

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

WRIT PETITION NO. 2095 OF 2021

Shubham Anil Ghadge
Age - 21 years, R/o Behind AIIMS
Hospital, Ganpati Mandir, Bhagat
Chaal, Audh Gaon, Pune.

...Petitioner

Versus

1. The Commissioner of Police, Pune City
2. The State Of Maharashtra
(Through Addl. Chief Secretary to
Government of Maharashtra
Mantralaya, Home Department,
Mantralaya, Mumbai)
3. The Superintendent, Yerwada Central
Prison, Pune.

...Respondents

Ms. Jayshree Tripathi, for the Petitioner.

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

**CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ.**

RESERVED ON: 26th AUGUST, 2021.

PRONOUNCED ON: 22nd SEPTEMBER, 2021.

JUDGMENT:- [PER : N. J. JAMADAR, J.]

1. Rule. Rule made returnable forthwith, and with the consent of the Counsels for the parties, heard finally.

2. The petitioner, who has been detained by the order dated 25th February, 2021, passed by the Commissioner of Police, Pune City - Respondent no.2, under the provisions of Section 3(2) of the Maharashtra Prevention of Dangerous Activities of

Slumlords, Bootleggers, Drug Offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing of Essential Commodities Act, 1981 (“the MPDA Act, 1981”), takes exception to the said detention order.

3. Shorn of unnecessary details, the background facts necessary for the determination of this petition can be stated as under:

(a) A proposal was mooted by the Chatushrungi Police Station, Pune City, to initiate a proceeding for preventive detention against the petitioner as the petitioner and his associates were indulging in criminal activities to foster terror in society. It was alleged that the petitioner had become a perpetual danger to the lives and properties of the people residing within the limits of Chatushrungi Police Station. The petitioner and his associates committed offences of attempt to murder, grievous hurt, extortion and criminal intimidation by using deadly weapons. On account of reign of terror created by the petitioner, the victim and the witnesses were not coming forward to make complaint against the petitioner due to fear of reprisal.

(b) The detaining authority noted that two offences affecting human body were registered against the petitioner being CR No.502/2019 and CR No.1162/2021 at Chatushrungi

Police Station. Preventive action initiated against the petitioner brought to bear no deterrent effect upon the petitioner. On 20th October, 2021, the petitioner was arraigned in CR No.1298/2020 for the offences punishable under Sections 307, 143, 147, 148 and 149 of the Indian Penal Code, 1860 (“the Penal Code”) and Section 25 read with Section 3 of the Arms Act, 1959 and Section 135 read with Section 37(1) of the Maharashtra Police Act, 1951. The detaining authority also considered the statement of two confidential witnesses, ‘A’ and ‘B’.

(c) On the strength of the predicate offence, i.e. CR No.1298/2020 and the statements of the witnesses recorded in-camera the detaining authority recorded a subjective satisfaction that the petitioner was a dangerous person within the meaning of Section 2(b-1) of the MPDA Act, 1981, and in order to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order it was necessary to detain the petitioner by invoking the provisions contained in Section 3(2) of the MPDA Act, 1981. Hence, respondent no.2 passed the impugned detention order dated 25th February, 2021. The order was approved by the State Government under Sub-section (3) of Section 3 of the MPDA Act, 1981, on 26th February, 2021. Eventually, after considering the representation of the

Advisory Board, the detention order was confirmed on 16th April, 2021.

4. The petitioner has assailed the legality and validity of the detention order by raising multi-fold grounds in the petition. We have heard Ms. Tripathi, the learned Counsel for the petitioner and Ms. Mhatre, the learned APP for the State, at length. With the assistance of the learned Counsels for the parties, we have also perused the material on record including the original record before the detaining authority, tendered for the perusal by the learned APP.

5. Though multi-fold grounds have been taken in the petition, during the course of submissions, Ms. Tripathi restricted the challenge to the following grounds:

- (i) Delay in consideration of and decision on the representation of the petitioner against order of detention by the State Government.
- (ii) Supply of illegible copies of judicial order to the petitioner resulting in prejudice to the petitioner in making an effective representation against the detention order.
- (iii) Variance in the English and vernacular version of the injury certificate in the relied upon crime, which mislead the petitioner.

6. We have carefully considered the aforesaid grounds of challenge and the endeavour made by the respondents to meet those grounds in their Affidavits-in-reply. In our view, the petition deserves to be allowed on the ground of delay in consideration of and decision on the representation of the petitioner against the detention order.

7. On the aspect of delay, the facts are rather incontrovertible. The petitioner claimed that he had sent the representation to the State Government through the Superintendent, Yerwada Central Prison, Pune, on 19th April, 2021. Indisputably, the representation came to be rejected by the Additional Chief Secretary (Home) on 18th May, 2021. In the affidavit filed on behalf of the State Government - respondent no.2, the ground of delay was sought to be met by asserting as under:

“2. With reference to Para 06(g)(h) of Writ Petition, it is submitted that the representation dated 19.04.2021 (bearing signature of detenu dated 22.04.2021) was received in the Special Branch-3B Desk of Home Department on 28.04.2021 through the Superintendent, Yerwada Central Prison, Pune, vide his office letter dated 22.04.2021. Thereafter, remarks were called for from the Detaining Authority i.e. Commissioner of Police, Pune City on the same day i.e. 28.04.2021 by Special Branch-3B Desk. The remarks of the Detaining Authority were received on 14.05.2021 vide letter dated 13.05.2021. The concerned Assistant Section Officer submitted the file containing remarks of Detaining Authority alongwith the representation of the detenu to the Section officer on 14.05.2021. As there were holidays on 15.05.2021 (Saturday) and 16.05.2021 (Sunday), the concerned Section Officer submitted the file to the Deputy Secretary on 17.05.2021.

The Deputy Secretary endorsed it on 18.05.2021 and forwarded it to the Additional Chief Secretary (Home) on the same day. The Additional Chief Secretary (Home) considered the representation of the detenu and the remarks of the Detaining Authority and rejected the representation on 18.05.2021 by applying his mind. The rejection of representation was communicated by speed post to the detenu vide letter dated 18.05.2021 through the Registry Section of Home Department. Thus, the representation of the detenu was considered by the State Government as expeditiously as possible.”

8. From a bare perusal of the aforesaid contentions on behalf of respondent no.2, it becomes evident that the representation of the detenu dated 19th April, 2021 was received in the Special Branch-3B Desk in the Home Department of the State Government, on 28th April, 2021, vide letter of the Superintendent, Yerwada Central Prison, Pune, dated 22nd April, 2021. Remarks were called from the detaining authority on the same day i.e. 28th April, 2021. However, the remarks of the detaining authority were received on 14th May, 2021 vide letter dated 13th May, 2021. The competent authority is stated to have considered and rejected the representation on 18th May, 2021 as 15th and 16th May, 2021 happened to be holidays.

9. In the backdrop of the aforesaid uncontroverted facts, Ms. Tripahti strenuously urged that the delay in processing the representation of the petitioner is writ large. Amplifying the submission Ms. Tripathi would urge that the constitutional guarantee of expeditious consideration of the representation of

the detenu against the order of detention was frustrated by inordinate and unexplained delay in processing the representation of the petitioner. Emphasis was laid on the fact that there was a delay of almost 16 days on the part of the detaining authority in submitting remarks, called for by the State Government. According to Ms. Tripathi, what exacerbates the situation is a complete absence of explanation on the part of the detaining authority for the said delay. Our attention was invited to the Affidavit-in-reply filed on behalf of the detaining authority wherein with regard to the ground 6(h), pertaining to the challenge based on delay, respondent no.1 simply asserted that since the said point pertains to the State Government, the Affidavit of the State Government may be perused. Thus, in the absence of explanation, the delay renders the detention unsustainable, urged Ms. Tripathi.

10. In opposition to this, Ms. Mhatre, the learned APP attempted to salvage the position by relying upon the endeavour made by the State Government to explain the delay in paragraph 2 of the Affidavit-in-reply, extracted above. It was urged that in the circumstances of the case, the delay cannot be construed to be inordinate and unreasonable. The delay, thus, does not impair the order of detention, submitted Ms. Mhatre.

11. It is trite that the detenu has a fundamental right to make and have the representation against the order of detention considered by the competent authority. This right flows from the constitutional guarantee contained in Article 22(5) and the statutory provision in the particular enactment under which the detenu is detained.

12. Article 22(5) of the Constitution of India provides as under :

“22(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.”

13. Sub-section (1) of section 8 of the MPDA Act, 1981, provides as under :

“8(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.”

14. The fundamental right of the detenu to have his representation against the order of preventive detention considered by the Detaining Authority and Appropriate Government is supplemented by the statutory mandate that the Detaining Authority shall offer an earliest opportunity of making a representation against the detention order to the appropriate

government. These constitutional and statutory provisions incorporate a corresponding duty on the authorities to whom the representation is made, to dispose of the representation at the earliest. Lest, the constitutional guaranty and statutory protection would be rendered meaningless and illusory. If the authorities fail to discharge the statutory obligation to provide the earliest opportunity of making a representation and have it considered, the provisions would be robbed of the meaning and content.

15. A useful reference in this context can be made to the Constitution Bench judgment in the case of *Jaynarayan Sukul Vs. State of West Bengal* ¹, wherein the principles were culled out in the following words :

“18. 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.

19. No definite time can be laid down within which a representation of a detenu should be dealt with save and except that it is a constitutional right of a detenu to, have his representation considered as expeditiously as possible. It will depend upon the facts and circumstances of each case

1(1970) 1 SCC 219.

whether the appropriate Government has disposed of the case as expeditiously as possible for otherwise in words of Shelat, J. who spoke for this Court in the case of Khairul Haque⁽¹⁾ "it is obvious that the obligation to furnish the earliest opportunity to make a representation loses both its purpose and meaning. Broadly stated, four principles are to be followed in regard to representation of detenu. First, the appropriate authority is bound to give an opportunity to the detenu to make a representation and to consider the representation of the detenu as early as possible. Secondly, the consideration of the representation of the detenu by the appropriate authority is entirely independent of any action by the Advisory Board including the consideration of the representation of the detenu by the Advisory Board. Thirdly, there should not be any delay in the matter of consideration. It is true that no hard and fast rule can be laid down as to the measure of time taken by the appropriate authority for consideration but it has to be remembered that the Government has to be vigilant in the governance of the citizens. A citizen's right raises a correlative duty of the State. Fourthly, 'the appropriate Government is to exercise its opinion and judgment on the representation before sending the case along with the detenu's representation to the Advisory Board. If the appropriate Government will release the detenu the Government will not send the matter to the Advisory Board. If however the Government will not release the detenu the Government will send the case along with the detenu's representation to the Advisory Board. If thereafter the Advisory Board will express an opinion in favour of release of the detenu the Government will release the detenu. If the Advisory Board will express any opinion against the release of the detenu the Government may still exercise the power to release the detenu.'"

(emphasis supplied)

16. A profitable reference can also be made to the judgment of the Supreme Court in the case of *Rama Dhondu Borade vs. V. K. Saraf, Commissioner of Police and another*² on which reliance was placed on behalf of the petitioner. In the said case after adverting to the previous pronouncements, the Supreme Court culled out the propositions as under:

"19. The propositions deducible from the various reported

²(1989) 3 SCC 173.

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 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."

17. The aforesaid pronouncement was followed by the Supreme Court in the case of ***Mahesh Kumar Chauhan alias Banti vs. Union of India and others,***³ wherein in the backdrop of the facts of the said case, which resemble with the facts of the case at hand, the following observations were made:

"20. Reverting to the facts of the present case as submitted by the learned counsel, except merely mentioning that the representation was forwarded to the concerned sponsoring authority on August 25, 1989 and the comments from the

3(1990) 3 Supreme Court Cases 148.

sponsoring authority was received by the Department on September 11, 1989, there is absolutely no explanation as to why such a delay had occurred. Therefore, in the light of the proposition laid down in *Rama Dhondu Borade's* case (albeit), we have no other option except to allow this appeal on the ground that this undue and unexplained delay is in violation of the constitutional obligation enshrined in Article 22(5) of the Constitution of India rendering the impugned order invalid.”

18. On the touchstone of the aforesaid exposition of legal position, reverting to the facts of the case, the authorities have not made any effort to offer an explanation for the time consumed by the detaining authority in forwarding the remarks to the State Government, from 28th April, 2021 to 14th May, 2021. There is no explanation much less a satisfactory one. The delay of about 16 days, for which there is not a semblance of explanation, when the cherished personal liberty of a citizen is infringed, can only be said to be unreasonable and unsustainable. We find substance in the submissions of Ms. Tripathi that it was for respondent no.1 to offer a plausible explanation. However, respondent no.1 chose to simply affirm that it is for the State Government to respond to the challenge based on delay in consideration of the representation of the detenu.

19. The conspectus of aforesaid consideration is that there was an undue and unexplained delay in processing and deciding the representation of the petitioner in clear violation of

the constitutional imperative enshrined in Article 22(5) of the Constitution of India. Resultantly, the order of detention is rendered invalidate and unsustainable.

20. For the foregoing reasons, we are persuaded to quash and set aside the impugned detention order and allow the petition.

21. Hence, the following order

: O R D E R :

- (i)** The petition stands allowed.
- (ii)** The impugned order of detention dated 25th February, 2021, passed by the Commissioner of Police, Pune City, stands quashed and set aside.
- (iii)** The petitioner – detenu Mr. Shubham Anil Ghadge, be set at liberty forthwith, if not required to be detained in any other case.

Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]