

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1901 OF 2022**

Chandrakant Alias Chandar Basu Chavan

... Petitioner

V/s.

The Commissioner Of Police & Ors.

... Respondents

Mr. Hitesh P. Shah for Petitioner.

Mr. J. P. Yagnik, A.P.P. for Respondents-State.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 21st November 2022.

ORAL JUDGMENT (Per : A. S. Gadkari, J.)

1. By the present Petition under Article 226 of the Constitution of India, the Petitioner has prayed that, the Order of Detention bearing No. O.W.No./Crime PCB/DET/Chavan/87/2022, dated 14th March 2022 issued under Section 3(2) of The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing of Essential Commodities Act, 1981 (for short, "M.P.D. Act") be quashed and set-aside.

2. Heard Mr.Shah, learned Advocate for Petitioner and Mr.Yagnik, learned A.P.P. for Respondents-State. Perused record.

3. Record reveals that, by an Order dated 14th March 2022 passed by Respondent No.1, i.e. Detaining Authority, under Section 3(2) of M.P.D. Act, the Petitioner has been preventively detained at Nagpur Central Prison. Along with the Detention Order, Committal Order and the Grounds of Detention of even date, so also necessary documents have been served upon the Petitioner.

4. Though the Petitioner has taken several grounds in the Petition, the learned Advocate for the Petitioner submitted that, the ground No.5(b) of the Petition involves violation of Article 22(5) read with Article 21 of the Constitution of India and the said ground be considered for deciding present Petition. In the said ground it is stated that, the representation dated 17th March 2022 made by the mother of Petitioner with the Respondent No.2 i.e. State, has not been decided within reasonable period. He submitted that, as a matter of fact it was not decided till the date of filing of present Petition.

5. In the grounds of detention vide para Nos.11 & 12 itself, the Petitioner was informed about his right to make representation with two different authorities, i.e. the Commissioner of Police, Pune i.e. Respondent No.1 and the Additional Chief Secretary, Government of Maharashtra (Home), Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai i.e. Respondent No.2. The said two paragraphs from grounds of detention reads as under.

11. *I further inform you that pending approval of this detention order under Section 2(3) of the said Act by the State Government, you have a right to make representation to the Detaining Authority i.e. the Commissioner of Police, Pune, 2, Sadhu Vaswani Road, Camp, Pune through the Superintendent of the Jail, where you are detained. On approval of the detention order by the State Government under Section 3(3) of the said Act the right of representation to the Detaining Authority automatically extinguishes.*
12. *You are informed that you have a right to make representation to the State Government against the detention order and that you shall be afforded the earliest opportunity to make such representation. If you wish to make such representation, you should address it to The Additional Chief Secretary (Home), Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai – 400032 and submit it through the Superintendent of the Jail, where you have been detained.*

6. The Petitioner therefore apart from making representation to the Respondent No.1 also made representation on 17th March 2022 with Additional Chief Secretary, Home Department, Maharashtra, Pune. As noted above, it is the precise contention of the Petitioner that, the Respondent No.2 till the date of filing of the present Petition i.e. 26th April 2022 had not decided the said representation and therefore a specific ground No.5(b) has been taken in the Petition to that effect.

7. Mr. Shirish N. Mohod, Deputy Secretary, Government of Maharashtra, Home Department, Mantralaya, Mumbai, has filed Affidavit-in-Reply dated 18th July 2022 and has affirmed that, the representation made by the mother of the detenu dated 17th March 2022 was received by his office on 21st March 2022. The pleadings in para No.2 or otherwise also, in the said affidavit, are absolutely silent about the fact as to whether the Respondent No.2 infact has decided the representation of the Petitioner and has communicated its decision to him or not. It clearly appears from record that, the representation dated 17th March 2022 made by the mother of the detenu with Respondent No.2 has not been decided till the date of filing of the present Petition.

8. It is the settled law and as has been held by the Hon'ble Supreme Court in the case of *Rashid Kapadia Vs. Medha Gadgil & Ors*, reported in (2012) 11 SCC 745, that the right of a person, who is preventively detained to make a representation and have it considered by the authority concerned as expeditiously as possible is a constitutional right under Article 22(5). That any unreasonable and unexplainable delay in considering the representation is held to be fatal to the continued detention of the detenu.

9. In the present case record clearly indicates that, there is unreasonable and unexplained delay in considering the representation made

by the mother of the Petitioner with the Competent Authority and it is fatal to the continued detention of the detenu. In view of the above, we have no option but to arrive at a safe conclusion that, the Detention Order bearing No. O.W.No./Crime PCB/DET/Chavan/87/2022, dated 14th March 2022 cannot be sustained in the eyes of law on the above mentioned ground alone and is accordingly required to be set-aside.

10. In the circumstances and in view of the above, we quash and set-aside the Detention Order bearing No. O.W.No./Crime PCB/DET/Chavan/87/2022, dated 14th March 2022 and direct that the detenu be released from jail forthwith on production of authenticated copy of the present Order, unless required in any other case.

11. Writ Petition is allowed and Rule made absolute accordingly.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]

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