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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
WRIT PETITION NO.1894 OF 2022

Sahil Sanaulla Shah

... Petitioner

V/s.

1. The Commissioner of Police,  
Pimpri Chinchwad
2. The State of Maharashtra
3. The Superintendent,  
Yerwada Central Prison, Pune

... Respondents

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Ms Jayshree Tripathi along with Mr. U.N. Tripathi for the Petitioner.  
Mrs. S.D. Shinde, APP for the Respondent/ State.  
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CORAM : NITIN JAMDAR &  
N.R. BORKAR, JJ.  
DATE : 12 AUGUST 2022.

**JUDGMENT (PER N. R. BORKAR, J.)**

. This petition takes exception to the order of detention dated 20 December 2021 passed by the Respondent No.1 - The Commissioner of Police, Pimpri Chinchwad under Section 3 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 'the Act'). By the order impugned, the Petitioner is directed to be detained in Yerwada

Central Prison with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. In terms of Section 8 of the Act, the grounds of detention were supplied to the Petitioner.

2. Respondent No.1 to reach to the decision that the Petitioner needs to be detained has relied upon the two cases registered against the Petitioner at Dighi Police Station vide Crime No. 211 of 2021 and 350 of 2021 *inter alia* for the offences punishable under Chapter XVI and XVII of the Indian Penal Code and under Chapter V of the Arms Act and two In-camera statements. The allegations against the Petitioner are that he causes terror and extort money from petty shopkeepers carrying out their business within the jurisdiction of Dighi and Bhosari Police Station, Pimpri Chinchwad. The Petitioner is as such dangerous person as defined under Section 2(b-1) of the Act. The activities of the Petitioner are prejudicial to the maintenance of public order and they cannot be dealt with under the ordinary law of the land.

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

4. The sole contention advanced by the learned Counsel for the Petitioner is delay in deciding the representation, which the

Petitioner had made on 22 April 2022 to the Respondent – State in terms of Article 22(5) of the Constitution of India. The learned Counsel for the Petitioner submits that the State is under obligation to consider the representation of the Petitioner without any delay, however, till date, the State has not passed any order on representation of the Petitioner. It is submitted that the order of detention, thus, stands vitiated.

5. The learned APP in all fairness submitted that, the representation of the Petitioner could not be considered due to non-receipt of remarks of Detaining Authority.

6. The Supreme Court in the case of *Rajammal vs. State of Tamil Nadu & Anr.*<sup>1</sup>, 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 detainee 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*<sup>2</sup> held that the words "as soon as may be" occurring in clause (5) of Article 22

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1 1999 (1) LJ (SC) 265

2 1991 (1) SC 476

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

7. The Respondent-State in its affidavit-in-reply dated 6 July 2022, has not disputed the receipt of representation of the Petitioner dated 22 April 2022. According to the Respondent – State, after receipt of representation of the Petitioner, the remarks of Detaining Authority were called on 27 April 2022. However, the Detaining Authority has not submitted its remarks since then.

8. It is thus apparent that the Respondent – State is yet to decide the representation of the Petitioner, which he had made on 22 April 2022. We have therefore, no option except to allow the present petition. Accordingly, Writ Petition is allowed in terms of prayer clause (b); that is the order of detention dated 20 December 2021 is quashed and set aside. The Petitioner be set at liberty unless required in any other case.

**(N.R. BORKAR, J.)**

**(NITIN JAMDAR, J.)**