

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

CRIMINAL WRIT PETITION NO. 235 OF 2020

Mohammed Aslam Azad Shaikh	]	
Age : 49,	]	
Address – Room No. 10,	]	
Dattuwardi Chawl No. 3, Near Petrol	]	
Pump, Mumbra, Dist. Thane	]	...Petitioner /Father of Detenu
Mohammed Rafiq Aslam Azad Shaikh	]	...Detenu

VERSUS

1. The State of Maharashtra	]	
Through Secretary	]	
Home Department (Special)	]	
Mantralaya, Mumbai – 32.	]	
2. Shri. Ravindra Sengonkar,	]	
Commissioner of Police,	]	
Railways, Mumbai	]	
4 th Floor, Area Manager, Building,	]	
P .D'Mello Road, Wadi Bandar,	]	
Sandhurst Road, Mumbai – 10.	]	
3. The Superintendent	]	
Thane Central Prison, Thane.	]	...Respondents

Mr. Sandeep R. Waghmare for the Petitioner.
Mr. J.P. Yagnik, APP for Respondent – State.

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

**RESERVED ON : 27th FEBRUARY 2020
PRONOUNCED ON : 05th MARCH 2020**

JUDGMENT (PER S. S. SHINDE, J)

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

2. The Petitioner / Mohammed Aslam Azad Shaikh who is the father of detenu namely Mohammed Rafiq Aslam Azad Shaikh has preferred this Petition questioning the preventive detention order passed against detenu on 13th November 2019 by Respondent No. 2 – Commissioner of Police, Railways, Mumbai. The said detention order has been passed under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders, Dangerous persons and Video Pirates, Sand Smugglers and persons engaged in Black-marketing of Essential Commodities Act, 1981 (hereinafter referred to as 'MPDA Act'). The said detention order has been issued as according to the detaining authority, Detenu is a Dangerous person whose activities are prejudicial to the maintenance of public order. The detention order is based on Crime i.e. C.R. Reg. No. A-2974 of 2019 dated 18th August, 2019 registered with Thane Railway Police Station for the offence punishable under Section 392 read with Section 34 of the Indian Penal Code, and two in-camera statements of witnesses 'A' and 'B' recorded on 22-10-2019 and 24-10-2019 respectively.

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 has pressed five grounds before us i.e. ground nos. 'j', 'k', 'l', 'm' and 'n'. Those grounds are reproduced herein below in verbatim.

- j. By passing Detention Order and by detaining the Detenu without having sufficient material and reasons to implicate the Detenu under provisions of MPDA Act, the Police have infringed constitutional rights of the Detenu under Article 22(5) of the Constitution of India. Therefore, the impugned order of Detention is malafide, null and void.*
- k. Before taking away somebody's liberty, the Detaining Authority ought to have strictly adhered to provisions and parameters of MPDA Act, and should have applied only where activities of person falls under dangerous activities. However, Detaining Authority has wrongly exercised their powers while passing Detention Order against the Detenu.*
- l. The Respondents have not communicated to the Petitioner as to whether the Section Officer of Respondent No. 1 has granted his approval to the Detention Order dated 10-10-2019 or not. In case the Approval is not granted by the Respondent No. 1 the detention order cannot be acted upon and the Detenu is entitled for release with immediate effect.*
- m. The Petitioner states that, the only incident considered by the detaining authority was dated 13-11-2019, FIR was registered on 18-8-2019 bearing No. 2794 by Thane Railway Police Station. The Petitioner was arrested on 18-8-2019, he was granted bail by Ld. J.M.F.C., Railway*

Court, Kalyan on 22-10-2019 on cash security of Rs. 25,000/-. And on the same day the Petitioner had deposited Rs. 25,000/- cash security as per bail order dated 22-10-2019. The Petitioner says and submits that, the detaining authority issued impugned detention order on 13-11-2019 i.e. after a period of 3 months from the date of incident as well as from the date of his arrest. The impugned order of detention was thus issued after an inordinate and in-execusable delay. The Petitioner says and submits that, the live link having been snapped and the credible chain if any, has been broken. The Petitioner states and submits that, to fill the gap between the day when the detenu was released on bail and the day when the detaining authority issued the impugned order of detention dated 13-11-2019, the sponsoring authority has recorded two in-camera statements, one on 22-10-2019 and another on 24-10-2019. The Petitioner states and submits that, belated issuance of impugned order of detention vitiate the impugned order of detention.

- n. The Petitioner says and submits that the detenu has submitted to Addl. Chief Secretary, Home Department, State Government on or about 18-12-2019 by Post and the same was received by the Addl. Chief Secretary, Home Department, State Government on 19-12-2019 as per India Post Tracking Report as available on Office Website of India Post. The Petitioner submits that, his Advocate also received back Postal Acknowledgment. The Petitioner says and submits that it was incumbent upon the State Government to satisfy this Honourable Court whether any parawise comments were called from the sponsoring authority; if called when it has been called and that as to when the said parawise comments was received by the State Government. The Representation dated 12-12-2019, which was sent on 18-12-2019 was decided by State Government after inordinate delay i.e. on 13-1-2020 and the rejection*

letter dated 13-1-2020 was communicated to detenu on 20-1-2020. The State Government should disclose to this Hon'ble Court, as whether the said Representation was considered by the State Government expeditiously and uninfluenced by the opinion of the Advisory Board. The State Government shall explain with cogent reasons as to why the consideration of Representation was communicated to the Detenu with inordinate delay. The Prison authority should disclose to this Hon'ble as to when the rejection letter was received by them and as to when it has been served upon the detenu. The Petitioner states and submits that, on instructions from the Petitioner the said rejection letter dated 13-1-2020 was received by the detenu on 20-1-2020. The Petitioner states and submits that, there is delay in considering the representation at every stage, which has resulted into continuation of detention of the detenu as vitiated. Hereto annexed & marked Exhibit-H is the copy of Postal Receipt with printout of Track Report and postal acknowledgment, and Exh-I is the copy of rejection letter dated 13-1-2020.

4. Learned counsel appearing for the Petitioner invites attention of the Court to the aforesaid grounds and submits that the representation of the Petitioner was decided belatedly and therefore, on this ground alone Petition deserves to be allowed. In support of the aforesaid contention learned counsel invites attention of this court to the judgment of the Hon'ble Supreme Court in the case of Rama Dhondu Borade v. K. Saraf, Commissioner of Police and Others¹ and in the case of Harish Pahwa v. State of U.P. and others².

¹ (1989) 3 SCC 173

² AIR 1981 SC 1126

5. Learned counsel appearing for the Petitioner further submits that, there was delay in passing the order of detention. In support of aforesaid contention learned counsel pressed into service unreported judgment of this Court in Narendra @ Chotya Mahadev Balkawade v. The Commissioner of Police Pune City and Others³. Therefore, learned counsel appearing for the Petitioner submits that Petition deserves to be allowed.

6. On the other hand, learned APP appearing for the Respondent – State invites attention of this Court to the affidavit in replies filed by the Ravindra Sengaonkar, Commissioner of Police, Railways, Mumbai, Aniruddha Venkatesh Jewlikar, Deputy Secretary (In-charge), Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai and two additional affidavit of Ravindra Sengaonkar, Commissioner of Police, Railways, Mumbai, submits that all the grounds have been specifically answered in the aforesaid replies. Learned APP submits that petitioner is dangerous person and in past he has committed six serious offences against person and 11 property offences. In the year 2016 detenu was externed taking recourse to section 56(1)(a)(b) of the Maharashtra Police Act. It is submitted that there was no delay in passing the order of detention so also in deciding the representation of the Petitioner. In support of aforesaid

3 Criminal Writ Petition No. 6041 of 2019 decided on 09th January 2020

contention learned APP pressed into service an exposition of the High Court of Bombay⁴ in the case of Deepak Govind Murudhkar V. R.H. Mendonca and Ors. Therefore, learned APP submits that Petition may be rejected.

7. We have carefully perused the contents of the ground nos. 'j' and 'k', we find that it suffers from specific particulars and said contentions are general in nature.

8. It appears that detention order was issued on 13th November 2019 and on 10th October, 2019 as mentioned in paragraphs 5 and 9 in the Writ Petition. The FIR bearing C.R. Reg. No. A-2974 of 2019 against the Petitioner was registered with Thane Railway Police Station on 18th August, 2019. The Petitioner was arrested immediately on very same day and was granted bail by learned JMFC, Railway Court, Kalyan on 22nd October, 2019 on certain conditions. Thereafter the statements of two witnesses in camera were recorded on 22nd October, 2019 and 24th October, 2019. The Proposal was forwarded by the Thane Railway Police Station on 25th October, 2019 through Assistant Commissioner of Police, Kalyan Division, Railways, Mumbai. After scrutinizing the said proposal same was forwarded to DCP, Central Zone on 26th October, 2019. Therefore, from the date of recording the statement of witness B the detention order has been passed within one

4 Criminal Writ Petition No. 2090 of 1999 decided on 13.03.2000

month. Thereafter through proper channel said proposal was submitted to Commissioner of Police, Railways, Mumbai. Therefore, there is no delay as such in passing the order of detention. In Deepak Govind Murudkar (supra) in para 11 it is held as under:

11. Since in view of the ratio laid down in A.I.R. 1999 S.C page 2197 (supra) in-camera statements of witnesses, provided they disclose offences falling under Chapters XVI or XVII of I.P.C. or Chapter V of Arms Act, can be taken into consideration for determining whether a person is a dangerous person under Section 2(b-1) of the MPDA Act, and Mr. Tripathi does not dispute that in-camera statements of witnesses A and B reveal commission of offences under Chapters XVI and XVII of the I.P.C by the detenu, the delay in the issuance of the detention order, in our view, would be computed from the date of the last in-camera statement and not from the date of the last C.R., as urged by Mr. Tripathi.

9. The another ground raised by the petitioner that there was delay in deciding the representation is concerned, Respondent no. 1, Mr. Aniruddha Venkatesh Jewlikar, Deputy Secretary (In-charge), Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai has stated in affidavit in reply that the representation of the detenu dated 12.12.2019 was received in the Registry of Home Department of Government of Maharashtra on 19th December, 2019. During the said period

there was session of the Assembly at Nagpur. Thereafter, there was holidays on 22.12.2019 (Sunday), 25.12.2019 (Christmas), 28.12.2019 (Fourth Saturday) and 29.12.2019 (Sunday). Due to heavy workload with the Registry of Mantralaya, Mumbai and holidays in between, the representation of the detenu could not be sent to Special Branch-3B Desk till 01.01.2020 by the Registry of Home Department. Thereafter, the remarks were called for from the Detaining Authority i.e. Commissioner of Police, Railways, Mumbai on the same day by the Special branch-3B Desk. The remarks were received on 09th January, 2020 and thereafter, the said remarks were forwarded to the Deputy Secretary (In-charge) on the same day. The Deputy Secretary gave endorsement on 10th January, 2020. and the same was forwarded to the Additional Chief Secretary (Home) on the same day. There was holidays on 11.01.2020 (Second Saturday) and on 12.01.2020 (Sunday). 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 and thereafter decision was communicated to the Petitioner.

10. The aforesaid averments from the affidavit in reply would make it abundantly clear that the representation dated 12th December, 2019 of the detenu was received in the Registry of the Home Department, Government of Maharashtra on 19th December, 2019. It is admitted position that from

19th December, 2019, the said representation was lying in the Registry of the Home Department, Government of Maharashtra was not sent to Special Branch-3B Desk till 01st January, 2020 by the Registry of Home Department. It is only stated that there were four holidays from 19th December, 2019 till 01st January, 2020. It further appears that the remarks were called and till 09th January, 2020 no remarks were received from the Detaining Authority and thereafter, the representation has been decided on 13th January, 2020. However, it is not mentioned in the affidavit that when the said decision was communicated to the Petitioner. The Supreme Court in the case of Venmathi Selvam (Mrs) v. State of T.N. and Another⁵ in paragraph 4 held as under:

Though the delay is not long, it has remained unexplained. Though the delay by itself is not fatal, the delay which remains unexplained becomes unreasonable. In spite of this well-settled legal position the State Government has failed to explain satisfactorily that it had dealt with the representation of the detenu as promptly as possible. It appears that oblivious of the correct legal position and its obligations in matters of preventive detention it has dealt with the representation of the detenu in a routine manner. This indifference of the Government is the cause for rendering the continued detention of the detenu illegal.

11. The Division Bench (CORAM : INDRAJIT MAHANTY & A. M. BADAR, JJ.) of this Court in Criminal Writ Petition No. 45 of 2019 decided on 19th June, 2019, while dealing with case of detenu therein that there was delay in deciding the representation, in paragraphs 8 and 9 held thus:-

⁵ (1998) 5 SCC 510

8 At this juncture, it is apposite to quote observations of the Hon'ble Apex Court found in paragraphs 12 to 20 in [Rama Dhondu Borade vs. V. K. Saraf, Commissioner of Police and Others](#) relied by the learned counsel for the petitioner/detenu. Those read thus :

"12 We shall now examine the proposition of law relating to the delayed consideration and disposal of the representation of a detenu with reference to the judicial pronouncements.

13 There is a line of decisions of this Court dealing with this aspect of law of which we shall make reference to a few.

14 [In Jayanarayan Sukul v. State of West Bengal](#), [1970] 1 SCC 219 the following observation has been made:

"It is established beyond any measure of doubt that the appropriate authority is bound to consider the representation of the detenu as early as possible. The appropriate Government itself is bound to consider the representation as expeditiously as possible. The reason for immediate consideration of the representation is too obvious to be stressed. The personal liberty of a person is at stake. Any delay would not only be an irresponsible act on the part of the appropriate authority but also unconstitutional because the Constitution enshrines the fundamental right of a detenu to have his representation considered and it is imperative that when the liberty of a person is in peril immediate action should be taken by the relevant authorities."

15 This Court in [Niranjan Singh v. State of Madhya Pradesh](#), [1973] 1 SCR 691 expressed the view that it is incumbent on the State to explain the inordinate delay in considering and rejecting the representation of the detenu and satisfy the Court that there was justification in that delay.

16 While dealing with the constitutional requirement

of expeditious consideration of the detenu's representation by the Government as spelt out from Clause 5 of [Article 22](#) of the Constitution this Court, after referring to the decisions in [Abdul Karim and Others v. State of West Bengal](#), [1969] 1 SCC 433 and [Pankaj Kumar Chakraborty and Others v. State of West Bengal](#), [1969] 3 SCC 400 has stated in [Rashik Sk. v. State of West Bengal](#), [1973] 3 SCC 476, as follows:

"It is undoubtedly true that neither the Constitution nor the Act expressly provides for consideration of a detenu's representation by the State Government within any specified period of time. The constitutional requirement of expeditious consideration of the petitioner's representation by the State Government has, however, been spelt out by this Court from clause (5) of [Article 22](#) of the Constitution....."The use of the words "as soon as may be" (occurred in [Article 22\(5\)](#) of the Constitution) is important. It reflects the anxiety on the part of the framers of the Constitution to enable the detenu to know the grounds on which the order of his detention has been made so that he can make an effective representation against it at the earliest. The ultimate objective of this provision can only be the most speedy consideration of his representation by the authorities concerned, for, without its expeditious consideration with a sense of urgency the basic purpose of affording earliest opportunity of making the representation is likely to be defeated. This right to represent and to have the representation considered at the earliest flows from the constitutional guarantee of the right to personal liberty - the right which is highly cherished in our Republic and its protection against arbitrary and unlawful invasion..... Now, whether or not the State Government has in a given 198 case considered the representation made by the detenu as soon as possible, in other words, with reasonable dispatch, must necessarily depend on the facts and circumstances of that case, it being neither possible nor advisable to lay down any rigid period of time uniformly applicable to all cases. The Court has in

each case to consider judicially on the available material if the gap between the receipt of the representation and its consideration by the State Government is so unreasonably long and the explanation for the delay offered by the State Government so unsatisfactory as to render the detention order thereafter illegal."

17 Chinnappa Reddy, J. speaking for the bench in Smt. Shalini Soni and Others v. Union of India & Ors., [1980] 4 SCC 544 has emphasised the constitutional obligation on the part of the authorities concerned in dealing with the representation of a detenu as follows:

"Quite obviously, the obligation imposed on the detaining authority, by Article 22(5) of the Constitution, to afford to the detenu the earliest opportunity of making a representation, carries with it the imperative implication that the representation shall be considered at the earliest opportunity. Since all the constitutional protection that a detenu can claim is the little that is afforded by the procedural safeguards prescribed by Article 22(5) read with Article 19, the Courts have a duty to rigidly insist that preventive detention procedures be fair and strictly observed. A breach of the procedural imperative must lead to the release of the detenu."

18 See also B. Sundar Rao and Others v. State of Orissa, [1972] 3 SCC 11; Jnanendra Nath Roy v. The State of West Bengal, [1972] 4 SCC 50; Frances Coralie Mullin v. W.C. Khambra and Others, [1980] 2 SCC 275; Vijay Kumar v. State of Jammu and Kashmir & Ors., [1982] 2 SCC 43; Raisuddin alias Babu Tamchi v. State of Uttar Pradesh and another, [1983] 4 SCC 537 and Mohinuddin alias Moin Master and Ors. v. D.M. Beed, [1987] 4 SCC 58.

19 The propositions deducible from the various reported decisions of this Court can be stated thus:

The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution of India. Correspondingly, there is a

constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty --- the highly cherished right --- which is enshrined in [Article 21](#) of the Constitution.

20 True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the word "as soon as may be" occurring in [Article 22\(5\)](#) of the Constitution reflects that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances or 'each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention."

9 Similarly, it is apposite to quote observations of the Hon'ble Supreme Court in paragraph 3 in the matter of [Harish Pahwa vs. State of Uttar Pradesh and Others](#)² which read thus :

"3In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of representations made by persons detained without trial. There is no explanation at all as to why no action was taken

in reference to the representation on 4th, 5th and 25th of June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980 when we find that it culminated only in a reference to the Law Department, nor it is apparent why the Law Department had to be consulted at all. Again, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for 279 some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

12. As already observed, from 19th December, 2019 till 01st January, 2020 the representation of the detenu was laying in the Registry of the Home Department, Government of Maharashtra. Reason given that there was heavy workload is too vague and cannot be accepted.

13. In that view of the matter, keeping in view the aforesaid

authoritative pronouncements of the Hon'ble Supreme Court and this Court, we are of the considered view that representation of the detenu was not decided with a reasonable dispatch by the State. Hence, we pass the following order:

ORDER

- A. The impugned order of Detention bearing D.O. No. 03/CB/DP/2019 dated 13.11.2019 issued under Section 3 of M.P.D.A. Act 1981 by the Respondent No. 2 is hereby quashed and set aside.
- B. The Detenu – Mohmmmed Rafiq Aslam Azad Shaikh be set at liberty forthwith, if not required in any other case.
- C. Rule made absolute in above terms with no order as to costs.

(VG.BISHT, J.)

(S. S. SHINDE, J.)