

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2873 OF 2019

Yallya @ Sagar Irappa Kolanatti

...Petitioner

vs.

The Commissioner of Police, Pune City and Ors. ...Respondents

Mr. U.N. Tripathi a/w. Jayshree Tripathi, for the Petitioner.

Ms. M.H. Mhatre, APP for the Respondents-State.

CORAM : S.S. SHINDE &

N.B. SURYAWANSHI, JJ.

ORDER RESERVED ON : OCTOBER 11, 2019

ORDER PRONOUNCED ON : OCTOBER 18, 2019

ORDER (Per N.B. Suryawanshi, J.)

. The Petitioner challenges the detention order passed by the Commissioner of Police, Pune City dated 12th April, 2019 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 (for short “the said Act”).

2. Rule was granted in this matter vide order dated 12th June, 2019 which is made returnable and the matter is heard

finally with the consent of parties.

3. Heard learned counsel for the Petitioner and learned APP for the State.

4. With the assistance of both the learned counsel, we have perused the record.

5. The learned counsel for the Petitioner has pressed into service two grounds i.e. (e) and (f) to assail the impugned detention order. In ground (e) he contended that the translation given to the Petitioner of the compilation of documents was not true and correct translation. Firstly the name of police station is 'Koregaon' whereas in Marathi translation it is stated as 'Koregaon Park'. Secondly, the time of production of accused is shown as 4.00 pm whereas in Marathi translation no time is shown. Thirdly, it is stated in English that 'reasons for arrest of accused are proper' Marathi translation of the same is not found. Lastly, the authority passing the order there is no name, designation, name of Court and date of passing remand order as well as in Marathi

translation. There is lot of variance and omissions. Thus, the right of the Petitioner to make effective representation under Article 22(5) of Constitution of India is violated.

6. The learned counsel for the Petitioner submitted in terms of ground (f) that, the representation dated 29th May, 2019 to State Government was submitted through the Superintendent, Yerwada Central Prison, Pune. But till the date of filing of the Petition, there was no response to the same received by the Petitioner or his advocate i.e. till 6th June, 2019. The same is in violation of fundamental right of the Petitioner guaranteed under Article 22(5) of the Constitution of India.

7. Learned counsel for the Petitioner relies upon the following authorities in support of his arguments.

(i) Powanammal vs. State of T.N. and Another reported in 1999 Supreme Court Cases (Cri) 231.

(ii) Arbaj @ Baban Iqbal Shaikh vs. The Commissioner of Police, Pune and Ors. in Criminal Writ Petition No. 45 of 2019 of this Court.

(iii) Vijay Kumar Dharna @ Koka vs. Union of India and Ors.

reported in (1990) 1 Supreme Court Cases 606.

(iv) Sandip Suresh Ghag vs. The Commissioner of Police, Mumbai and Ors. reported in 2014 ALL MR (Cri) 707.

8. Learned APP while opposing the Petition argued that firstly, full name of the police station is provided in Marathi translation to the detenu in order to make effective representation. Merely adding of word 'park' would not change the nature of documents and or cause any prejudice to the detenu. Secondly, so far as the time of production of the detenu and co-accused is not mentioned on page 217 i.e. '04.00 p.m.' It is an inadvertent typographical error but what is important is to communicate the sum and substance of order. Thirdly, the statement 'the reasons of arrest of accused are proper' whose Marathi translation is missing. The learned APP argues that the copy of 'remand' is given to detenu wherein the reasons of arrest of accused have been clearly stated to the Petitioner. It is further argued regarding the last grievance that the name of the authority passing the order, name and designation, name of Court and date of order is not provided to detenu. The learned APP replies that all these details have been provided to the

detenu in the grounds of detention in paragraph - 5.1.

9. In reply to ground (f), learned APP submitted that representation of the Petitioner dated 29th May, 2019 was received in jail on 3rd June, 2019. Thereafter, the copies of the same were forwarded to the State Government by speed post on the same day which was delivered at the post office of Mantralaya on 10th June, 2019 and received by the State Government on 11th June, 2019.

10. Thereafter, remarks were called from concerned authorities. The remarks of the detention authority were received on 14th June, 2019 on the same day Section Officer endorsed the file and forwarded it to Dy. Secretary who endorsed it and forwarded the same to the Additional Chief Secretary, Home. It is further argued that since the Additional Chief Secretary was busy on 2nd June, 2019 and there was holiday on 16th June, 2019 the representation of the Petitioner was considered and rejected on 17th June, 2019 and it was communicated on the same day. It is therefore stated that there is no delay and hence he supports the impugned order.

11. We find no merit in the first ground raised by the Petitioner in respect of incorrect translation and/or time is not mentioned and name of police station etc. It is a matter of record that the Petitioner was given Marathi translation in which the name of the police station is mentioned as 'Koregaon Park' instead of 'Koregaon' in English version. That does not change the nature of the document and in our opinion it does not cause any prejudice to the detenu. The sum and substance of the order of remand was communicated to the Petitioner. The next argument of the Petitioner that the reasons of arrest of accused are proper whose Marathi translation is missing, is of no help to the Petitioner in view of the fact that copy of the remand was given to the Petitioner wherein the reasons of arrest have been mentioned.

12. So far as the next ground of the Petitioner about delay in considering representation is concerned, the same needs to be accepted in the facts and circumstances of the present case. It is clear from the record that the Petitioner forwarded the representation dated 29th May, 2019 which was ultimately decided on 17th June, 2019. Even in the reply the delay in

considering the representation is not appropriately explained by the Respondents. The learned counsel for the Petitioner was justified in placing reliance in the case of *Arbahz @ Baban Shaikh* (supra) wherein this Court has, in the similar set of facts, come to the conclusion that, “as the representation of the Petitioner was not expeditiously decided and there is delay in the decision, the constitutional right guaranteed under Article 22(5) of the Constitution of India is violated and the impugned detention order is unsustainable”.

13. We find no plausible explanation for not expeditiously deciding the representation of the Petitioner dated 29th May, 2019 till 17th June, 2019 and on this ground alone the Petition is liable to be allowed. There is no satisfactory explanation for the delay in deciding the representation of the Petitioner. It is settled legal position that the detenu is required to be given earliest opportunity of making representation and his representation is required to be decided expeditiously as per the mandate of Article 22(5) of the Constitution of India.

14. The Hon’ble Apex Court in the case of **Rama Dhondu**

Borade vs. V.K. Saraf, Commissioner of Police and Ors.

Reported in (1989) 3 Supreme Court Cases 173 in paragraph

No. 19 has held thus:

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

The 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. his 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.

15. Thus it is clear from the record that the representation of the Petitioner was not decided within reasonable time by the State though it was incumbent on the part of the State to deal with the representation expeditiously. There was inordinate delay in deciding the same. The reasons given by the State justifying the delay

are unacceptable. The reasons for delay are not sufficient and we are unable to accept the same.

16. In this view of the matter, Writ Petition deserves to be allowed and it is accordingly allowed.

17. The impugned order of detention of the Petitioner passed by the Commissioner of Police, Pune City dated 12th April, 2019 is hereby quashed and set aside. The Petitioner to be released forthwith, if he is not required in any offence or proceeding.

18. Rule is made absolute in above terms. There shall be no order as to costs.

(N.B. SURYAWANSHI, J.)

(S.S. SHINDE, J.)