

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 157 OF 2022

Shri. Premchand @ Babu Punjabi
@ Tatu Manohar Dhakani
Age : 25 years,
R/o. Near Jay Ambe Medical Store
Barrack No.1127, Farwar Line,
Ulhasnagar-3, Dist. Thane.

.. Petitioner

Versus

- 1. The Commissioner of Police**
Thane.
- 2. The State of Maharashtra**
(Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department
Mantralaya, Mumbai).
- 3. The Superintendent,**
Nashik Road Central Prison,
Nashik.

.. Respondents

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- Ms. Jayshree Tripathi, Advocate for the Petitioner
 - Ms. M.H. Mhatre, APP for the Respondents - State
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CORAM : S.S. SHINDE &
MILIND N. JADHAV, JJ.

DATE : JUNE 06, 2022.

JUDGMENT (PER : MILIND N. JADHAV, J.)

- 1.** Heard.
- 2.** Rule. Rule made returnable forthwith.

3. Petitioner has filed the present Writ Petition for the following relief:

"b. The order of Detention bearing No. TC/PD/DO/MPDA/02/2021 dated 24.08.2021 issued under Section 3 of M.P.D.A. Act, 1981 by the Respondent No.1 be quashed and set aside and on quashing the same the Petitioner be ordered for release forthwith."

4. Petitioner is presently detained at Nashik Road Central Prison, Nashik and order of detention dated 24.08.2021 came to be passed and served upon the Petitioner. On receipt of the said order, the Petitioner submitted a representation to the State Government on 07.12.2021 through the Jail Authorities for consideration and revocation of the order of detention.

5. Learned counsel Ms. Jayshree Tripathi appearing on behalf of the Petitioner submits that the impugned detention order has been passed with total non application of mind by the detaining authority; that the representation dated 07.12.2021 filed by the Petitioner for consideration and revocation of the detention order has not been acted upon and has remained unattended with the jail authorities for more than three months; that the Petitioner has not received any communication from the State Government with respect to his representation resulting in undue delay and continuation of the Petitioner in detention. She submits that there is gross delay in passing the order of detention which has been passed after about 2

months and 14 days after the date of the last incident; that the two cases which are relied upon in the order of detention are still under investigation and have not reached any finality and thus cannot be considered for passing the detention order; that in the present case save and except the aforementioned two CR's, there is no other material or case to indict the Petitioner. She submits that there is violation of the provisions of Section 3(3) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offencers, Dangerous Persons and Video Pirates Act, 1981 (for short "**MPDA Act**") in as much as admittedly no urgency has been shown by the Respondents to consider the representation of the Petitioner which has challenged the detention order.

5.1. Ms. Jayshree Tripathi, has referred to and relied upon the decision of the Supreme Court in the case *B. Alamelu Vs. State of T.N. and Ors.*¹ and a decision of a Co-ordinate Bench of this Court dated 16.09.2021 passed in Criminal Writ Petition No.1497 of 2021 (to which one of us S.S. Shinde, J. was a party) to submit that in the event if there is a delay on the part of the jail authorities in forwarding and referring the representation received against the detention order to the appropriate Government then the avoidable and unexplained delay resulting in rendering the continued detention of the Petitioner is

¹ (1995) 1 SCC 306

illegal and constitutionally impermissible. She submits that in the present case admittedly there is a delay in not forwarding the representation dated 07.12.2021 on the part of the jail authorities to the State Government for consideration. Paragraph No. 6 of the decision of the Supreme Court in ***B. Alamelu's*** case(supra) is relevant and reads thus:-

"6. In the facts of the present case it is not the delay on the part of the Central Government in disposing of the representation on 27-7-1994 which reached its end on 22-7-1994 that is on the anvil. The question is whether the delay on the part of the jailor in despatching the representation received by him on 4-5-1994 to the Central Government has violated the constitutional right under Article 22(5) or not. So far as that question is concerned, it has to be noted that the jailor on his part never despatched the representation to the Central Government. If he had despatched the same as expeditiously as possible after 4-5-1994 as requested by the appellant in the covering letter, the matter would have stood on a different footing but that never happened. In the case of *Aslam Ahmed Zahir Ahmed Shaik v. Union of India*³, it has been held by this Court that the supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the Government which received the representation 11 days after it was handed over to the Jail Superintendent by the detenu. This avoidable and unexplained delay had resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible. On the facts of the present case, the ratio of the aforesaid decision squarely gets attracted. So far as the decision of this Court in *Jai Parkash* case¹ is concerned, we fail to appreciate how the ratio of the decision could not be held to be applicable. The fact that the detenu was an advocate in the present case cannot make any difference to the applicability of the ratio of the aforesaid decision. As in *Jai Parkash* case¹ so in the present case, the appellant furnished nine copies of the representation to the jailor. Under these circumstances, the jailor was bound to send one copy to the Central Government and he did not do so and that infringed the constitutional right of the detenu under Article 22(5). A futile attempt was made by the learned counsel for the respondent to distinguish the judgment on the ground that in *Jai Parkash* case¹ the detention was under the National Security Act and that representation to the Central Government was never considered while in the

present case the detention is under COFEPOSA and the representation was ultimately decided upon by the Central Government. These facts would make no difference to the applicability of the ratio of *Jai Parkash* case¹. Even under COFEPOSA, the Central Government having statutory power to revoke the detention under Section 11 cannot be said to be an authority which was not at all concerned with such a representation. On the contrary, the grounds of detention themselves as furnished to the detenu had rightly indicated that the detenu could represent to the Central Government. As held by this Court in *Jai Parkash* case¹ when the detenu gave sufficient number of copies of the representation and left it to the jail authorities to forward the same to the authorities as specified in the grounds of detention, the Superintendent of Jail was legally bound to send one copy to the Central Government. We are, therefore, of the view that the detenu was denied his right to make an effective representation at the earliest opportunity and on that short ground his continued detention is liable to be held illegal. In our view on the facts of the present case the ratio of the decision of this Court in *Jai Parkash* case¹ has squarely got attracted."

6. *PER CONTRA*, learned APP submits after considering the record of the case that there has been a delay on the part of the jail authorities to forward the representation dated 07.12.2021 to the State Government.

7. We have perused the reply affidavit dated 14.03.2022 filed by the Commissioner of Police, Thane City filed in the present case. It is seen that the entire affidavit deals with the objective consideration for passing the detention order dated 24.08.2021 but does not deal with the principle ground raised by the Petitioner of not forwarding the representation dated 07.12.2021 to the State Government for consideration. Infact, in the entire affidavit-in-reply there is no reference whatsoever to the representation dated 07.12.2021 made by the Petitioner.

8. In view of the ratio laid down in the case of *B. Alamelu* (Supra) as also the decision in the case of *Swapnil Salunkhe* (supra), we find considerable force in the submissions made by the learned counsel for the Petitioner that there is an unreasonable delay in executing the order of detention as also forwarding the representation dated 07.12.2021 to the State Government for consideration in accordance with law. On perusal of the reply filed by the answering Respondents it is abundant clear that the Respondents have not given any cogent reply with reference to the grounds and for the principle relief prayed for in the present petition. There is no satisfactory explanation whatsoever for the delay in processing the representation dated 07.12.2021 when such representation of the detinue is required to be considered by the State Government as expeditiously as possible. Admittedly we find that there is a substantial delay on the part of the jail authorities which has remained unexplained. It is seen that if a representation to challenge the detention order is filed, then the same ought to be considered as expeditiously as possible; in the present case the delay in considering the representation of the Petitioner has remained unexplained.

9. In view of the above discussion and findings, the Petition deserves to be allowed. Hence the following order:

ORDER

- (i) The Writ Petition stands allowed;
- (ii) The impugned order of detention bearing No. TC/PD/DO/MPDA/02/2021 dated 24.08.2021 issued under 3 of the MPDA Act is quashed and set aside;
- (iii) Consequently, the Petitioner is directed to be released forthwith unless required in any other case;
- (iv) Rule is made absolute in the above terms.

10. The Writ Petition stands disposed of.

11. Parties to act upon an authenticated copy of this order.

[MILIND N. JADHAV, J.]

[S. S. SHINDE, J.]

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TRAMBAK
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