

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1457 OF 2022

Shri Raj Gulab Shaikh,
Age-29 years, R/o. Indiranagar,
Handewadi Road, Hadapsar, 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,
Aurangabad Central Prison, Aurangabad. ... Respondents.

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Ms.Jayashree Tripathi with Mr.U.N.Tripathi
for the Petitioner.

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

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

DATE : 12 August 2022.

ORAL JUDGMENT: (Per Nitin Jamdar, J.)

By this petition, the Petitioner has challenged the order of detention dated 28 February 2022 passed by Respondent No.1 - Commissioner of Police, Pune City. Since pursuant to the order of detention, the Petitioner is taken in custody; the Petitioner is praying to be set forthwith at liberty. The impugned detention order is passed under section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drugoffenders, Dangerous Persons and Video Pirates Act, 1981.

2. Along with the order of detention dated 28 February 2022, the committal order and grounds of detention of the same date were served upon the Petitioner. In the grounds of detention, the Detaining Authority referred to the criminal history of the Petitioner of five offences ranging from August 2017 to June 2021. The Detaining Authority also referred to the preventive actions taken on 13 April 2018 and 20 February 2020, whereby the Petitioner had executed a bond for good behaviour. The Detaining Authority stated that despite the preventive action, it had no deterrent effect on the Petitioner and the Petitioner committed two more offences for which crimes were registered on 30 October 2021

and 25 October 2020. The statements of witnesses 'A' and 'B' were recorded in-camera. Considering this material on record, the Detaining Authority formed a subjective satisfaction that the Petitioner is a slumlord as defined under section 2(f) of the Act of 1981 and his criminal activities are prejudicial to the public order and that the Petitioner cannot be dealt with under the ordinary law of land and action of preventive detention is necessary. Accordingly, the Detaining Authority passed the impugned order of detention. The Petitioner made a representation on 21 March 2022 which was rejected on 20 April 2022. Thereafter, the Petitioner is before us by the present petition.

3. We have heard Ms.Tripathi, learned counsel for the Petitioner and Ms.Mhatre, learned Assistant Public Prosecutor for the Respondents.

4. The Petitioner has urged that there is undue delay in deciding the representation made by the Petitioner, and the delay has not been explained by the Respondents. According to the Petitioner, this situation violates Article 22(5) of the Constitution of India, which mandates that the detune's representation should be decided as expeditiously as possible. The Petitioner has pointed out that two periods have not been explained by the Respondent- Authorities. The first is between 13 April 2022 and 19 April 2022, and the second is between 31 March 2022 and 13 April 2022. Replies to the petition have been filed on behalf of the State by the Deputy

Secretary, Home Department, Mantralaya, by Respondent No.1- Commissioner of Police, the Detaining Authority and by the Superintendent of Central Prison, whereby the details of the movement of the representation of the Petitioner are given. Regarding the first period, according to the Petitioner, the same is unexplained and contradictory to the versions placed on record by the Detaining Authority and the State Government. It is urged that according to the Detaining Authority, parawise comments of the Detaining Authority were prepared and sent to the State Government on 13 April 2022; however, in reply filed on behalf of the State, it is stated that the remarks of the Detaining Authority were received on 19 April 2022. Regarding the second period, the Petitioner contends that the reason given by the Detaining Authority for preparation of parawise comments from 31 March 2022 to 13 April 2022, that is of, 14 days is unexplained and the reason given in the reply is not satisfactory. The Petitioner relies upon the decision of the Supreme Court in the case of *Kundanbhai Dulabhai Shaikh v Distt.Magistrate, Ahmedabad*¹.

5. The mandate under Article 22(5) of the Constitution of India to deal with the representation of the detenu as expeditiously as possible has been underscored and implemented through various decisions of the Hon'ble Supreme Court, and the law in that regard is well settled. It is not the position of law; however, that moment there is a delay in deciding the representation, the benefit should be

1(1996) 3 SCC 194: 1996 SCC (Cri) 470.

given to the detenu, as the authorities can explain the reasonable delay. However, when the delay is undue and unexplained, the benefit has to be given to the detenu as it violates Article 22(5) of the Constitution. In that context, the Respondent's explanation for the periods highlighted by the Petitioner will have to be seen.

6. The Detaining Authority, in the reply, has stated that parawise comments were sent to the State Government on 13 April 2022. The State Government, in its affidavit, has referred to this letter of 13 April 2022 and has stated that it was received by them six days after that, on 19 April 2022. In reply, there is no reference to the mode of communication either of the Detaining Authority or the State Government. Regarding the rejection of representation, the State Government has specifically stated that it was communicated to the detenu by Speed Post. As regards the receipt of representation of the detenu, it is stated that it is received by email; however, there is no reference whatsoever as regards the mode of communication of remarks of the Detaining Authority- whether by email or by Speed Post. If it were sent by email, the remarks would have been received on 13 April 2022 itself and would have been lying unattended for six days. If it was sent by Speed Post, no reason is given why they could not be sent by email as the representation was sent by email and why this facility was not utilized for sending the para-wise remarks. When it is a constitutional mandate to decide the detune's representation as expeditious as possible, the Respondents had to explain why expeditious means of communication were not utilized

in this case. For want of any explanation on this aspect of the matter, the delay of six days will have to be considered undue and unexplained.

7. As regards the second period, i.e. from 31 March 2022 to 13 April 2022, this is a time taken to prepare parawise comments by the Detaining Authority. In reply, the Detaining Authority has stated that during this period, twelve MPDA proposals and two representations were pending before the Detaining Authority for consideration, and there were four public holidays being, Saturdays and Sundays. Even assuming that public holidays are excluded from this period, as regards the remaining period, the only ground is of pendency of other proposals and representations. The pendency of proposals and representations can be considered as a cogent reason; however, the particulars of these representations, whether these were representations or proposals, whether they were prior in time to the proposal and the matter of the Petitioner will have to be explained. The Hon'ble Supreme Court, in the case of *Kundanbhai Shaikh* as far back in the year 1996, has stressed upon this aspect as a matter of discipline to be observed by the detaining authorities. The Hon'ble Supreme Court in para-22 has observed thus:

“22. In both these cases, we have to read the old story of lethargy of the State Government. In the first case, the representation dated 23-8-1995 was received in the office of the Chief Minister on 25-8-1995 and was ultimately disposed of on 12-9-1995 and the order was communicated to the detenu on 14-9-1995. During this period, the file was being processed in the government departments. It is pointed out in the counter-affidavit that the representation,

on being received in the office of the Chief Minister on 25-8-1995 was sent to the Secretary, Food and Civil Supplies Department, where it was received on 29-8-1995. The internal movement of the file thus took four days. The representation was then sent to the Special Branch where it was received on 1-9-1995. The representation was taken up by the Special Branch on 6-9-1995. The inactivity in taking up the representation for six days is explained by showing in the counter-affidavit that there were about 40 to 50 representations pending for disposal and they were taken up chronologically. This indicates that the representation was placed in the queue and was not given precedence over other representations which are not said, in the counter-affidavit, to relate to detention orders. Even if they related to preventive detention, then such of those which were ready for disposal and in respect of which comments from various departments had been gathered and other formalities completed, should have been disposed of immediately and should not have been kept pending on the ground of "chronological disposal" by saying that representations filed earlier by other detenus were still to be disposed of. The chronology must be broken as soon as a representation is ready for disposal."

This dictum is clear and applies to the case at hand. Therefore, in light of this law laid down as above, it was not enough to state that there were representations and proposals pending before the Detaining Authority and, therefore, the Petitioner's proposal was not attended to. The Detaining Authority has not stated that the pending representations and proposals referred to in its reply were chronologically earlier than that of Petitioner and, therefore, were given priority. As stated earlier, this position of law having been laid down more than 25 years ago, it was expected that it should be given effect while dealing with the file of the Petitioner or at least the delay should have been explained in the affidavit. Therefore, the reason

given on the affidavit for this delay cannot be accepted. The effect of these two unexplained periods, if taken cumulatively, would show that there was lethargy on the part of the Respondents in dealing with the representation of the Petitioner “as expeditiously as possible” as contemplated under Article 22(5) of the Constitution of India.

8. As a result, the Petitioner is entitled to succeed. Writ petition is allowed. Rule is made absolute in terms of prayer clause (b). The Petitioner be set forth at liberty if not required in any other case.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)