

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

WRIT PETITION NO.505 OF 2021

Mr. Nikhil Suresh Rajput

Age : 26 years,

R/o : Datta Nagar, Shriramnagar,

Vanjola Road, Taluka Bhusawal,

District Jalgaon.

.... Petitioner

Vs.

1. The District Magistrate
Jalgaon

2. The State of Maharashtra
(Through Additional Chief Secretary
to Government of Maharashtra,
Mantralaya, Home Department,
Mumbai.

3. The Superintendent
Nashik Road Central Prison, Nashik

4. The Secretary
Advisory Board for MPDA
C/o Home Department,
Mantralaya, Mumbai.

.... Respondents

Ms. Jayashree Tripathi i/by Mr. U.N. Tripathi for Petitioner.
Mr. J.P. Yagnik, APP for Respondent- State.

**Coram : S.S. SHINDE AND
MANISH PITALE, JJ.**

**RESERVED FOR JUDGMENT : 24.03.2021
PRONOUNCED ON : 05.04.2021**

JUDGMENT (PER MANISH PITALE, J.) :

1. By this Writ Petition, the petitioner has challenged detention order dated 21.12.2021, passed by the Respondent No. 1- District Magistrate, Jalgaon, whereby the petitioner has been detained under the provisions of 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 (MPDA Act). The said detention order along with grounds of detention and documents relied upon by the respondent No.1 were served upon the petitioner. He filed his representation against the same, which stood rejected and therefore, the petitioner is constrained to approach this Court. On 08.02.2021, this Court issued notice to the Respondents. Upon replies being filed by the Respondents, this petition was finally heard on 24.03.2021.

2. Ms. Jayshree Tripathi, learned counsel appearing for the petitioner has raised three grounds to challenge the aforesaid detention order. The learned counsel invited attention of this Court to ground 'G' in the Writ Petition and submitted that there was inordinate delay in consideration and disposal of the representation filed by the petitioner, thereby violating his valuable right under Article 22(5) of the Constitution of India. The learned counsel submitted that the representation was preferred on 05.01.2021 and rejection of the same was communicated to the petitioner after a month on 05.02.2021. Attention of this court was invited to the reply filed on behalf of the respondent-State to highlight the fact that the representation of the petitioner dated 05.01.2021 was received in the Special Branch of the State for consideration as late as on 18.01.2021. The further processing of the same also took considerable amount of time, thereby violating the valuable right of the petitioner. In this regard the learned counsel appearing for the

petitioner relied upon judgements of the Hon'ble Supreme Court in the case of **Rama Dhondu Borade Vs. VK. Saraf (1989) 3 SCC 173**, **Harish Pahwa Vs. State of U.P (1981) 2 SCC 710** and **Mahesh Kumar Vs. U.O.I. (1990) 3 SCC 148**.

3. The learned counsel for the petitioner then emphasized upon ground 'F' in the petition, to contend that since translated copies of judicial orders and other documents were not provided to the petitioner, his right to make an effective and purposeful representation guaranteed under Article 22 of the Constitution of India was violated. Attention of this Court was invited to Exhibit 'H' filed along with the Writ Petition, which pertained to judicial orders and other documents, translations of which were not provided. According to the learned counsel, this was fatal to the detention order issued by Respondent No.1. In this regard, learned counsel for the petitioner relied upon judgements of the Hon'ble Supreme Court in the case of **Hadibandhu Das Vs. District Magistrate AIR 1969 SC 43**, **Nainmal Shah Vs. U.O.I. AIR 1980 SC 2129** and **Ibrahim Ahmad Batti Vs. State of Gujarat (1982) 3 SCC 440**.

4. The third ground of challenge raised on behalf of the petitioner was ground 'B' in the Writ Petition pertaining to old and stale material relied upon by the Respondent No.1, detaining authority while issuing the detention order. The learned counsel appearing for the petitioner submitted that the cases on which the Respondent No.1 placed reliance, all pertained to the years 2017 to 2019, while the detention order was issued on 21.12.2020. On this basis, it was submitted that there was no live link between the material relied upon and the issuance of the detention order. It was submitted that even with regard to the single case registered against the petitioner in the year 2020, the same was only under the Arms Act and there was hardly any material in the said case to implicate the petitioner. Hence, it was submitted that on this ground also the impugned detention order deserved to be set-aside. The learned counsel for the petitioner relied upon the judgement of the Hon'ble Supreme Court in the case of **Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta (1995) 3 SCC 237**.

5 On the other hand, Mr. J.P. Yagnik, learned APP submitted that none of the three grounds raised on behalf of the petitioner deserved consideration. As regards alleged delay in consideration and disposal of the representation, it was submitted that mere delay in disposal of the representation could not be a ground for setting aside the detention order. Instead, what was required to be demonstrated was that there was lack of explanation for such delay. By referring to the reply of the Respondent State filed in the Writ Petition, the learned APP submitted that sufficient explanation was placed on record and therefore, the said ground was without any substance.

6. As regards the failure to supply translated copies of judicial orders, the learned APP submitted that the petitioner could not be permitted to take an unrealistic and abstract stand in such a matter. He further submitted that there was no inflexible rule of general application that whenever translation of a document was not

provided, the detention order was necessarily required to be set-aside. It was submitted that in the reply of the Respondent 1-detaining authority, it was properly explained that in all the matters in which judicial orders were passed, the petitioner was duly represented by advocates and therefore, he could not insist upon translation of such judicial orders.

7. In respect of the alleged stale material relied upon by the detaining authority, the learned APP submitted that the cases registered against the petitioner in the years 2017 to 2019 were referred, in order to claim that the petitioner was indeed a dangerous person. It was further submitted that the case registered against the petitioner in the year 2020, read with the two in-camera statements were sufficiently proximate to the issuance of the detention order dated 21.12.2020 and therefore, there was no substance in the said contention raised on behalf of the petitioner. The learned APP relied upon judgments in the cases of **A.C. Razia Vs. Govt. of Kerala and Ors. (2004) 2 SCC 621**, **Bhaskar A. Shetty Vs.**

M.N. Singh 2001(5) Bom. C.R.718 and Omkar Chandrashekhar Kapare Vs. The Commissioner of Police (Judgement and Order dated 28.01.2019 passed in Cri. W.P. No. 4456 of 2018).

8. In order to examine whether the detention order issued by Respondent No. 1 can be sustained or not, each of the three grounds raised on behalf of the petitioner needs to be considered, on the basis of the material available on record and the position of law as laid down by the Hon'ble Supreme Court.

9. In respect of the ground pertaining to delay in disposal of representation of the petitioner, it would be necessary to refer to the relevant dates to examine whether there was delay and as to whether it could be said to be unexplained delay on the part of the Respondents. The petitioner submitted his representation on 05.01.2021. The reply filed on behalf of the Respondent State shows that this representation was forwarded by the Respondent No.3, Superintendent of Nashik Central Prison, on 11.01.2021 with a

covering letter. It was received in the Special Branch on 18.01.2021. It is surprising that in this day and age the representation submitted on 05.01.2021 took six long days for the Respondent No. 3 to prepare the covering letter for forwarding it to the Special Branch. It took another seven days for the letter along with the representation to reach the Special Branch on 18.01.2021.

10. We are unable to appreciate as to why there was such inordinate delay in the representation reaching the Special Branch, when fast modes of communication are available in the form of e-mails and speed post. The material on record also shows that after the representation was received in the Special Branch on 18.01.2021, it took 16 days for remarks of the detaining authority to be received via e-mail. Thereafter, the representation was considered and rejected by the Additional Chief Secretary (Home) on 05.02.2021, which was communicated to the petitioner by speed post on 05.02.2021.

11. In the case of **Rama Dhondu Borade Vs. V.K. Saraf** (supra), the Hon'ble Supreme Court observed that although there is no prescribed time period within which such a representation is to be dealt with, but the use of the words "as soon as may be" in Article 22 (5) of the Constitution of India clearly shows that the representation has to be considered expeditiously and disposed of with due promptitude and diligence, with a sense of urgency. In the said case, the Hon'ble Supreme Court allowed the appeal of the detenu for the reason that the representation was disposed of after a time period of 28 days. In the case of **Harish Pahwa Vs. State of U.P.** (supra) the Hon'ble Supreme Court emphasized that it is the duty of the State to consider and dispose of such representations with utmost expedition and the order on the representation needs to be communicated to the detenu immediately. In the case of **Mahesh Kumar Vs. Union of India** (supra), the Hon'ble Supreme Court found that when there was unexplained delay in disposal of the representation of a detenu, because of the fact that comments from the sponsoring authority

were received late, the detention order deserved to be set-aside.

12 Applying the ratio of the aforesaid judgments of the Hon'ble Supreme Court relied upon by the petitioner, it becomes clear that in the present case when the representation was submitted by the petitioner on 05.01.2021, its rejection on 05.02.2021 was clearly delayed and hence fatal for the detention order. The learned APP was not justified in claiming that delay in disposal of the representation in the present case could not be said to be unexplained delay. A perusal of the reply affidavit filed on behalf of the Respondent State would show, as noted above, that the representation was dispatched after considerable delay by Respondent No.3 and its further processing with the Respondent State was also extremely slow, thereby violating the mandate of the law as recognized by the Hon'ble Supreme Court. Therefore, we are of the opinion that the impugned detention order deserves to be set-aside on this ground itself.

13 Insofar as the ground pertaining to failure on the part of

the Respondents to supply translated copies of documents relied upon by the detaining authority is concerned, we have perused the documents at Exhibit H, translations of which were not supplied to the petitioner. These are judicial orders, Roznamas and other such documents. The material on record shows that the petitioner knows Marathi language and that he is not educated beyond the 10th standard. It is the contention of the petitioner that due to failure on the part of the Respondents to provide translations of the said documents, his right to make an effective and purposeful representation stood frustrated, thereby violating his valuable right under Article 22 of the Constitution of India. In response to the said ground raised on behalf of the petitioner, the only explanation given on behalf of the Respondents is that translations of the said documents were not required to be furnished to the petitioner because these were judicial orders in cases where the petitioner was represented by his advocates. We are unable to accept the said explanation given on behalf of the Respondents.

14. The Hon'ble Supreme Court in the case of **Hadibandhu**

Das Vs. District Magistrate (supra) held that failure to supply documents relied upon by the detaining authority in the script and language understood by the detenu, amounted to denial of the right of the detenu of being communicated with the grounds on which the detention order was passed. On this basis, it was held that the detention order could not be sustained. In the case of **Nainmal Shah Vs. U.O.I.** (supra), the Hon'ble Supreme Court held that non-supply of translated documents to the detenu was fatal for the detention order, despite the fact that on some of the documents the detenu had signed in English. It was held that there could be no presumption about the detenu having knowledge of English language and that therefore, translated script of such documents ought to have been supplied to the detenu. In the case of **Ibrahim Ahmad Batti Vs. State of Gujarat** (supra), the Hon'ble Supreme Court reiterated that the grounds of detention as well as the documents relied upon by the detaining authority must be supplied to the detenu in the language known to him.

supply of translations of the documents relied upon by the detaining authority was fatal for the detention order. The judgments relied upon by the learned APP in this regard are clearly distinguishable. In the case of **A.C.Razia Vs. Govt. of Kerala** (supra), it was laid down that first it would have to be determined as to whether the documents, translations of which were sought by the detenu, were relied upon by the detaining authority or not. It was then held that translations of documents not relied upon could not be fatal for the detention order. There can be no quarrel with the said proposition. But, in the present case the documents supplied in English were clearly relied upon by the detaining authority and translations of the same were admittedly not provided to the petitioner. In the case of **Bhaskar A. Shetty Vs. M.N. Singh** (supra), it was found that each and every document was explained to the detenu in Hindi and this fact was acknowledged by the detenu by certifying the same in his own hand. Thus, the facts of the said case are clearly distinguishable from the present case, wherein admittedly, the documents relied upon by the detaining authority were supplied only in English

language and no translations thereof were furnished. Hence, we are of the opinion that the detention order deserves to be set-aside on this ground also.

16. Insofar as the last ground of challenge is concerned, it pertains to material that was allegedly stale and having no live link with the detention order. A perusal of the detention order and grounds of detention would show that there is a reference to number of criminal cases registered against the petitioner in the years 2017 to 2019. There is also a reference to earlier steps taken for detention of the petitioner and certain externment orders passed against him. These also pertain to the years 2016 to 2018. Thereafter, there is reference to only one case pertaining to the year 2020, concerning offence registered against the petitioner on 15.07.2020 under sections 3 and 25 of the Arms Act. Apart from this, there is reference to two in-camera statements of witnesses. It is found that even in the aforesaid offence registered on 15.07.2020, it is recorded that secret information was received that some person was in possession of a

country made pistol and live cartridges and when he was confronted, he stated that the said weapon and cartridges were purchased from the petitioner and further that they were kept with some third person. It is then recorded that when the house of the said third person was searched, the country made pistol and two live cartridges were found. It is only this nature of material pertaining to the year 2020 referred to and relied upon in the impugned detention order. Apart from this, all other offences pertain to the years 2017 to 2019, while the impugned detention order was issued on 21.12.2020.

17. Considering the said material, there appears to be substance in the contention raised on behalf of the petitioner that there was snapping of live link between material relied upon and the date of issuance of the impugned detention order. A perusal of the reply of Respondent No.1, detaining authority in this regard shows that it is merely stated that the material from the year 2017 onwards was relevant to show continuous criminal activities and background of the detenu i.e. the petitioner. But, there is lack of sufficient

explanation as to why the contention regarding absence of live link

raised on behalf of the petitioner ought not to be accepted. The law will be taking its own course as regards offences registered against the petitioner in the years 2017 to 2019, but it is not explained as to why the detention order had to be passed on 21.12.2020. Even the single offence referred to in the impugned detention order pertaining to the year 2020 is dated 15.07.2020 and the detention order is issued as late as on 21.12.2020. Therefore, we are inclined to accept the said contention raised on behalf of the petitioner. The judgement of this Court in the case of the **Omkar Chandrashekhar Kapare Vs. Commissioner of Police** (supra) cannot be of much assistance to the detaining authority, because in the said case, on facts this Court came to the conclusion that the subjective satisfaction arrived at by the detaining authority was sustainable.

18. In view of the above, the present Writ Petition deserves to be allowed. Hence the following order.

ORDER

A) The Writ Petition is allowed and the impugned detention order dated 21.12.2020 is quashed and set aside.

B) Consequently, the Respondents are directed to release the petitioner forthwith, unless required in connection with any other criminal case.

19. Rule made absolute in above terms.

20. The Writ Petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)