

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

CRIMINAL WRIT PETITION NO.2874 OF 2019

Nagesh Prakash Ingale
Age 37 years, residing at MIDC
Hudko Colony, Kumtha Naka,
Solapur.

...Petitioner (Detenu)

Vs.

1. Commissioner of Police,
Solapur, Maharashtra.

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.

...Respondents

Mr. Udaynath Tripathi, advocate for the petitioner.
Mr. J.P. Yagnik, APP for the respondents-State.

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

JUDGMENT RESERVED ON : 5TH NOVEMBER, 2019.

JUDGMENT PRONOUNCED ON : 18TH NOVEMBER, 2019.

JUDGMENT : (Per N.B. SURYAWANSHI, J.)

. By this Petition, the petitioner challenges the detention order passed by the Commissioner of Police, Solapur 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. This court granted Rule in the matter on 12th June, 2019. Rule is made returnable and with the consent of both the parties, the matter is heard finally.

3. Heard the learned counsel for the petitioner and the learned APP. The learned APP has made available the original file of the present case, which we have perused with the assistance of both the parties.

4. The learned counsel for the petitioner pressed into service ground (e), which is to the effect as follows :-

“The petitioner submitted a representation through the Superintendent of Yerwada Central Prison, viz., the respondent No.3 on 22nd April, 2019 and the same was considered and rejected on 10th May, 2019.”

Thus, there was inordinate and unexplained delay in considering the representation, due to which the fundamental right guaranteed to the petitioner under Article 22(5) of the Constitution of India is violated and the detention order is rendered invalid.

5. The learned counsel for the petitioner placed reliance in the case of Mahesh Kumar Chauhan Alias Banti Vs. Union of India And Others reported in (1990) 3 SCC 148 in support of his contention.

6. The learned APP supported the detention order contending that the representation was received in the Special Branch-3B-Desk on 4th May, 2019 and the remarks thereafter were called from the detaining authority, which were received on 9th May, 2019. After receipt of the file containing remarks of the detaining authority alongwith the representation of the detenu, the same was submitted to the Deputy Secretary on 9th May, 2019, who endorsed it on the same day and forwarded the same to the Additional Chief Secretary (Home) on the same day. On consideration of the file, the Additional Chief Secretary (Home) rejected the representation on 10th May, 2019 by applying his mind. The learned APP submits that

there were holidays on 27th April, 2019, 28th April, 2019, 1st May, 2019 and 5th May, 2019. Therefore, there is no delay.

7. Perusal of the original file shows that the representation of the petitioner dated 22nd April, 2019 was received in the Inward Department of Yerwada Central Prison on 26th April, 2019 and the same was received in the Special Branch-3B-Desk on 4th May, 2019, which was ultimately decided and rejected on 10th May, 2019. The respondents have failed to explain the reasons for not considering and disposing of the representation of the petitioner expeditiously, which is fatal and the Petition deserves to be allowed on this ground alone.

8. It is a matter of record that the representation dated 22nd April, 2019 ought to have been immediately forwarded by the prison authorities to the Government. There is no explanation as to why the representation of the petitioner was forwarded belatedly, which was received in the Special Branch-3B-Desk only on 4th May, 2019. Thereafter, further the Government took six days to take the decision on the said representation.

9. The learned counsel for the petitioner was right in

placing reliance in the case of Mahesh Kumar Chauhan Alias Banti Vs. Union of India and others (cited supra), wherein it is held that the representation to appropriate authority should be disposed of expeditiously. Delay in disposal should be satisfactorily explained by all the concerned authorities individually and where detaining authority is unable to personally explain delay at various stages, the delay is fatal to the detention irrespective of enormity and gravity of allegations made against the detenu. The Hon'ble Apex Court has held in paragraphs 16 to 19 as follows :-

16. Now the unchallengeable legal proposition that emerges from a host of decisions, a few of which we have referred to above, is that a representation of a detenu whose liberty is in peril and depraved should be considered and disposed of as expeditiously as possible; otherwise the continued detention will render itself impermissible and invalid as being violative of the constitutional obligation enshrined in Article 22(5) of the Constitution and if any delay occurs in the disposal of a representation, such delay should be explained by the appropriate authority to the satisfaction of the court.

17. In spite of the weighty pronouncements of this Court making the legal position clear, it is still disquieting to note that on many occasions the appropriate authorities cause considerable delay in considering and disposing of representations

and also exhibit culpable indifference in explaining such delay. We feel that in case the appropriate authority is unable to explain personally the delay at various stages, then it will be desirable - indeed appropriate - for the concerned authority or authorities at whose hands the delay has occurred to individually explain such delay.

18. The next question is should or can the court in the absence of any explanation wink at or skip over or ignore such an infringement of the constitutional mandate and uphold an order of detention merely on the ground that the enormity of allegations made in the grounds of detention is of very serious nature as in the present case? Our answer would be 'Not at all'.

19. In this connection, it will be relevant to make reference to the view expressed by Mathew, J. speaking for the majority in Prabhu Dayal Deorah v. District Magistrate, Kamrup which is as follows : (SCC p. 114, para 21)

"We say and we think it is necessary to repeat, that the gravity of the evil to the community resulting from anti-social activities can never furnish an adequate reason for invading the personal liberty of a citizen, except in accordance with the procedure established by the Constitution and the laws. The history of personal liberty is largely the history of insistence on observance of procedure. And observance of procedure has been the bastion against wanton assaults on personal liberty over the years. Under our Constitution, the only guarantee of personal liberty for a person is that he shall not be deprived of it except in

accordance with the procedure established by law”.

10. In the light of the above observations and considering the fact that the respondents have failed to explain the delay in expeditiously considering the representation of the petitioner, the impugned detention order is unsustainable and the same is liable to be quashed and set aside. Hence, the following order :-

ORDER

- (i) The impugned detention order dated 12th April, 2019, passed by the Commissioner of Police, Solapur, at Exhibit 'A' is quashed and set aside.
- (ii) The petitioner-detenu be set free, if not required in any other case.
- (iii) Rule made absolute in above terms, with no order as to costs.

(N.B. SURYAWANSHI, J.)

(S.S. SHINDE, J.)