

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 385 OF 2021

Lakhan Kisan Tusambad,
Age : 28 yrs. R/o. Watarves
Watarves, Peth Beed
Tq & Dist: Beed

...Petitioner

Versus

1. District Magistrate,
Office of the District Magistrate
Beed, Dist.: Beed.
2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra,
Mantralaya, Home Department,
Mantralaya, Mumbai)
3. The Superintendent
Aurangabad Central Prison,
Harsul, Dist.: Aurangabad
4. The Secretary,
Advisory Board for M.P.D.A.
C/o. Home Department,
Mantralaya, Mumbai.

...Respondents

Mr U.N. Tripathi, Advocate holding for Mr A.D. Ostwal,
Advocate a/w Ms Jayshree Tripathi, Advocate for Petitioner
Mr Rajendra V. Dasalkar, A.P.P. for Respondents-State

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

RESERVED ON : 21.08.2021

PRONOUNCED ON : 05.10.2021

JUDGMENT : (PER SHRIKANT D. KULKARNI, J.)

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for both the sides, heard finally at admission stage.

2. The petitioner is challenging the order of detention passed by respondent No.1/District Magistrate, Beed by invoking writ jurisdiction under Article 226 of the Constitution of India.

3. According to the petitioner, the detaining authority has taken into consideration one non-cognizable offence vide No. 491/2020 for the offence punishable under section 504 and 506 of Indian Penal Code and two in-camera statements of witness A and B for arriving at subjective satisfaction and passed the order of detention dated 06.12.2020 under section 3(2) of The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as 'the MPDA Act' for the sake of convenience). The petitioner was interviewed by the Advisory Board at Mumbai on 08.01.2021. The Advisory Board also confirmed the decision of the detaining authority. The petitioner also sent his representation to the Additional Chief Secretary, Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai for revocation of the order of detention but no fruitful outcome. According to the petitioner, the detention order has been passed by the detaining authority by taking into consideration irrelevant cases and cases not falling within Chapter XVI and XVII of I.P.C or any cases under Arms Act, according to the scheme of MPDA Act.

4. Heard Mr U.N. Tripathi, learned counsel for the petitioner and Mr R.V. Dasalkar, learned A.P.P. for the State/Respondents at length.

5. Mr Tripathi, learned counsel for the petitioner vehemently submitted that the order of detention is on solitary non-cognizable complaint vide No. 491/2020 under sections 504 and 506 of I.P.C. coupled with two in-camera statements of the witness. The definition of 'Dangerous Person' is defined under section 2 (b) (b-1) of the MPDA Act. The detaining authority has committed an error and passed order of detention branding the petitioner as dangerous person when there is no such material on record. It is clear case of non-application of mind by the authority. Mr Tripathi, the learned counsel for the petitioner submitted that two in-camera statements are also relied by the detaining authority. On perusing the same, it would be clear that the same is copied down from one after another. It shows total non-application of mind of the detaining authority for taking into consideration the statements which are vague in nature. The order of detention is illegal and bad in law and liable to be quashed and set aside.

6. Mr Tripathi, learned counsel for the petitioner submitted that the representation of the petitioner dated 14.12.2020 was rejected by the State Government on 07.01.2021. There was an unexplained delay of about 18 days while considering the petitioner's representation which is fatal. According to Mr Tripathi, learned counsel, the right of the petitioner guaranteed under Article 22 (5) of the Constitution of India is violated on account of inordinate and unexplained delay on the part of the State Government. On that ground, the impugned order is liable to be quashed and set aside. He submitted that the petitioner is unable to read and write

English language. The authority has not furnished Marathi translation of orders and documents relied on, and as such, again it is violation of right guaranteed under Article 22 (5) of the Constitution of India. Mr Tripathi, learned counsel submitted that the impugned order does not stand on legal platform, and thus, it is liable to be quashed and set aside.

7. Mr Tripathi, learned counsel for the petitioner has placed his reliance on the following stock of citations in support of his argument :-

- (i) ***Darpan K. Sharma Vs. State of Tamil Nadu reported in 2003 SCC (Cri) 537***
- (ii) ***Mustakmiya J. Shaikh Vs. M.M. Mehta, Commissioner of Police and others reported in 1995 3 SCC 237***
- (iii) ***Jay @ Nunya Rajesh Bhosale Vs. The Commissioner of Police, Pune and others reported in 2015 ALL M.R. (Cri) 4437***
- (iv) ***Rama Dhondu Borade Vs. V.K. Saraf, commissioner of Police and others reported in (1989) 3 SCC 173***
- (v) ***Mahesh Kumar Chauhan Alias Banti Vs. Union of India and others reported in (1990) 3 SCC 148***
- (vi) ***Rohit Sidram Khatal (Detenu) Vs. The Commissioner of Police, Solapur (Criminal Writ Petition No. 1576 of 2020)***
- (vii) ***Hadibandhu Das Vs. District Magistrate, Cuttack and Another reported in AIR 1969 SC 43***
- (viii) ***Nainmal P. Shah Vs. Union of India reported in AIR 1980 SCC 2129***

(ix) Mrs. Satwinder K. Mann Vs. State of Maharashtra reported in 2002 ALL MR (Cri) 1123

8. Per contra, Mr R.V. Dasalkar, learned A.P.P. for the State submitted that the impugned order of detention passed against the petitioner has been passed by the District Magistrate, Beed after subjective satisfaction. He submitted that the petitioner is a dangerous person as defined under the MPDA Act. He has committed serious offences viz rioting, voluntarily causing hurt, robbery, stone pelting, house trespass, violation of externment order, disobedience of an order lawfully promulgated by a public servant. He has created reign of terror in the locality of Peth Beed and adjoining areas and disturbed the peace in that locality.

9. Mr Dasalkar, learned A.P.P. submitted that after receiving the proposal for detention of the petitioner, the detaining authority has personally perused the documents and after having subjective satisfaction, the order of detention came to be passed on 06.12.2020. The authority has also considered antecedents of the petitioner and noticed that the criminal activities of the petitioner are increasing and thereby prejudicial to the maintenance of public order. He submitted that the State Authority has considered the representation of the petitioner/detenu dated 19.12.2020 and after careful examination of the same, rejected it. The said decision was communicated to the detenu through the Superintendent of Central Prison, Aurangabad vide its letter dated 07.01.2021.

10. Mr Dasalkar, learned A.P.P. for the State/Respondents has placed his reliance on the following stock of citations in support of his argument :-

- (i) ***Harish Patil Vs. The State of Maharashtra and others reported in 2016 ALL MR (Cri) 5144***
- (ii) ***Adil Chaus Vs. Commissioner of Police and others reported in 2012 (2) Bom.CR (Cri) 30***
- (iii) ***Smt. Phulwari Jagadambaprasad Pathak Vs. R.H. Mendonca and others reported in AIR 2000 SC 2527***
- (iv) ***Magar Pimple Vs. State of Maharashtra and Anr. reported in 2006 ALL MR (Cri) 491***
- (v) ***State of Tamil Nadu Through Secretary to Government, Public (Law and order-F) and Another Vs. Nabila and Another reported in (2015) 12 SCC 127***

11. Mr R.V. Dasalkar, learned A.P.P. submitted that there is no merit in the criminal writ petition and same is liable to be dismissed.

12. We have considered the submissions advanced by Mr Tripathi, learned counsel for the petitioner and Mr R.V. Dasalkar, learned A.P.P. for the State/Respondents.

13. We have carefully gone through the impugned order of detention passed by respondent No.1/District Magistrate, Beed and Police papers made available by the learned A.P.P.

14. The petitioner is challenging the impugned order of detention mainly on following four grounds :-

- (i) Non-application of mind by detaining authority.
- (ii) Representation of the petitioner was not considered expeditiously. The detaining authority has taken into account irrelevant cases and cases not falling within Chapter XVI and XVII of I.P.C. or any cases under Arms Act according to the scheme of MPDA Act.
- (iii) In camera statements not verified in truthful manner.
- (iv) Translation of the orders and documents in Marathi were not supplied to the petitioner and it violated under Article 22 (5) of the Constitution of India.

15. Mr Tripathi, learned counsel for the petitioner forcefully argued that there is totally non-application of mind by the detaining authority while passing the impugned order of detention and Mr Tripathi, learned counsel has relied upon the following Judgments :

- (i) ***Rama Dhondur Borade Vs. V.K. Saraf, commissioner of Police and others reported in (1989) 3 SCC 173***
- (ii) ***Mahesh Kumar Chauhan Alias Banti Vs. Union of India and others reported in (1990) 3 SCC 148***
- (iii) ***Rohit Sidram Khatal (Detenu) Vs. The Commissioner of Police, Solapur (Criminal Writ Petition No. 1576 of 2020)***

16. On the other hand, Mr R.V. Dasalkar, learned A.P.P. for the State vehemently submitted that the impugned order of detention itself speaks that the detaining authority has applied its mind and after having subjective satisfaction on the material placed before him, passed the order of detention.

17. We have carefully gone through the impugned order of detention dated 06.12.2020, committal order and the grounds of detention at page Nos. 19 to 23 respectively.

18. The detaining authority has considered following material for passing detention order.

Sr. No.	P.Stn.	Cr. No.	Under Section	Date of offence/FIR	Remarks
01	Peth Beed	Non Cognizable 491/2020	504, 506 of IPC	22.11.2020	Investigation

19. Apart from that, the detaining authority has also considered two in-camera statements marked as witness A & B. On going through the grounds for detention, more particularly in para 5.1.2, 6, 6.1, 6.1.1., 6.2, 6.2.1. given by the Authority in its order speak itself. The detaining authority has considered N.C. case registered at Peth, Beed Police Station for the offence punishable under section 504 and 506 of I.P.C. initiated at the instance of Mahadeo Sukhdeo Doiphode, resident of 1st, Tq. & Dist. Beed. The detaining authority has discussed in detail as to how the people are not coming forward to lodge complaint against the petitioner due to fear.

20. The detaining authority has also considered two in-camera statements of witness - A and B thoroughly. It is revealed after perusing para No. 6.1 of the impugned order relating to witness – A that petitioner is engaged in snatching Ganthan (Necklace) from the neck of female forceably. He is also involved in committing theft, assault, forming an unlawful assembly, assaulting persons by committing house trespass, etc. In para Nos. 6.1.1, the detaining authority has also taken into consideration one incident occurred on 20.08.2020 at about 4.00 p.m. The petitioner seems to have threatened to the witness as to how he is asking to the traders of Mondha not to give money to him. The petitioner alleged to have taken out kukri from his waist and put it on the neck of witness and kicked in his stomach. The witness fell down and shouted for help, but nobody responded. On seeing the incident, people started running away. The shopkeepers shut their shops due to terror of the petitioner and no one rushed to the spot to help witness. Likewise, the statement of the witness No. B is also considered by the detaining authority in detail, as to how the petitioner is involved in criminal activities.

21. In-camera statements of witness A and B seem to be independent and it cannot be said to be copied of another statement. We are unable to accept the argument advanced by Mr Tripathi, learned counsel for the petitioner that in-camera statements of witness A and B are replica of one another. Those in-camera statements give distinct incidents and different factual scenario.

22. In case of ***Adil Chaus Vs. Commissioner of Police and others*** (*supra*), the Division Bench of this Court Bench at Aurangabad held that when the detaining authority was satisfied that the petitioner was a dangerous person as defined in the MPDA Act, 1981 on the basis of material placed before the authority, and find in the facts of the case, grounds of detention are satisfactory and provide a live link and refused to exercise extraordinary writ jurisdiction to look into subjective satisfaction of the detaining authority.

23. In case of ***State of Tamil Nadu Through Secretary to Government, Public (Law and order-F) and Another Vs. Nabila and Another*** (*supra*), it is held by the Hon'ble Supreme Court that preventive detention order is not punitive, but only preventive. No charge is required to be framed. No offence is required to be proved and in view of the constitutional safeguards of Article 21 and 22 of the Constitution, strict and meticulous manner of compliance with procedure for preventive decision is required.

24. Even though Mr Tripathi, learned counsel has relied upon above said three Judgments in support of his argument on the ground of non-application of mind by the Authority, the facts of the case in hand very well speak that the detaining authority has applied its mind having regard to the material placed before him and after subjective satisfaction, seems to have passed the detention order dated 06.12.2020. The detaining

authority has not only considered previous antecedents, but also present criminal activities of the petitioner coupled with two in-camera statements. We do not find any merit in ground No. 1 raised by the petitioner.

25. Now, coming to second ground pleaded by the petitioner regarding inordinate delay in deciding his representation by the State. According to the petitioner, the representation made by him dated 14.12.2020 was sent to the Superintendent of Aurangabad Central Prison, Harsul, Aurangabad by speed post for onward transmission to State Government for expeditious consideration and communication to the detenu/petitioner. According to Mr Tripathi, learned counsel for the petitioner, the State Government has delayed while considering the representation of the petitioner expeditiously and diligently and communicating result to the petitioner. As such, the State Authority needs to explain the gross delay occurred from the date of receipt of representation till its decision to the satisfaction of this Court, failing which the detention order needs to be held as bad in law and liable to be quashed and set aside.

26. Mr Tripathi, learned counsel for the petitioner submits that there was 18 days delay in deciding the representation sent by the petitioner and the affidavit sworn in by the detaining authority has nowhere explained about such delay. The impugned order of detention needs to be quashed and set aside solely on this ground since it violates fundamental right of the petitioner guaranteed under Article 22 of the Constitution of India.

27. Mr Dasalkar, learned A.P.P. submitted that the State has promptly attended the representation sent by the petitioner. The date of representation of the petitioner is not 14.12.2020, but in fact, it is dated 19.12.2020. He submitted that after receipt of representation, the State Government has considered the same on its own merits and rejected the same. The decision was communicated to the petitioner through the Superintendent of Central Prison, Aurangabad vide its letter No. MPDA-1220/CR/217/SPL. 3 B, Home Department (Special), Mantralaya, Mumbai, dated 07.01.2021. As such, there is no merit in the ground raised by the petitioner.

28. Having regard to the submissions made by the learned counsel for the petitioner and the learned A.P.P. for the State, we have gone through the record in order to ascertain the position as well as papers/file made available by the learned A.P.P.

29. We have noticed the following dates, highlighting on the issue.

- | | | |
|-------|---|------------|
| (i) | Date of detention order | 06.12.2020 |
| (ii) | Date of actual detention | 07.12.2020 |
| (iii) | Date on which grounds of detention issued | 06.12.2020 |
| (iv) | Date of representation of the petitioner | 19.12.2020 |
| (v) | On 06.12.2020, the information about detention of the petitioner is given to his brother Vijay Kisan Tusambad R/o Waterves, Peth Beed Tq. & Dist. Beed about the detention and lodging of detenu in prison at Central Jail Harsul, Aurangabad and his signature on the office copy of the intimation letter obtained. | |

- (vi) The grounds of detention were explained to the detenu before Jail Authority in the language known to him i.e. Marathi dated 07.12.2020.
- (vii) Date of decision on the representation and communication to the petitioner/ detenu 07.01.2021

30. The affidavit-in-reply sworn in by the detaining authority. Para No. 13 is important, which reads thus -

13. Deponent submits that, it is not correct to say that no communication has been received from the State Government as regard to the consideration of the representation of the detenu dated 19/12/2020 by the State Government. Deponent submits that, after receipt of the said representation, State Government has considered carefully and independently and rejected the prayer made by the detenu in his representation and communicated the said decision to the detenu through Superintendent of Central Prison, Aurangabad vide it's letter No. MPDA-1220/CR/217/SPL. 3B, Home Department (Special), Mantralaya, Mumbai, dated 07.01.2021, hence allegations made by the petitioner are totally false and denied.

31. On making necessary calculations, it is found that the representation is decided by the authority after 18 days. Can it be said to be inordinate delay and needs explanation from the State Authority. In case of ***Rama Dhondur Borade Vs. V.K. Saraf, commissioner of Police and others reported in (1989) 3 SCC 173***, after referring various earlier decisions, the Apex Court has observed in para No. 19 which reads thus -

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. The 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.

32. There is no prescribed period provided either under the provisions of the Constitution of India or under the provisions of MPDA Act, 1981, 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 of India reflects that the representation sent by the detenu 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 of 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.

33. In case of ***Mahesh Kumar Chauhan Alias Banti Vs. Union of India and others reported in (1990) 3 SCC 148***, the same view is expressed by the Hon'ble Supreme Court and held that if there is undue and unexplained delay in deciding the representation of the detenu, it is violative of Article 22(5) of the Constitution of India and order of detention needs to be quashed.

34. The Division Bench of this Court in case of ***Rohit Sidram Khatal (Detenu) Vs. The Commissioner of Police, Solapur (Criminal Writ Petition No. 1576 of 2020, Principal Seat at Bombay) decided on 27th November, 2020*** by following the decisions of the Hon'ble Supreme Court held that if there is undue delay in deciding the representation of the detenu and the same is not satisfactorily explained by the State, the order of detention is liable to be quashed and set aside.

35. Now, coming again to the facts of this case. It is evident from the affidavit sworn in by the detaining authority, as referred in his para No.13, the State Government has received the representation of the petitioner dated 19.12.2020. The copy of the representation sent to the State Government is placed on record by the petitioner along with the list of documents at page No. 35 and 36. Page No. 35 is covering letter addressed to the Superintendent, Aurangabad Central Prison, Harsul, Aurangabad dated 14.12.2020 sent by the Advocate for detenu Mr Tripathi followed by representation at page No.36 which is of dated 14th December, 2020. On perusing the original file of the Home Department

made available by the learned A.P.P., it is noticed by us that though representation made by the petitioner is dated 14th December, 2020, in fact, it was signed by the petitioner on 19.12.2020. The petitioner has also issued a request letter addressed to the Superintendent of Central Prison, Aurangabad, which is also dated 19.12.2020 in Marathi with a request to forward his representation to the Additional Chief Secretary (Home Department) (Special), Mantralaya, Mumbai. The letter also speaks that the petitioner has received representation from his advocate Mr Tripathi on 08.12.2020 and he seems to have forwarded the same through the jail authority, Aurangabad to the State Home Department on 19.12.2020. As such, we have to accept the argument advanced by Mr Dasalkar, learned A.P.P. for the State that though the representation given by the petitioner is dated 14.12.2020, but it is signed by the petitioner on 19.12.2020 and forwarded on 19.12.2020.

36. On going through the original file of the Home Department, it is further noticed by us that the State has taken the decision on the representation made by the petitioner on 07.01.2021. On careful examination of the file, we do not find on which date, the State Government has received the representation made by the petitioner dated 19.12.2020. The affidavit sworn in by the detaining authority is also silent on this point. It is further noticed by us that the affidavit is also silent as to why the State Authority has taken 18 days time to consider the representation made by the petitioner. True it is that 18 days time is not a big span of time. At the same time, it is mandatory on the part of the State

Authority to explain as to why it has taken 18 days time to consider the representation, how the time was consumed and how the representation was processed with result thereof. No explanation is given by the detaining authority on this point. It was very much necessary on the part of the State authority to explain as to why they required 18 days time to consider representation and that too to the satisfaction of the Court. In view of the citation in case of ***Mahesh Kumar Chauhan Alias Banti Vs. Union of India and others reported in (1990) 3 SCC 148 (supra)***. The State has taken the time from 19.12.2020 to 07.01.2021 for processing the representation and decision thereon. There was delay of 18 days in taking decision on representation moved by the petitioner. It is, therefore, clear that the representation dated 19.12.2020 moved by the petitioner is not considered expeditiously and diligently. As pointed out earlier, the delay in consideration of the representation of the detenu is not fatal if the delay is satisfactorily and reasonably explained. In the present facts for the period from 19.12.2020 to 07.01.2021, there is absolutely no explanation forthcoming. Therefore, in our opinion, the order of detention would stand vitiated on the ground of delay in deciding the representation of the petitioner. If representation of the detenu is not decided expeditiously and diligently, it amounts to violation of valuable right conferred under Article 22(5) of the Constitution of India. Certainly, the impugned order of detention needs to be quashed and set aside on the ground of delay in deciding the representation moved by the petitioner.

37. Now, coming to another ground raised by the petitioner regarding verification of in-camera statements, we have gone through the original file. It is noticed by us that in-camera statements have been verified by the concerned S.D.P.O. and he found the version therein truthful. In the case of **Harish Patil Vs. The State of Maharashtra and others (supra)**, it is held by the Division Bench of this Court at Principal Seat that when there is material and contemporaneous documents before Detaining Authority to show that in-camera statements were true and genuine and copies of these documents have been furnished to detenu – Subjective satisfaction cannot be said to be illusory or fanciful but it is real and rational – Detention based on these in-camera statements cannot be said to be invalid. In case of **Smt. Phulwari Jagadambaprasad Pathak Vs. R.H. Mendonca and others (supra)**, it is held by the Hon'ble Supreme Court that in-camera statements of persons/witnesses can be utilized for the purpose of arriving at subjective satisfaction of the detaining authority for passing the order of detention. We do not see any reason to take different view. As such, we do not find any merit in this ground. 21.

38. Now, coming to last ground raised by the petitioner regarding translation of the orders and documents in Marathi not supplied to him. It is evident from the record that the petitioner has made representation to the Additional Chief Secretary (Home Department) (Special), Mantralaya, Mumbai in English language and not in Marathi. On going through the said representation, it is noticed by us that it is nowhere stated at the end of the representation that the contents of the representation were read over and

explained to the petitioner in Marathi. If the petitioner is not conversant with English language, obviously his representation would have found clause at the end of the representation that the contents of the representation were read over and explained to the petitioner in Marathi. In absence thereof, we have to infer that the petitioner is well conversant with English language. Further, it is evident from the record that the grounds of the detention though in English language seems to have explained to the petitioner in Marathi as evident from the file and in view of the endorsement put up by the jail authority. The petitioner seems to have made representation after consulting his advocate which indicates that proper procedure is followed in this case. No prejudice whatsoever is shown to have caused to the petitioner in this respect. We, therefore, do not find any force in that ground.

39. The citations in case of ***Hadibandhu Das Vs. District Magistrate, Cuttack and Another reported in AIR 1969 SCC 43, Nainmal P. Shah Vs. Union of India reported in AIR 1980 SCC 2129 and Mrs. Satwinder K. Mann Vs. State of Maharashtra reported in 2002 ALL MR (Cri) 1123*** relied upon by Mr Tripathi, learned counsel for the petitioner are not any way helpful to the petitioner in view of the distinguishable facts of the case in hand.

40. Having regard to the above reasons and discussion, the impugned order of detention is liable to be quashed and set aside on the ground of unexplained delay in taking decision on the representation made

by the petitioner.

41. We, therefore, proceed to pass the following order :-

ORDER

- (I) The Criminal Writ Petition is hereby allowed.
- (II) The detenu be released forthwith, if not required in any other case.
- (III) Rule made absolute in above terms.

[SHRIKANT D. KULKARNI, J.]

[V.K. JADHAV, J.]

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