IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5551 OF 2018

ANIKET ARJUN CHOUDHARY)...PETITIONER

V/s.

1) THE COMMISSIONER OF POLICE)
PIMPRI-CHINCHWAD)
)
2) THE STATE OF MAHARASHTRA)
)
3) THE SUPERINTENDENT)
YERWADA CENTRAL PRISON, PUNE)
)
4) THE SECRETARY)
ADVISORY BOARD FOR M.P.D.A.ACT)...RESPONDENTS

Mr.Udaynath Tripathi, Advocate for the Petitioner.

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

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

DATE : RESERVED ON 25th APRIL 2019
PRONOUNCED ON

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

1 By this petition, the petitioner/detenu is challenging the order of his detention dated 10th October 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 Aniket Arjun Choudhary.

2 Though Mr.Tripathi, 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.6(L) raised by the petitioner/detenu needs to be reproduced for appreciating the contentions raised by the learned counsel for the petitioner. According to him, 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 15th October 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 relevant portion of ground raised in this regard is found in paragraph 6(L), which reads thus :

> "The detaining Authority sent the report to the State Government after 6 days of passing the detention order, which clearly shows that the detaining Authority has not sent the report forthwith, which shows total non-application of mind and clear violation of Section 3(3) of M.P.D.A.Act, 1981. The detaining authority is called upon to explain the said 6 days delay in

detail as to what prevented the detaining authority to send the report more promptly with a sense of urgency which could have been avoided and said report should have been sent immediately. The order of detention is illegal and bad in law liable to be quashed and set aside since the Hon'ble Apex Court has quashed and set aside the order for any delay if not explained to the satisfaction of the Court relying on various larger and Constitution benches of Apex Court.

4 The learned counsel for the petitioner/detenu further argued that the petitioner/detenu through his counsel has submitted a representation to the State on 23rd October 2018 for expeditious consideration of the matter and revocation of the order of detention. Though that representation was received by the State on 24th October 2018, it was submitted to the M.P.D.A. Desk on 29th November 2018. There is gross delay of 37 days in this regard. It is further urged on behalf of the petitioner/detenu that then remarks of the Detaining Authority were called vide letter dated 29th November 2018 but those remarks were sent

belatedly on 7th December 2018. Ultimately, representation of the petitioner/detenu was rejected by the State on 10th December 2018. In this way, right of the petitioner/detenu granted under Article 22(5) of the Constitution of India is violated. His representation was not considered promptly as well as expeditiously.

5 To counter this submission, Mr.Yagnik, the learned APP drew our attention to the affidavit filed by the Detaining Authority as well as the State from time to time and submitted that because of incorrect marking of the representation, it was wrongly forwarded to the Pol-13 Desk. After realization of mistake on 28th November 2018, the representation was again marked to the concerned Desk i.e. Desk Spl-3B. This mistake took place as the concerned Inward Clerk had gone for foundation training from 20th October 2018 to 3rd November 2018. That is how, according to the learned APP, the report was ultimately rejected on 10th December 2018 by the State after considering the response of the Detaining Authority as well as by due application

of mind. Our attention was drawn to the reply of the State reflecting the fact that report under Section 3(3) of the said Act was received from the Detaining Authority by the State on 15th October 2018. With this, the learned APP prayed for dismissal of the petition.

6 We have considered the submissions so advanced. Section 3 of the said Act deals with powers to make orders detaining certain persons. After making of orders of detention in exercise of powers conferred by sub-section (2) of Section 3 of the said Act, the Detaining Authority is required to forthwith report the fact to the State Government together with the ground on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter. Relevant portion of Section 3 of the said Act reads thus :

> **"3(1).....**
>
> **(2) .....**
>
> **(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."

It is, thus, clear that, the Detaining Authority is enjoined to submit its report under Section 3(3) of the said Act to the Government forthwith.

7 In the matter of **Hetchin Haokip vs. State of Manipur and Others**[1] 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

1 2018 (9) SCC 562

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 <u>whether the report was sent at the earliest time possible or whether the delay in sending the report could have been avoided</u>. 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."

8 In the case in hand, the detention order was not only made but was executed on 10th October 2018. Affidavit of the State shows that it has received report from the Detaining Authority under Section 3(3) of the Act on 15th October 2018. It is not explained by the State as to why the report, as envisaged under Section 3(3) of the Act, was not sent by the Detaining Authority forthwith to the State Government. Taking time of five days in submitting the report of the order or detention by the Detaining Authority clearly shows that the report was not sent by the Detaining Authority to the State at the earliest point in time

possible. There is laxity in reporting the detention to the State Government by the Detaining Authority i.e. respondent no.1.

9 Undisputed facts emerging on record do show that the petitioner/detenu had sent representation against the order of detention to the State Government, which was received by the Home Department of the State on 24th October 2018. However, this representation ultimately came to be decided on 10th December 2018. There is no plausible explanation for this delay in deciding the representation of the petitioner/detenu. The detenu is required to be given the earliest opportunity of making a representation against the order of detention and his representation is required to be decided expeditiously, as per mandate of Article 22 of the Constitution of India. The State Government has come up with a stand that after receipt of representation of the petitioner/detenu on 24th October 2018, it was inadvertently marked to wrong desk i.e. Pol-13 as the Inward Clerk had gone for the foundation course. Affidavit of the State further shows that the mistake was ultimately revealed on 28th

November 2018 and then the representation of the petitioner/ detenu was sent to the concerned desk. Then, remarks of the Detaining Authority were called and ultimately on 10th December 2018, the representation of the petitioner/detenu came to be rejected. The reasons put forth justifying the delay in disposal of the representation are totally unsatisfactory and reflect sorry state of affairs. The State Government cannot choose to delay in deciding the representation by putting forth the reason of clerical mistake in handling the representation of the petitioner/detenu. Ultimately, the question is of opportunity to a citizen and such matters need to be handled with due caution and sensitivity. Undue delay in disposal of the representation of the petitioner/detenu vitiates the order of detention.

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

(A. M. BADAR, J.) **(INDRAJIT MAHANTY, J.)**