

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5844 OF 2018

NAVIN KANHAIYALAL KESWANI)...PETITIONER

V/s.

**THE COMMISSIONER OF POLICE, THANE)
AND OTHERS)...RESPONDENTS**

Mr.Udaynath Tripathi a/w. Ms.Jayshree Tripathi, Advocate for the Appellant.

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

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

**DATE : RESERVED ON 28th JUNE 2019
PRONOUNCED ON 9th JULY 2019**

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

1 By this petition, the petitioner/detenu is challenging the order of his detention dated 1st November 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 Navin Kanhaiyalal Keswani.

2 Mr.Tripathi, the learned counsel for the petitioner, by relying on ground (h) urged that representation of the petitioner is not decided within reasonable dispatch by the State and thereby, his detention is rendered illegal. According to him, there is delay in considering the representation sent to the State and the law mandates that such a representation should be decided within reasonable dispatch as per mandate of Article 22(5) of the Constitution of India. Order calling remarks on the representation

was not passed by the empowered Officer and there was no reason to call for remarks. For this purpose, the learned counsel relied on the judgment of the Honourable Supreme Court in **R. Paulsamy vs. Union of India and Another**¹, **Venmathi Selvam vs. State of Tamil Nadu and Another**² as well as the judgment of the learned Division Bench of this court in **Chanda Birju Garunge vs. State of Maharashtra and Others**³. The learned counsel for the petitioner urged that there is no plausible explanation for inordinate delay in deciding the representation. The relevant portion of ground raised in this regard is found in paragraph 6(h), which reads thus :

“6(h) The Petitioner says and submit that representation of the detenu was sent to the State Government on 26.11.2018 by the Advocate on behalf of the detenu for revocation and requesting for certain vital documents which are referred to and relied by the detaining authority. The Petitioner submits that a communication dated 10.12.2018 is received by the detenu rejecting the said representation of

1 1999 CRI.L.J. 2897

2 (1998) 5 SCC 510

3 2015 (4) Bom.C.R.(Cri.) 219

the detenu thereby the State Government has delayed in considering the representation of the Petitioner. The said authority is called upon to explained the abovesaid delay of the satisfaction of this Hon'ble Court, failing which the continued detention will be held illegal. The order of detention is illegal and bad in law, liable to be quashed and set aside.”

3 Mr.Tripathi, the learned counsel for the petitioner, further argued that, translation of documents, and particularly bail application, was not provided to the petitioner, and as such, the petitioner was deprived of making any effective representation. As such, his right, as envisaged by Article 22(5) of the Constitution of India is violated rendering the detention order illegal. The Detaining Authority has taken into consideration Crime Nos.I-132 of 2018 and I-229 of 2018 in which he was granted bail but no Hindi translation of bail application was furnished to the petitioner in the language known to him i.e. Hindi. To buttress this contention, he relied on Abdul Sathar

Ibrahim Manik vs. Union of India and Others⁴, M.Ahamedkutty vs. Union of India and Another⁵ and Mrs.Satwinder Kaur Maan vs. District Magistrate & Another⁶ decided by the learned Division Bench of this court.

4 To counter this submission, Ms.Mhatre, the learned APP, drew our attention to the judgment of the Honourable Apex Court in the matter of **Kantilal Hirji Shah vs. State of Tamil Nadu and Others**⁷ and submitted that judgment in the matter of **R. Paulsamy (supra)** is expressly overruled by the Honourable Apex Court. Therefore, in submission of Ms.Mhatre, contention on behalf of the petitioner that order calling remarks was not passed by the empowered Officer and necessity of calling remarks is not explained, is devoid of any substance. Ms.Mhatre, the learned APP, candidly accepted the fact that remarks on representation were called by the Desk Officer of the department. She, further, argued that, bail application was moved by the petitioner himself and the petitioner, being an educated person,

4 AIR 1991 Supreme Court 2261

5 (1990) 2 Supreme Court Cases 1

6 2002 ALL MR (Cri) 1123

7 (2000) 7 Supreme Court Cases 606

was knowing English language. There was no material in the bail application, which was made in the bailable offence, in a routine manner. She based reliance on judgment of the Honourable Supreme Court in the matter of **Sunila Jain vs. Union of India and Another**⁸ and submitted that bail application in bailable offences filed by the detenu were not containing any material facts which were required to be taken into consideration by the Detaining Authority. Those applications were not imperative in character. With this, the learned APP submitted that the petition is devoid of substance and deserves to be dismissed.

5 We have considered the submissions, so advanced before us, by both the parties, and we have also carefully perused the material placed on record, so also, the case law cited by the parties. Firstly, we will deal with the contention that Hindi translation of bail applications was not furnished to the petitioner and that amounts to non-communication of grounds of detention. In ground 6(c), the petitioner/detenu has contended that in Crime Nos.I-132 of 2018 and I-229 of 2018 he was released on bail.

8 (2006) 3 Supreme Court Cases 321

These bail applications were in English language. However, translation of those bail applications in Hindi language were not furnished to him. Undisputedly, in both these offences, the petitioner himself had moved bail application in routine format, in English language. Both these offences were bailable in nature, and therefore, bail applications were formal bail applications on which routine order of releasing him on bail came to be passed. In reply, the Detaining Authority has categorically stated that the petitioner/detenu has taken education upto 7th Standard having English as one of his subjects in his studies. There is no counter to this submission made on affidavit by the Detaining Authority. Therefore, it cannot be said that non-furnishing of English translation of formal bail applications moved by the petitioner himself, has resulted in non-communication of grounds of detention to him. Judgment in the matter of **Abdul Sathar Ibrahim Manik (supra)** relied by the petitioner is explained by the Honourable Apex Court in the matter of **Sunila Jain (supra)**. Relevant observations found in paragraph 13 of judgment in the matter of **Sunila Jain (supra)** read thus :

“13 In **Abdul Sathar Ibrahim Manik v. Union of India & Ors.** [1992 (1) SCC 1] this court inter alia held (SCC page 17 paragraph 12) :

12(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody."

It was, however, observed: (SCC page 17 paragraph 12) :

12(6) In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should also be supplied to the detenu."

6 In the matter of M.Ahamedkutty (supra) the Honourable Apex Court followed earlier judgment in the matter of Mohd.Zakir vs. Delhi Administration⁹ and reiterated that it is a constitutional imperative to give the documents relied on and referred to in the order of detention along with grounds of detention and those should be furnished at the earliest, so that the detenu could make an effective representation immediately. It is not the case of the petitioner/detenu that bail applications moved by him before the competent court were not supplied to him. He has accepted the fact that those bail applications were supplied to him. The learned counsel for the petitioner relied on the judgment of the learned Division Bench of this court in the matter of Manoj s/o. Dilip Trivedi vs. State of Maharashtra (Through Home Department (Special) and Others¹⁰. The said matter proceeded on its own facts and the learned Division Bench of this court found that the copy of the bail application, which was moved by the detenu, and the order passed thereon by the concerned court, were not seen to be brought to the notice of the

9 (1982) 3 SCC 216

10 2007 ALL MR (Cri.) 1066

Detaining Authority by the sponsoring authority. The learned prosecutor failed to satisfy the court, in that matter, that copies of those vital documents were supplied to the detenu. Such is not the case in hand. In the matter of **Mrs.Satwinder Kaur Maan (supra)**, the detenu was not knowing Marathi. He was Punjabi and was knowing only Hindi language. However, documents supplied to him were in Marathi language.

7 As against this, the learned APP has rightly relied on judgment of the Honourable Apex Court in the matter of **Sunila Jain (supra)**, wherein, after considering several judgments on the issue, the Honourable Apex Court concluded that, a document which is imperative in character, needs to be supplied to the detenu, and placing of application for bail and order made thereon is not always mandatory and such requirement would depend on facts of each case.

8 In the case in hand, undisputedly, bail applications moved by the petitioner and orders passed thereon by the

concerned court, have been furnished to the petitioner. Those bail applications were in bailable offences and formal orders were passed on those applications, releasing the petitioner on bail. The petitioner has studied up to 7th Standard with English as one of the subjects in his studies. The documents, which were supplied to him in English language, were not at all vital documents or documents imperative in character, in the issue involved in this case. Therefore, it cannot be said that, merely because Hindi translation of the documents mentioned in paragraph 6(c) of the petition were not supplied to the petitioner, it resulted in non-communication of grounds of detention to him, thereby depriving his right of making prompt representation.

9 Case submitted by the learned counsel for the petitioner relying on Ground No.6(h) is to the effect that representation of the detenu made on 26th November 2018 was rejected on 10th December 2018 by causing delay in deciding the representation and the delay is not properly explained. There was no necessity for calling comments and the order calling comments

was not passed by the empowered Officer. In the matter of **R. Paulsamy (supra)** the Honourable Apex Court has held that as the order for calling comments of the Sponsoring Authority was not passed by the empowered Officer, the representation was dealt with in a routine manner without application of mind. However, the said judgment is expressly overruled by the Honourable Apex Court in the matter of **Kantilal Hirji Shah (supra)** relied on by the learned APP. Relevant portion of paragraph 4 of the said judgment needs reproduction. It reads thus :

“4It appears to us that the very fact that on receipt of the representation a comment was sought for from the sponsoring authority by an officer who had not passed the order of detention was itself treated to be the grounds for the conclusion that the representation has been dealt with in a routine manner and there was no application of mind by the competent officer. We cannot subscribe to the aforesaid conclusion expressed by the learned Judges in the aforesaid case. When a representation is received in the department of the concerned authority it is not

necessary for the authority to whom the representation is made, himself to make entry in the diary and immediately deal with the matter without taking the assistance of any other subordinate officers. A detenu under Article 22(5) has a right that his representation should be considered by the appropriate authority as expeditiously as possible and there should not be unexplained delay in the matter of disposal of the representation. Subordinate Officer calling for comments from any other authority does not, in fact, deal with the representation nor does it express any view on the representation and acts clerically only to get the necessary comments for being considered by the persons on whom the power to dispose of the representation vest. That being the position, and taking into account the system through which the Government functions, it is difficult for us to sustain the conclusion of this Court in Paulsamy's case in paragraph 6 quoted above. In our view, therefore, the fact that on receipt of the representation, the Joint Secretary of the department called for the comments of the sponsoring authority immediately and on receipt of the same had forwarded to the higher authority

which was dealt with by the appropriate authority, would not constitute any infringement of the constitutional right of the detenu under Article 22(5) nor it can be said that the representation has been dealt with mechanically without application of mind. We therefore hold that the law laid down by this Court in aforesaid case is not correct. Applying our mind to the manner in which the representation has been dealt with by the Central Government, as indicated in the counter affidavit, it is difficult for us to hold that there has been any unexplained delay in disposal of the representation, and therefore the contention of the learned Counsel for the detenu that the order of detention should be quashed on that score cannot be accepted.”

10 In the light of this authority to pronouncement of the Honourable Apex Court, we are unable to concede with the submissions of the learned counsel for the petitioner that representation was dealt with in a mechanical manner. Judgment of the Honourable Apex Court in the matter of Kantilal Hirji Shah (supra) was not placed for consideration before the learned

Division Bench of this court dealing with the petition of **Chanda Birju Garunge (supra)**. As such, the petitioner cannot take advantage of judgment of the learned Division Bench of this court in the said matter. Duly sworn affidavits of the respondents show that representation of the petitioner was received on 27th November 2018 and remarks thereon were called immediately. On receipt of remarks on 6th December 2018, the same came to be rejected on 10th December 2018. It is worthwhile to note that 8th December 2018 and 9th December 2018 were holidays. In the light of this fact, it cannot be said that there was delay in deciding the representation or that the representation was decided in a mechanical manner by calling comments routinely.

11 In the result, the petition is devoid of substance and therefore, the order :

ORDER

The writ petition is dismissed.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)