

1. The Commissioner of Police
Solapur
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.

Ms Jayshree Tripathi along with Mr. U.N. Tripathi for the Petitioner.
Ms S.D. Shinde, APP for the Respondent/State.

CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.

DATE : 28 JULY 2022.

ORAL JUDGMENT (PER NITIN JAMDAR, J.).

By this writ petition, the Petitioner has challenged the order of detention dated 1 September 2021 issued by the Respondent No.1. The order of detention is issued under section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers (Drug Offenders, Dangerous Persons and Video

Pirates)Act, 1981 (for short "MPDA Act"). Since the Petitioner was detained pursuant to the detention order, the Petitioner is praying that he be set forth at liberty.

2. Along with a copy of the order of detention dated 1 September 2021, a copy of the committal order dated 1 September 2021 and grounds of detention were supplied to the Petitioner. The Detaining Authority has referred to six offences registered against the Petitioner in the past under the Maharashtra Police Act and the Maharashtra Prohibition Act, 1949. Then reference is made to preventive action taken against the Petitioner under Section 93 of Maharashtra Prohibition Act, 1949. The grounds of detention referred to and relied upon six offences committed by the Petitioner from 5 February 2021 to 16 June 2021 under the Maharashtra Prohibition Act, 1949. The detaining authority also recorded the two In-Camera statements of the witnesses "A" and "B", who deposed to the prejudicial activity of the Petitioner. The report of the Department of Forensic Medicine and Toxicology stated that consumption of Ethyl Alcohol in excessive amounts is harmful to the human body and causes death. Considering this materials, Respondent No.1 arrived at subjective satisfaction that the Petitioner is a Bootlegger within the meaning of Section 2(b) of the MPDA Act and that his activities are prejudicial to public order and they cannot be dealt with under the ordinary law of the land. Accordingly, the

detaining authority passed the order of detention dated 1 September 2021. The representation made by the Petitioner was rejected. Therefore, the Petitioner is before us with this petition.

3. Reply affidavits are filed by the Deputy Secretary, Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai and Commissioner of Police, Solapur.

4. We have heard Ms Jayshree Tripathi, learned counsel for the Petitioner and Ms S.D. Shinde learned APP for the Respondent/State.

5. The learned counsel for the Petitioner urged one ground of challenge, i.e., ground (e) in the petition that there was a delay in consideration of the representation of the Petitioner, which is unexplained and unreasonable and thus violated the rights of the Petitioner under Article 22(5) of the Constitution of India. The learned counsel has relied upon the following case laws in support of the proposition.

- “(i) *Harish Pahwa vs. State of U.P. and ors.*¹;
- (ii) *Rama D. Borade vs. V.K. Saraf, Commissioner of Police and ors.*²;
- (iii) *Kundanbahi D. Shaikh vs. D.M. Ahmedabad and ors.*³
- (iv) *Rajammal vs. State of Tamil Nadu and anr.*⁴;

1 (1981) 2 SCC 710
 2 (1989) 3 SCC 173
 3 (1996) 3 SCC 194
 4 1999 (1) LJ (SC) 265

(v) *Rashid Kapadia vs. Medha Gadgil and ors.*⁵; and
(vi) *Yallya @ Sagar Irappa Kolanatii vs. The Commissioner of Police, Pune City and ors.*⁶;

6. Since the delay in deciding the representation is the sole ground, the following is the chronology of the events.

7. As per the affidavit-in-reply filed by Respondent No.1- detaining authority, the detention order was passed on 1 September 2021 and served to the Petitioner - detainee on the same day. The detention order was sent to the State Government on 2 September 2021 and received by the State Government on 3 September 2021. It was approved on 7 September 2021. On 26 October 2021, the detaining authority sent the representation to Police Station, Solapur and the para-wise remarks were received on 27 October 2021. The para-wise remarks were signed by the detaining authority on 29 October 2021 and received by the State Government on 1 November 2021.

8. In the affidavit-in-reply filed by the Dy. Secretary, Government of Maharashtra, Home Department, it is stated that the Registry of Home Department received the representation on 25 October 2021 by letter dated 5 October 2021. As there were holidays on 9 October 2021, 10 October 2021, 15 October 2021 to 17 October 2021, 19 October 2021, 23 October 2021 and 24

⁵ (2012) 11 SCC 745

⁶ Criminal Writ Petition No. 2873 of 2019 dt. 18.10.2019 (Bombay High Court)

October 2021, on 25 October 2021, the remarks were called for from the detaining authority.

9. The Petitioner contends that there is a delay of 20 days, i.e., from 5 October 2021 to 25 October 2021, when the representation was lying with the State authorities is unexplained and unreasonable. The learned counsel for the Petitioner has submitted that not all the days were holidays, and there were 12 working days between 5 October 2021 to 25 October 2021. The Petitioner has given the details as follows.

“5 October 2021 (Tuesday); 6 October 2021 (Wednesday); 7 October 2021 (Thursday); 8 October 2021 (Friday); 11 October 2021 (Monday); 12 October 2021 (Tuesday); 13 October 2021 (Wednesday); 14 October 2021 (Thursday); 18 October 2021 (Monday); 20 October 2021 (Wednesday); 21 October 2021 (Thursday); and 22 October 2021 (Friday)”

10. The learned APP contended that the representation was received on 8 October 2021 and not on 5th October 2021. Even assuming it was received on 8th October 2021, there is still no explanation for the remaining days where the representation was lying in the department. The learned APP sought to contend that the representation remained in the box and because there were holidays, it could not be dealt with.

11. The Hon'ble Supreme Court, in the case of *Harish Pahwa (supra)*, has observed that the State Government is not expected to

allow the representation to lie unattended in the matter of such vital importance as of personal liberty of a citizen. In the case of *Rama Borade (supra)*, the Hon'ble Supreme Court has restated the right of Detenu under Article 22 (5) of the Constitution of India and directed that the representation should be considered expeditiously and disposed of with due promptitude, diligence and with a sense of urgency. A similar view is taken by the Hon'ble Supreme Court in the cases of *Kundanbhai Shaikh (supra)* and *Rajammal (supra)*.

12. Applying the ratios laid down above to the facts of the case, we find that there is no explanation whatsoever for the delay of 12 days or even assuming for the delay of 8 days; still, there is no explanation. That the representation was lying unattended in the inbox is not an explanation but an admission of the casual approach.

13. As a result, the right guaranteed to the Petitioner under Article 22 (5) of the Constitution of India is infringed, and the Petitioner is entitled to succeed. Thus, the impugned detention order deserves to be quashed and set aside on this ground.

15. Accordingly, Rule is made absolute in terms of prayer clause (b), i.e., the order of detention dated 1 September 2021 is quashed and set aside. The Petitioner is set forth at liberty unless required in any other case.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)