

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

CRIMINAL WRIT PETITION NO. 98 OF 2020

Vicky @ Munna Mahesh Shinde	}	
Nighoj, Nimgaon, Tal: Rahata	}	
District: Ahmednagar.	}	... <u>PETITIONER</u> / (Detenu)

VERSUS

1.	The District Magistrate	}	
	Ahmednagar.	}	
2.	The State of Maharashtra	}	
	(Through Addl. Chief Secretary	}	
	to Government of Maharashtra	}	
	Mantralaya, Home Department	}	
	Mantralaya, Mumbai	}	
3.	The Superintendent	}	
	Nashik Road Central Prison	}	
	Nashik.	}	... <u>RESPONDENTS</u>

APPEARANCES-

<i>For Petitioner-</i>	<i>Ms. Jayshree Tripathi. i/b. Mr. Udaynath Tripathi.</i>
<i>APP for State-</i>	<i>Mr. J P Yagnik.</i>

**CORAM : S. S. SHINDE &
V. G. BISHT, JJ.**

RESERVED ON : 02/03/2020.
PRONOUNCED ON : 05/03/2020.

JUDGMENT (PER S. S. SHINDE, J.)

1. Rule. Rule made returnable forthwith and heard with the consent of learned counsel for the parties.

2. The Petitioner / Detenu Vicky @ Munna Mahesh Shinde has preferred this Petition questioning the preventive detention order passed against him on 15th October 2019 by Respondent No. 1 – the District Magistrate, Ahmednagar. The said detention order has been passed under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders, Dangerous persons and Video Pirates Act, 1981 (hereinafter referred to as ‘MPDA Act’). The said detention order has been issued as the Detenu is a Dangerous person whose activities are prejudicial to the maintenance of public order. The detention order is based on three Crimes i.e. C.R. No. I-219/2019 registered with Shirdi Police Station, for the offences punishable under Sections 392, 34 Extra Section 394 of the Indian Penal Code, and C.R. no. I-594/2019 registered with Shirdi Police Station, for the offences punishable under Sections 141, 143, 147, 149, 323, 504, 506 of IPC and CR No. 687/2019 registered with Shirdi Police Station for the offences punishable under Sections 326, 323, 504, 506, 34 of IPC.

3. Though the number of grounds have been raised in the present petition whereby the detention order has been assailed, however, the learned counsel appearing for the Petitioner / Detenu has pressed only four grounds before us i.e. ground nos. ‘c’, ‘d’, ‘f’ and ‘g’. Those grounds are reproduced herein below in verbatim.

c. *The Petitioner says and states that there are various documents which are placed before the detaining authority in English language, no translation of page Nos. 47, 71, 77, 99, 31, 66, 91, 32, 33 of the compilation which are relied on documents in C.Rs. considered by the detaining authority which include Judicial Orders, injury certificates and other vita and most relevant documents whose Marathi translation is not supplied to the Petitioner. As a result the Petitioner is deprived of making any effective representation as such his right to make effective representation guaranteed under Article 22(5) of the Constitution is violated. This is in clear violation of constitutional safeguards and non following procedures required to be followed in preventive detention cases also violating Article 21 of the Constitution of India. The order of detention is illegal and bad in law liable to be quashed and set aside.*

d *The Petitioner says and submits that there are various documents found at page 42, 43, 51, 72, 101 which are relied on and considered by the detaining authority are found to be wholly and/or partly illegible. The Petitioner is unable to read and understand the contents of documents as such his right to make effective representation guaranteed under Article 22(5) of the Constitution of India is*

violated. This is in clear violation of constitutional safeguards and non following procedures required to be followed in preventive detention cases. The order of detention is illegal and bad in law liable to be quashed and set aside.

- f. The Petitioner says and submits that the detaining authority has taken into consideration three criminal cases registered against the Petitioner vide C.R. No. I-219 of 2019, C.R. No. I-594 of 2019 and C.R. No. I-687 of 2019, all registered at Shirol Police Station. The Petitioner was granted bail by the competent Court of law in all abovementioned cases and the Petitioner was a free person when he was detained under M.P.D.A. Act. The Petitioner says and submits that neither Bail Applications and Bail Orders in these cases are placed before the detaining authority nor copies of Bail Applications and Bail orders are furnished to the Petitioner. It is held by the Hon'ble Supreme Court of India that in such cases Bail Application and Bail Orders are most relevant and vital documents, which are necessarily required to be placed before the detaining authority and copies should be furnished to the Petitioner for making effective representation. The Petitioner says and submits that in this case no Bail Application and Bail Orders are either placed before the detaining authority or copies furnished to the Petitioner. The satisfaction vitiated. The order of detention is illegal and bad in*

law liable to be quashed and set aside.

g. The Petitioner says and submits that a representation of the detenu dated 17.12.2019 was sent by Speed Post to the State Government through the Nashik Road Central Prison, Nashik for expeditious consideration and revocation of the order of detention. The Petitioner has so far not received any communication as regards to the consideration of the abovesaid representation thereby the State Government has delayed in considering and communicating the result. The State Government is called upon to explain the said delay, if any, to the satisfaction of this Hon'ble Court failing which the continued detention will be held as illegal. The order of detention is illegal and bad in law, liable to be quashed and set aside.

4. Heard learned counsel appearing for the Petitioner. She invites attention of this Court to the grounds taken in the petition, annexures thereto and submits that on aforesaid grounds the petition deserves to be allowed.

5. On the other hand learned APP appearing for Respondent-State and its officials invites attention of this Court to the averments in reply filed by Rahul Dwivedi, District Magistrate, Ahmednagar and also Aniruddha Venkatesh Jewlikar, Deputy Secretary (In-charge),

Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai and submits that all the grounds have been dealt with in the affidavit in reply. None of the ground is convincing, therefore, petition may be rejected.

6. We have carefully perused the grounds in the petition, replies filed by respondents and original record. So far ground no. (c) is concerned, in reply filed by the respondents it is stated that the Page Nos. 47, 71, 77, 99, 31, 66, 91, 32, 33 have been relied upon by the detaining authority while arriving at subjective satisfaction for passing the order of detention, and those documents are only for reference. However, there is no denial to the fact that translation of aforesaid pages is not supplied to the detenu. Therefore, learned counsel for the Petitioner is right in submitting that non supply of translation of aforesaid copies in English language has caused prejudice while making the effective representation.

7. So far ground no. (d) is concerned the copy of documents which are supplied to the Petitioner is made available for perusal and upon perusal of compilation of documents given to the Petitioner, it appears that, Page Nos. 42, 43 and 51 are not legible at all and therefore, we find considerable force in the argument of learned counsel for the Petitioner that non supply of legible copies of

documents has caused prejudice to the Petitioner while making an effective representation.

8. So far ground no. (f) is concerned it is stated by the Petitioner that no bail application or bail orders are either placed before the detaining authority nor copies of said documents were furnished to the Petitioner. In respect of said ground also, we find considerable force in the argument of learned counsel for the Petitioner that copies of said documents ought to have been placed before the detaining authority and copies should have been furnished to the Petitioner.

9. The main ground (g) raised by the Petitioner is that the representation filed by the Petitioner has not been decided expeditiously and within reasonable time. In respect of ground (g) it would be apt to reproduce herein below para 14 of the affidavit in reply filed by the District Magistrate.

14. With reference to para no. 5(g) of the Petition, it is submitted that the contents in the said para is not true and correct and hence denied by me.

The representation submitted by detenu came to be decided by the state government and accordingly pleased to confirm the order of detention dated 15/10/2019 passed by present respondent.

The present respondent no. 2 vide letter dated 13/01/2020 has informed to the petitioner that the representation dated 17/12/2019 has been rejected. Vide letter dated 13/01/2020 the respondent no. 2 has communicated the said decision to the petitioner and directed the Nashik Road, Central Prison, Nashik to served the first copy of said letter to the petitioner explaining the contents therein in language known to him. The present respondent no. 3 has accordingly complied with the direction given in communication dated 13/01/2020.

It is submitted that the representation of Detenu dated 17.12.2019 was received in the Special Branch, 3-B, Desk on 20.12.2019, through the Superintendent, Nashik Road Central Prison, Nashik vide letter dated 19.12.2019. Thereafter, the remarks were called from the Detaining Authority i.e. District Magistrate, Ahmednagar on 19.12.2019 and vide reminder letter dated 07.01.2020 by Special Branch 3-B desk. I state that we have received letter from Government dated 20.12.2019 itself on Email Id of concerned branch of present respondent i.e. homebranch.ahmednagar@gmail.com. After receipt of the copy of said representation, the all relevant documents and record have been verified and on the basis of same the parawise comments have been prepared immediately and on 23/12/2019 the soft copy of said parawise comments has also been forwarded to the Home Department, Mantralaya, Mumbai in the form of MS-Word document as directed in the letter dt. 20/12/2019. The signed copy of the said parawise comments has been forwarded by the present respondent on 27/12/2019 to the Home Department,

Mantralaya, Mumbai on its official Email Id in the form of PDF document.

However, again on 07/01/2020 Home Department, Mantralaya has called parawise comments from the present respondent on the representation submitted by detenu. Besides earlier parawise comments submitted by present respondent to the Home Department on 27/12/2019 in the form of PDF document, the copy of same parawise comments has been submitted by the present respondent through the concerned clerk of the Home Branch of present respondent to Home Department, Mantralaya, Mumbai on 10/01/2020.

The contents in the parawise comments submitted to Home Department, Mantralaya, Mumbai in PDF format on 27/12/2019 on their Email and contents in the hard copy of parawise comments submitted on 10/01/2020 to Home Department, Mantralaya, Mumbai are one and the same. There is no delay on the part of present respondent to forward the parawise comments on representation submitted by the detenu to the Home Department, Mantralaya, Mumbai.

The remarks of the Detaining Authority were received on 10.01.2020. The concerned Assistant Section Officer submitted file containing remarks of Detaining Authority along with the representation of the Detenu to the Section Officer on 10.01.2020. The Section Officer endorsed it on 10.01.2020 and forwarded it to the Deputy Secretary (In-charge) on the same day. The Deputy Secretary (In-charge) endorsed it on 10.01.2020 and forwarded it to the Additional Chief Secretary (Home) on the same day. There were holidays on 11.01.2020 & on 12.01.2020 being 2nd Saturday and

Sunday respectively. The Additional Chief Secretary (Home) considered the representation of the detenu and the remarks of the Detaining Authority and rejected the representation on 13.01.2020 by applying his mind. The rejection of representation was communicated to the detenu vide letter dated 13.01.2020.

10. The aforesaid averments in the affidavit in reply would make it abundantly clear that the representation of the Petitioner dated 17.12.2019 was received in the Special Branch, 3-B, Desk on 20.12.2019 and thereafter due to negligence on the part of Home Department, Mantralaya, Mumbai, and also the District Magistrate, the same has been decided on 13.01.2020. The manner in which the representation of the Petitioner has been dealt with with casual approach cannot be approved.

11. The Hon'ble Supreme Court in the case of *Shadab v. R.H. Mendonca and others*¹ held that the right of detenu to make a representation under Article 22(5) of the Constitution of India stipulates the right of making an effective representation and not an illusory one. And when illegible copies of documents are supplied to the detenu, as in the case here, the right to make an effective representation is whittled down to an illusory one. And this is in clear violation of the mandate of Article 22(5) of the Constitution of India. Since in the instance case the detenu's right of making an

1 1998 CRI.L.J. 4348

effective representation under Article 22(5) of the Constitution of India was violated, his continued detention is rendered illegal in law and the detention order would have to be set aside.

12. The Division Bench of this Court (Coram:- Indrajit Mahanty & A.M. Badar, JJ.) in Criminal Writ Petition No. 45 of 2019 decided on 19th June 2019, relying upon the judgment of Hon'ble Supreme Court in the case of *Harish Pahwa vs. State of Uttar Pradesh and others*² held that, though it was incumbent on the part of the State to deal with the said representation expeditiously, however, the said representation was lying with the Desk 3B of the Special Branch from 1st January 2019 to 4th January 2019 without there being any action thereon.

13. The Hon'ble Supreme Court in the case of *Rushikesh Tanaji Bhoite v. State of Maharashtra & Ors.*³, in Para 9 observed that, in a case where detenu is released on bail and is enjoying his freedom under the order of the Court at the time of passing the order of detention, then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.

2 AIR 1981 Supreme Court 1126

3 2012 CRI. L.J. 1334

14. In view of aforesaid reasons, we are of the opinion that, the petition deserves to be allowed. Hence, we pass the following order:-

ORDER

- i) The impugned order of Detention bearing No. DC/Desk-9K/365/2016 dated 15.10.2019 issued under Section 3 of the M.P.D.A. Act 1981 by the Respondent No. 1 is hereby quashed and set aside.
- ii) The Detenu-Vicky alias Munna Mahesh Shinde be set at liberty forthwith, if not required in any other case.
- iii) Rule made absolute in above terms with no order as to costs.

(V. G. BISHT, J.)

(S. S. SHINDE, J.)