

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

CRIMINAL WRIT PETITION NO.4643 OF 2019

Vijay Kedin Dhuriya
Age : 22 years, an Indian Inhabitant,
residing at Jay Ambey Chawl, Gaondevi
Mandir, Poisar, Kandivali (East),
Mumbai.

...Petitioner
Friend of Detenu
...Detenu

Akhilesh Acchebar Sahani @ Boka

Vs.

1. The State of Maharashtra,
Through Secretary, Home
Department (Special), Mantralaya,
Mumbai 400 032.

2. Sanjay Barve,
The Commissioner of Police,
Brihan Mumbai.

3. The Superintendent of Nashik Road
Central Prison, Nashik.

4. The Superintendent of Thane Central
Prison, Thane.

...Respondents

Mr. A.R. Shaikh a/w Ms. A.M.Z. Ansari a/w Ms. Nasreen Ayubi,
advocate for the petitioner.

Mrs. M.M. Deshmukh, APP for the respondents-State.

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

DATE : 13TH NOVEMBER, 2019.

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

. By this Petition, the petitioner challenges the detention order passed by the Commissioner of Police, Brihan Mumbai dated 9th August, 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 17th September, 2019. Rule is made returnable and with the consent of both the parties, the matter is heard finally.

3. Perused the original record of the matter, which was made available to us by the learned APP, with the assistance of the learned counsel for the petitioner and the learned APP.

4. The only ground pressed into service by the learned counsel for the petitioner is ground (viii), which is to the effect that

there was delay in considering the representation of the Detenu by the State Government and the decision of the representation was not communicated to the Detenu, which has vitiated the impugned detention order.

5. The learned APP has placed reliance on the affidavits filed by the respective respondents to contend that the representation was considered within reasonable time.

6. From the record, it emerges that the Detenu submitted his representation on 9th September, 2019, which was received by the Special Branch-3B Desk on the same day from Superintendent, Thane Central Prison. Thereafter, the remarks were called from the detaining authority, i.e., Commissioner of Police, Brihan Mumbai on the same day. The remarks of the detaining authority were received on 30th September, 2019, vide letter dated 27th September, 2019. After that, an endorsement was made by the Section Officer on 1st October, 2019 and the same was forwarded to the Deputy Secretary (In-charge) on the same day. Upon endorsement by the Deputy Secretary (In-charge) on 3rd October, 2019, the representation was

forwarded to the Additional Chief Secretary (Home) on that day only. The Addition Chief Secretary (Home) considered and rejected the representation on 4th October, 2019.

7. It is thus clear from the above facts that the representation of the Detenu dated 9th September, 2019 was considered and rejected on 4th October, 2019. Hence, the authorities took 25 days time to take decision on the representation of the Detenu.

8. On going through the affidavits filed by the respective respondents, the explanation about the delay of 25 days in considering the representation of the Detenu is conspicuously absent. The delay in the present matter is attributable to the detaining authority, as it delayed sending comments to the Government. However, the detaining authority has not offered any explanation for belatedly sending the comments to the Government. The only statement made in the reply affidavit of the detaining authority is as follows :-

“15. With reference to Ground 5(viii) of the petition, I offer no comments since it relates with Jail Authority and

State Government.”

Hence, we are of the considered opinion that the impugned detention order is vitiated on account of unexplained delay in considering the representation of the Detenu.

9. The learned counsel for the petitioner has rightly placed reliance in the case of Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and others [AIR 1989 SC 1861] wherein the Hon'ble Apex Court held that the authority must dispose of the representation of the Detenu as expeditiously as possible. The gap of 28 days between the receipt and disposal of the representation was held to be unreasonable and the explanation offered for the said delay was found to be unsatisfactory by the Apex Court. Hence, the Apex Court was pleased to set aside the detention order.

10. The reliance by learned counsel for the petitioner in the case of Mahesh Kumar Chauhan @ Banti Vs. Union of India & Ors. [AIR 1990 SC 1455] is well placed. That case was under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, wherein the delay was occasioned on the part of the detaining authority in sending comments and there was no

explanation for the delay. The Hon'ble Apex Court held the same violative of Article 22(5) and was pleased to quash and set aside the detention order.

11. The said authorities are squarely applicable to the facts of the present case. Thus, it is a matter of record that the delay of 25 days has gone unexplained and the right of the Detenu under Article 22(5) is grossly violated. In terms of section 3(3) of the said Act, the State Government is expected to expeditiously consider the representation, which is not done in the present case and the same has vitiated the impugned detention order. Hence, the following order :-

ORDER

- a) Writ Petition is allowed in terms of prayer clause 'a'.
- b) Petitioner be set at liberty, if not required in any other case.
- c) Rule made absolute in above terms with no order as to costs.

(N.B. SURYAWANSHI, J.)

(S.S. SHINDE, J.)