Aalam Yousuf Shaikh Vs. The Commissioner of Police, Pune and Ors².

Learned counsel appearing for the Petitioner – Detenu invites attention of this Court to another ground i.e. 'g' in the memo of the Petition and submits that, representation of the detenu was sent to the Superintendent, Yerwada Central Prison to obtain the signature of the detenu on his representation and for onward submission to the State Government for consideration expeditiously. However, learned counsel submits that, one Mr. Chandramani Arjun Indurkar, Deputy Superintendent of Jail, Yerwada Central Prison, Pune has filed the affidavit wherein in paragraph no. 4 it is stated that, the detenus representation dated 05th April 2019 was received in Jail on 10th April 2019 in inward department. However, said jail authority forwarded the said representation on 12th April 2019. It is submitted that, the Respondents have not explained the delay of two days in sending the said representation to the Government by the jail authority. It is submitted that, the delay from 10th April 2019 till 12th April 2019

1 Writ Petition No. 1018 of 2007 decided on 8th February 2008.

2 2018 ALL MR (Cri) 1908

remained unexplained. It is further submitted that, the said representation was received in the Mantralaya, Home Department on 18th April 2019. However, said representation has been decided on 22nd April 2019. Therefore, there was four days delay in deciding the said representation and on this ground alone petition deserves to be allowed.

5. In support of aforesaid contention, learned counsel appearing for the Petitioner – Detenu pressed into service unreported decision of the Bombay High Court at Principal seat in the case of Arbaz @ Baban Iqbal Shaikh Vs. The Commissioner of Police, Pune and ors³. Therefore, learned counsel appearing for the Petitioner – Detenu submits that, Petition deserves to be allowed.

6. On the other hand, learned APP appearing for Respondent – State invites attention of this court to the order of detention, averments in the affidavit filed by Dr. K. Ventakesham, Commissioner of Police, Pune City, Pune, affidavit filed by Mr. Devendra H. Chandel, secretary, Advisory Board, MPDA Act, 1981, Home Department (Special), State of Maharashtra, Mumbai, affidavit filed by Mr. Anirudha V. Jewlikar, Deputy Secretary (In-charge), Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai and affidavit filed by Mr. Chandramani Arjun

3 Criminal Writ Petition No. 45 of 2019 decided on 19th June 2019.

Indurkar, Deputy Superintendent of Jail, Yerwada Central Prison, Pune. Learned APP submits that, representation dated 05th April 2019 was sent by detenu by speed post and the same was received in Jail on 10th April 2019 in inward department after 3.00 p.m. On 11th April 2019 and same was segregated and on very same day signature of the detenu was obtained and after completing the other formalities, same was forwarded to the State Government office by letter vide O/w. No. 4672/2019, dated 12th April 2019 through speed post. The same was received in Home Department, Mantralaya, Mumbai on 18th April, 2019. Learned APP invites attention of this Court to the affidavit filed by Mr. Aniruddha V. Jewlikar wherein it is stated that, the representation of detenu dated 05th April 2019 was received on 20th April 2019 in inward section of the Home Department, Mantralaya Mumbai and after segregation same was received in the Special Branch-3B Desk on 20th April 2019. Thereafter, the remarks were called for from the Detaining Authority i.e. Commissioner of Police, Pune on same day. The remarks of the Detaining Authority were received on 22nd April 2019 vide letter dated 22nd April 2019 and the said representation was decided by the Additional Chief Secretary (Home), and same was rejected on very same day and the rejection of representation was communicated to the detenu vide letter dated 22nd April 2019.

Thus, the representation of the detenu was considered by the State Government expeditiously. It is submitted that, on 21st April 2019 was Sunday. The representation received on 20th April 2019 and has been decided on 22nd April 2019 and therefore, there is no delay in deciding the said representation as alleged by the learned counsel appearing for the Petitioner – Detenu.

7. So far ground 'c' is concern learned APP submits that, detaining authority considered two crimes registered against the Petitioner on 06th November 2018 and 19th December 2018. Thereafter, in camera statements of two witnesses were recorded on 07th January 2019 and 10th January 2019, and thereafter on 22nd February 2019 order of detention was passed. Therefore, learned APP submits that the detaining authority after proper application of mind considered the material / documents on record and arrived at the subjective satisfaction, and thereafter detention order has been passed. In support of aforesaid contentions, learned APP placed reliance on the ratio laid down in the case of *Indrajit Goswami V. R.H. Mendonca and ors*⁴ and judgment of the Supreme Court in the case of *Ahmed Nassar Vs. State of Tamil Nadu and Ors*⁵. Therefore, learned APP appearing for the Respondent – State submits that, Petition may be rejected.

4 1999 CRI.L.J. 4332

5 (1999) 8 Supreme Court Cases 473

8. We have given careful consideration to the submissions of learned counsel appearing for the Petitioner – Detenu and learned APP appearing for the Respondent – State. With their able assistance we have perused the pleadings and grounds taken in the Petition, annexures thereto and the record maintained by the Respondents in relation to the detention of the detenu. As already observed, the counsel for the Petitioner has restricted the Petition to only two grounds i.e. ground No. 'c' and 'g' which are reproduced herein above in paragraph no. 3. We have carefully perused the detention order (Exh. A) and grounds of detention. First Respondent in paragraph no. 3.1 of the ground clarified that, the four offences mentioned in said paragraph registered in between 26th October 2017 till 22nd April 2018 have not been relied by the said authority while passing the order of detention but, those offences i.e. Crime No. 324 of 2017 under Section 324, 323, 504, 506, 34 of the Indian Penal Code, Crime No. 428 of 2017 under Section 324, 504, 506(2), 34 of the Indian Penal Code, Crime No. 106 of 2018 under Section 395, 384, 324, 143, 147, 149, 427 of the Indian Penal Code read with Section 7 of the Criminal law Amendment Act and Crime No. 139 of 2019 under Section 395, 427 of the Indian Penal Code read with Section 7 of

the Criminal Law Amendment Act registered with Swargate Police Station, Pune are only referred to show that the detenu has been habitually committing serious offences. The said offences show the criminal history of the detenu. It is also mentioned in paragraph 3.2 about preventive action under Section 107 of the Code of Criminal Procedure initiated against the detenu. There is also reference to other offences committed by the detenu i.e. Crime No. 450 of 2018 under Section 394, 323, 504, 506 of the Indian Penal Code and Crime No. 503 of 2018 under Section 354, 354(A), 324, 451, 34 of the Indian Penal Code registered with Swargate Police Station, Pune. Detaining Authority has discussed in detail about the said incidents about which aforesaid two crimes were registered. It is stated by the detaining authority that, an investigation of aforesaid two crimes revealed that the detenu created terror in the said area and also disturbed public order. An another incident which gave rise to register Crime No. 450 of 2018 and 503 of 2018 is also elaborately discussed in the detention order and after considering the seriousness of the said two offences, Senior Inspector of Swargate Police Station, Pune conducted confidential inquires into criminal activities and the inquiry revealed that, the Petitioner has created terror and terrorized the residents of the area where he is residing as well

residence of the adjoining area. The witnesses from the said area have given in-camera statements before Senior Inspector, Swargate Police Station, Pune. The Assistant Commissioner of Police, Swargate Police Station, Pune City (Who is also Special Executive Magistrate) has duly verified the statements. The gist of the statements of witness no. 'A' and witness no.'B' is also mentioned in the grounds of detention. From reading the incident dated 05th January 2019, the authority arrived at the satisfaction that due to said incident at public place, and people residing in said vicinity got scared, and started running and the shopkeepers closed their shops. There is also discussion about statement of witness 'B'. It is specifically mentioned by the detaining authority in paragraph no. 7 of the ground that, he is subjectively satisfied that Petitioner is dangerous person as defined in Section 2(b-1) of the said Act. Detenu has unleashed a reign of terror and have become a perpetual danger to the society at large in the area of Swargate Police Station, Pune City. The people residing in the said area are experiencing a sense of insecurity and are living under a shadow of constant fear, whereby even day to day businesses and activities of citizens are under thereat from detenu. Detenu has no respect to the law of the land and to the citizens of the society where he lives. It is also stated that, detenu is an impulsively

violent man who wants to spread terror in the society by his violent criminal activities, in connivance with the detenu's criminal associates. It appears that, first Respondent i.e. detaining authority relied upon the material mentioned in paragraph no. 5.1, 5.2, 6.1 and 6.2 of the grounds of detention to arrive at subjective satisfaction that detenu is dangerous person as defined in para 2(b) of the M.P.D.A. Act and his criminal activities are prejudicial to maintenance of public order. It is mentioned in paragraph no. 8 of the grounds that, in view of detenu's tendencies and inclinations reflected in the offences committed by him as stated above as well as the incidents recorded in the in-camera- statements and in view of the fact that he has availed bail facility in the said offences and he is presently a free person, I am further satisfied that he is again likely to revert to similar activities which are prejudicial to the maintenance of public order in future and hence it is necessary to detain him under the said Act to prevent him from acting in such prejudicial manner in future.

9. Upon careful perusal of the ground of detention it is abundantly clear that, number of offences are registered against the Petitioner – Detenu in the past. The offences registered till April 2018 against the Petitioner so also preventive action taken

against the Petitioner – Detenu under Section 107 of the Cr.P.C. mentioned by the detaining authority only to show that the Petitioner is historysheeter and he is habitual offender. As already observed Crime No. 450 of 2018 and 503 of 2018 mentioned herein above are relied upon by the detaining authority while passing the order of detention. The aforesaid two crimes are registered on 06th November 2018 and 19th December 2018 respectively. Thereafter two in-camera statements of witnesses have been recorded and detention order has been passed on 22nd February 2019. The contention of the counsel appearing for the Petitioner that there is considerable delay in registration of aforesaid two crimes and for recording of statements of witnesses and passing the order of detention, in our considered view cannot be accepted. Two offences were registered in the month of November 2018 and December 2018 and thereafter two in-camera statements of two witnesses have been recorded on 05th January 2019 and 8th January 2019. It cannot be said that from 08th January 2019 there is considerable delay in passing the order of detention. Learned counsel appearing for the Petitioner has relied upon the judgment of the Division Bench of the Bombay High Court at Principal Seat in the case of Aalam Yusuf Shaikh (Supra), and contended that the delay in recording in-camera statements, if

not explained, in that case detention order deserves to be set aside. It appears that in the facts of that case the first incident was of March 2017, and second incident was of May 2017 and third incident was in July 2017. However, in-camera statements had been recorded in relation to those incidents not promptly but on 12, 14, 16 August 2017. Therefore, in the fact of that case from March 2017 there was delay of about four months in recording in-camera statements of witnesses. In that case the Court did not take into consideration the last incident of July 2017 while appreciating contention of the Petitioner about delay in recording in camera statement. It is only in relation to incident happened in the month of March 2017 and May 2017, the Court observed that there was delay in recording in-camera statements about the said incidents i.e., in March 2017 and May 2017. However, so far third incident in July 2017 is concerned the Court did not make any observation that there was delay in recording in-camera statements. It appears that, the incident which had taken place in July 2017 the statement was recorded on 16th August 2017. There was more than one months delay however, Court did not observed that, there was delay in recording in-camera statements in respect of last incident in July 2017. In the present case, there is insignificant delay and not considerable delay as tried to be

contended by the learned counsel appearing for the Petitioner. In another cited judgment in the case of Parvez Faizulla Khan (Supra), it appears that in the said case in respect of one specific incident, in the month of August / September 2006, the authorities did not thought it fit to take action against detenu till March 2007, and in between concern authority recorded the in-camera statements of witnesses. Therefore, in the facts of that case it is held that, to justify the delay in passing the order from the date of incident the authorities recorded in-camera statements of the witnesses. Therefore the fact of the said case are distinguishable vis-a-vis case in hand.

10. An another ground raised by the counsel for the Petitioner is that there was delay in deciding the representation of the detenu, the respondents have filed the affidavit and made it clear that the representation of the Petitioner dated 05th April 2019 was sent by detenu by speed post, and same was received by the Jail authorities on 10th April 2019 after 3.00 p.m. same was segregated and on very same day signature of the detenu was obtained and after completing the other formalities, same was forwarded to the State Government office by letter vide O/w. No. 4672/2019, dated 12th April 2019 through speed post. The same

was received in Home Department, Mantralaya, Mumbai on 18th April, 2019. Learned APP invites attention of this Court to the affidavit filed by Mr. Aniruddha V. Jewlikar wherein it is stated that, the representation of detenu dated 05th April 2019 was received on 20th April 2019 in inward section of the Home Department, Mantralaya Mumbai and after segregation same was received in the Special Branch-3B Desk on 20th April 2019. Thereafter, the remarks were called for from the Detaining Authority i.e. Commissioner of Police, Pune on same day. The remarks of the Detaining Authority were received vide letter dated 22nd April 2019, and the said representation was decided by the Additional Chief Secretary (Home), and same was rejected on very same day. The rejection of representation was communicated to the detenu vide letter dated 22nd April 2019, on very same day. Thus, the representation of the detenu was considered by the State Government expeditiously. On 21st April 2019 was Sunday. The representation received on 20th April 2019 has been decided on 22nd April 2019 and therefore, there is no delay in deciding the said representation.

11. In the light of the above discussion in forgoing paragraph there is no merit in the Petition and accordingly, Writ Petition stands

rejected. Rule stands discharged.

(N. B. SURYAWANSHI, J.)

(S. S. SHINDE, J.)