

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 998 OF 2022**

Shri. Jaggu Sardar @ Jagdish Tirathsingh
Labana @ Punjabi
Age 39 yrs. R/o. Barrack no. 356,
Room No. 7, Sonargalli, Shiru Chowk
Ulhasnagar No.2, Dist: Thane
At present, Nashik Road Central Prison ... 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 with Mr. U.N. Tripathi for the Petitioner.
Ms. M.H. Mhatre, Assistant Public Prosecutor for the State.

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**CORAM: NITIN JAMDAR AND
N.R. BORKAR, JJ.**

DATED: 19 AUGUST 2022

JUDGMENT:-

By this writ petition, the Petitioner is praying for quashing
and setting aside the order of detention dated 21 December

2021 issued by Respondent No.1, the Commissioner of Police, Thane. Respondent No.1 has passed the order of detention dated 21 December 2021 under Section 3 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 the copy of the order of detention dated 21 December 2021, a copy of the committal order and grounds of detention of the same date were furnished to the Petitioner. The Detaining Authority took note of the criminal history of the Petitioner from 2019 to 2021 of five criminal cases filed against the Petitioner at Ulhasnagar Police Station. The Detaining Authority referred to three preventive measures against the Petitioner and that these actions failed to deter the Petitioner. The Detaining Authority relied upon two criminal cases filed against the Petitioner on 22 July 2021 and 28 November 2021, and the statements of two witnesses, Witness A and Witness B, recorded in-camera. Considering this material, the Detaining Authority recorded a subjective satisfaction that the Petitioner's activities were prejudicial to public order and could not have been dealt with under ordinary law, and the action of placing

the Petitioner under preventive detention was necessary. Accordingly, Respondent No.1 passed the impugned detention order on 21 December 2021. The Petitioner made a representation on 22 February 2022, which was rejected on 17 March 2022; thereupon, the Petitioner has filed the present petition.

3. On behalf of the State, the Deputy Secretary, Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai, the Commissioner of Police, Thane City, District Thane and the Superintendent, Nashik Road Central Prison, Nashik have filed their reply affidavits.

4. The Petitioner has pressed the ground of delay in deciding the representation made to the State Government by the Petitioner. The Petitioner contends that there is an unexplained gross delay at every stage while dealing with the representation and the casual approach of the authorities in deciding the representation is violative of Article 22 (5) of the Constitution of India. The Petitioner contends that there are two periods where undue delay has occurred for which there is no explanation. The first is from 4 March 2022 to 10 March 2022, which is unexplained, and the second is from 11 March 2022 to 17 March 2022. The learned Counsel for the Petitioner has relied upon the decisions of the Hon'ble Supreme Court in

the cases of *Harish Pahwa Versus State of U.P. and Others*¹ and *Aslam Ahmed Zahire Ahmed Shaik Versus Union of India and Others*². The learned APP relied on the affidavit and contended that there is no such undue or gross delay and the delay, if any, has been reasonably explained.

5. It is a settled position of law that when a detenu makes a representation, it must be dealt with expeditiousness without delay. In a series of decisions, the Hon'ble Supreme Court has stressed the need to deal with the representation with expeditiousness and the mandate under Article 22 (5) of the Constitution of India. In the case of *Harish Pahwa (supra)*, the Hon'ble Supreme Court has observed that the representation has to be dealt with continuously until a final decision is taken and communicated to the detenu. The Hon'ble Supreme Court has observed that the courts do not look with equanimity upon delay when a person's liberty is concerned. In the case of *Aslam Ahmed Zahire Ahmed Shaik (supra)*, the Hon'ble Supreme Court has observed that the jail authorities are merely intermediaries and it cannot show indifference or slackness in forwarding the representation. The representation cannot be unattended and must be dealt with immediately. Keeping that

1 (1981) 2 Supreme Court Cases 710

2 (1989) 3 Supreme Court Cases 277

legal position in mind, now we turn to how the Petitioner's representation was dealt with.

6. The Jail Superintendent's reply states that the Petitioner's representation was received on 26 February 2022. After that, on 27 February 2022, the office was closed. On 1 March 2022, the signature of the detenu was obtained, and thereafter representation was sent to the State Government on 4 March 2022. The State Government, in its reply, has stated that representation was received on 10 March 2022. The learned Counsel for the Petitioner points out that there is no explanation as to why the signature of the detenu was not obtained on 28 February 2022. Thereafter, the representation was lying with the jail authority for two days and was sent on 4 March 2022. In the case of *Aslam Ahmed Zahire Ahmed Shaik (supra)*, the jail authorities had kept representation unattended for seven days, which the Supreme Court found was undue and unexplained. Though learned APP submits that the delay is hardly 2-3 days in the present case which cannot be considered an undue delay, this is not the only stage of the process of dealing with the representation where the Respondents have shown casualness.

7. Next period of delay arises as follows. The jail authorities, in their reply, have stated that the representation was sent on 4 March 2022; however, the State Government has stated that it was received on 10 March 2022. In the affidavit filed by the jail authority, it is stated that the representation was sent by the speed post to the State Government on 4 March 2022. Based on this position, the learned APP sought to contend that the delay of 6 days from 4 March 2022 to 10 March 2022 occurred because the same was in transit with the speed post. In various matters of detention that come up before us, the representation and parawise remarks are being sent by the authorities by e-mail. Since the representation must be dealt with utmost dispatch, it is necessary that speedy communication facilities such as electronic communication must be put to use and in fact they are being used by the authorities. The learned APP accepted that the Respondents are using the electronic communication facilities in respect of processing representations of the detenu in various cases to abide by mandate under Article 22 (5) of the Constitution of India. Why the Respondent chose to send this representation by speed post, taking six days to transmit has not been explained. There could be a reason why in a particular case, the representation was forwarded from one authority to another by speed post, however, considering that a faster mode of transmitting the representation is being put to

use by the Respondents in detention matters, the explanation must be satisfactory. In the present case, there is no explanation. The Detaining Authority has stated in an affidavit that on 11 March 2022, communication was received to call for remarks from the Detaining Authority, and the remarks were sent by the Detaining Authority on 17 March 2022. The learned Counsel for the Petitioner contended that there is no explanation as to why they took seven days to prepare and send para-wise comments.

8. Therefore, taking these periods of delay, we find that the cumulative effect is that representation of the Petitioner has not been disposed of with due promptitude and diligence with a sense of urgency and without unavoidable delay. Representation of the Petitioner was not dealt with expeditiousness as required under Article 22 (5) of the Constitution of India and emphasized by the Supreme Court in the cases of *Aslam Ahmed Zahire Ahmed Shaik (supra)* and *Harish Pahwa (supra)*. This has resulted in the breach of the constitutional obligation under Article 22 (5) of the Constitution of India. Consequently, the Petitioner is entitled to succeed.

9. As a result, the petition is allowed. Rule is made absolute in terms of prayer clause (b); that is, the order of detention dated 21 December 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.)

TRUPTI
SADANAND
BAMNE

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TRUPTI SADANAND
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