

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1849 OF 2022

Rushikesh Suresh Pawar
Age 23 years, R/o Behind Marathi
School, Kadam Wasti, LoniKalbhor,
Tehsil-Haveli, Dist: Pune

.. Petitioner

v/s.

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

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Ms. Jayshree Tripathi, a/w. Mr. U.N. Tripathi, for the Petitioner.

Mrs. S.D. Shinde, APP, for State.

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CORAM: NITIN JAMDAR &
ARUN R. PEDNEKER, JJ.

DATE: 21 JULY 2022.

Oral Judgment (Per Nitin Jamdar,J):

The Petitioner, by this petition, is seeking to quash the order of detention dated 19 July 2021 issued by Respondent No.1- Commissioner of Police, Pune City. The period of detention is over, but the learned Counsel for the Petitioner states that the detention order casts a stigma on the Petitioner and in light of the completely untenable action on the part of the Respondents of delay in deciding the representation, the order of detention is vitiated.

2. Notice was issued in this petition on 7 April 2022. Replies have been filed pursuant thereto. Accordingly, Rule is made returnable forthwith. The Respondents waive service.

3. The order of detention is passed by Respondent No.1 against the Petitioner under Section 3(2) of *the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons And Video Pirates Act, 1981 (M.P.D.A. Act, 1981)*. The detention order is founded on two crimes registered against the Petitioner bearing C.R. No.272 of 2021 and C.R. No.319 of 2021 registered at LoniKalbhor Police Station, District Pune and statements of two witnesses, Witness A and Witness B, recorded In-camera. After considering the material on record, the detaining authority recorded satisfaction that the activities of the Petitioner are

prejudicial to the public order, cannot be contained under ordinary law, and action of placing the Petitioner under preventive detention is necessary. The Petitioner made a representation on 13 October 2021, which was rejected on 18 November 2021. After that, the Petitioner is before us in this petition.

4. We have heard Ms. Jayshree Tripathi, the learned Counsel for the Petitioner and Mrs. S.D. Shinde, the learned APP for the State.

5. In this case, the Petitioner made a representation on 13 October 2021, and the jail authorities received it on 16 October 2021. The same was forwarded by speed post to the Home Department on 18 October 2021. On 25 October 2021, the State called for para-wise comments from the detaining authority. The detaining authority supplied the para-wise comments to the State on 18 November 2021, and on the same day, i.e. 18 November 2021, the representation was rejected.

6. The sole contention advanced by the learned Counsel for the Petitioner is that there is no explanation for the delay in deciding the representation, particularly for the period between 25 October 2021 to 18 November 2021 of 23 days. The learned APP relied upon the affidavit-in-reply filed by the detaining authority and the State Authority.

7. The Petitioner contends that the period between 25 October 2021 and 18 November 2021, attributable to the detaining authority of time taken to send para-wise comments, must be explained.

8. The Supreme Court in the case of *Rajammal vs. State of Tamil Nadu & Anr.*¹, while considering the phrase “as soon as may be” occurring in clause (5) of Article 22 observed that it is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. It was held that though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. Constitution Bench in *K.M. Abdulla Kunhi and B.L. Abdul Khader vs. Union of India and Others*² held that the words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers of the Constitution that the representation should be expeditiously considered and disposed of without an avoidable delay. It was held that that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can undoubtedly consider whether the delay was occasioned due to

1 1999 (1) LJ (SC) 265

2 1991 (1) SC 476

permissible reasons or unavoidable causes. It would depend upon the facts and circumstances of each case.

9. The Petitioner has taken the ground of delay in deciding the representation vitiating the order of detention in para 5(d) of the Writ Petition. The State has filed an affidavit giving the dates referred to above. Therefore, for the explanation for the period between 25 October 2021 and 18 November 2021, we will have to turn to the affidavit filed by the Detaining Authority – Commissioner of Police, Pune. As regards this ground of delay 5(d), the only reference is found in para 12 of the reply, which reads thus:

“12. With reference to para 5(d) of the ground of Writ Petition, it is submitted that the contention of the Detenu in the said para is denied by the Respondent.”

There is no explanation regarding the delay of 23 days in sending para-wise comments. There is not even a sentence in the reply regarding the delay, let alone an attempt to explain the delay. If the State was serious about issuing a detention order, it should have taken steps promptly or should have at least attempted to explain the delay.

10. The contention of the Petitioner that the delay of 23 days, for which no explanation whatsoever is given, has infringed the right of the Petitioner under Article 22(5) of the Constitution of India and that

the impugned order of detention be set aside, will have to be accepted.

11. Accordingly, the petition is allowed. Rule is made absolute in terms of prayer clause (b).

(ARUN R. PEDNEKER, J.)

(NITIN JAMDAR, J.)