

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2564 OF 2022**

Sheetal Trishant Salve	]	
Age: 23 years, an Indian	]	
Inhabitant, residing at Tata	]	
Power House in front of	]	
Deshmukh's House, Jai	]	
Malhar Nagar, Pisavali,	]	
Taluka Kalyan, District. Thane.	]	Petitioner (Wife of Detenue)

Vs.

1. The State of Maharashtra	]	
Through Secretary Home	]	
Department (Special),	]	
Mantralaya, Mumbai - 400 032.	]	
2. Jai Jeet Singh,	]	
The Commissioner of Police,	]	
Thane.	]	
3. The Superintendent of	]	
Nasik Road, Central Prison,	]	
Nashik.	]	Respondents

.....

Ms. Aisha Ansari a/w Ms. Nasreen Ayubi, for Petitioner.

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

.....

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 16th DECEMBER, 2022.

ORDER: [Per Prithviraj K. Chavan, J.]:

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and the petition is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent -State.
3. By this petition, preferred under Article 226 of the Constitution of India, the petitioner, who is interested in life and welfare of herself and the detinue viz; Trishant Dilip Salve has impugned an order of detention dated 16th March, 2022 bearing No. TC/PD/DO/MPDA/05/2022 issued by the Commissioner of Police, Thane 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 'Act'), *inter alia*, directing the detinue to be detained with a view to preventing him from acting, in any manner, prejudicial to the maintenance of public order.

4. The petitioner challenges the impugned order of detention mainly on the following grounds;

- (a) Delay in issuing the impugned order of detention;
- (b) Non application of mind by the Detaining Authority;
- (c) Vital documents were not placed before the Detaining Authority;
- (d) Irrelevant and stale cases considered by the Detaining Authority;
- (e) Piecemeal consideration;
- (f) There is a problem of law and order and not public order;
- (g) Report under section 3(3) of the Act was not sent forthwith and
- (h) There was a delay in considering the representation.

5. Learned Counsel for the petitioner, however, emphasizes only on the last ground i.e of delay in communicating the result of the consideration of the representation. Since, the learned Counsel has restricted her arguments on the said aspect, we do not deem it necessary to consider rest of the grounds in the petition.

6. Shorn of unnecessary details, a few facts germane for deciding this petition are stated hereinbelow.

7. To summarize the allegations *qua* the detainee, it transpires that the detainee indulged in committing various crimes such as rioting, molestation, hurt, assault or use of criminal force to deter a public Servant, threatening to life, abusing, house trespass punishable under various sections of the Indian Penal Code, Criminal Law Amendment Act, 1932, Maharashtra Police Act and Indian Arms Act. It is, *inter alia*, alleged that the detainee is in habit of committing such offences by carrying weapons like, sword, knife, chopper, wooden stick etc and thereby unleashed a reign of terror in the area of *Jai Malhar Nagar, Pisavali*, District Thane. The detainee is in habit of engaging in criminal activities by terrorizing the people in the vicinity so that no victim will dare lodge a report against him. Since the activities of detainee were prejudicial to the maintenance of public order, peace and tranquility in the localities, the Authority was constrained to issue the impugned order.

8. Grounds of order of detention have been disclosed to the detenue by respondent No.2 on the same day in view of section 8 (1) of the Act along with documents which were considered by the Authority while passing the order of detention, *inter alia*, informing the detenue about his right to make a representation to the Detaining Authority i.e Commissioner of Police, Thane City, which was to be submitted through the Superintendent of Jail where the detenue has been detained.

9. At the outset, learned Counsel for the petitioner invited our attention to section 3 (3) of the Act, which reads thus;

"3. Power to make orders detaining certain persons.

(1).....

(2).....

(3) When any order is made under this Section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and so such order shall remain in force for more than twelve days after the

making thereof, unless, in the meantime, it has been approved by the State Government".

10. It is crystal clear from the language of section 3 (3) that while passing the order under sub-section (2), Authority shall forthwith report the fact to the State Government, together with the grounds on which the order has been made by giving all necessary particulars. The Counsel has emphasized on the word 'forthwith'. She has rightly placed a useful reliance upon a judgment of the Division Bench of this Court in the case of **Jaggu Sardar @ Jagdish Tirathsingh Labana @ Punjabi Vs. The Commissioner of Police, Thane and others** passed in **Criminal Writ Petition No.998 of 2022 on 19th August, 2022**. In this judgment, the Division Bench of this Court, *inter alia*, placed reliance on a judgment of the Hon'ble Supreme Court in case of **Harish Pahwa Vs. State of U.P and others**¹ and **Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and others**².

1 (1981) 2 Supreme Court Cases 710

2 (1989) 3 Supreme Court Cases 277

11. The law on the point of delay in deciding the representation made to the State Government by the petitioner is no more *res intergra*. It has been laid down that when a representation is made by a detainee, it must be dealt with expeditiously, without delay as mandated in Article 22 (5) of the Constitution of India. In the case of **Harish Pahwa** (supra), it has been observed by the Supreme Court that the representation has to be dealt with continuously until a final decision is taken and communicated to the detainee. It has further been observed that the Courts do not look with equanimity upon delay when a person's liberty is concerned. In the case of **Aslam Ahmed Zaire Ahmed Shaikh** (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. By keeping this principle in mind, now, we turn to the case at hand as to how the detainee's detention has been dealt with.

12. It is evident from the record that the impugned order of detention has been approved by the State Government on or about 24th March, 2022 i.e almost after eight days of issuing of the impugned order of detention dated 16th March, 2022. There is no relevant contemporaneous record placed before this Court to verify and ascertain as to whether the detaining Authority has sent the report to the State Government forthwith. In the absence of any such record, an adverse inference is required to be drawn against the detaining Authority that the impugned order suffers from *mala fides*.

13. It is significant to note that the order of approval dated 24th March, 2022 at annexure 'G' discloses Email ID of the concerned Secretary to the Government of Maharashtra, Home Department. It is unfathomable as to why the impugned order of detention had not been forwarded to the State Government upon it's Email ID? The delay of eight days could have been avoided. This itself speaks volumes.

14. The detenue has been detained in Nashik Central Prison, Nashik on 17th March, 2022. The representation submitted by the detenue was received in M.P.D.A Cell on 27th July, 2022. Thereafter, parawise remarks were prepared and communicated on 1st August, 2022. The Authority tried to justify that since there were public holidays on 30th July, 2022 and 31st July, 2022, Office of the State Government was closed and therefore, there was delay on it's part in forwarding the parawise comments. Interestingly, an affidavit of Superintendent of Nashik Road Central Prison which is placed on record, indicates that after the detention of the detenue in Nashik Road Central Prison on 17th March, 2022, representation of the detenue was received on 22nd July, 2022 by the Registry of the jail, late in the evening. After obtaining the signature of the detenue over it, the same was forwarded to the Additional Chief Secretary (Home) by Speed Post which was received by the State Government on 26th July, 2022.

15. Here also the Superintendent of Nashik Road Central Prison could have, forthwith, forwarded the representation of the detenue to the Additional Chief Secretary (Home) through Email. The Jail Authorities, as already stated, are merely intermediaries, however, here, in this case, it exhibits some indifference and slackness in forwarding the representation by speed post. As such, the cumulative effect is that the representation of the detenue had not been disposed of with due promptitude and diligence with a sense of urgency and without unavoidable delay as mandated in Article 22 (5) of the Constitution of India.

16. We are appraised by the learned A.P.P that several Jail establishments lack facility of computers and internet. It is not clear from the affidavit of the Superintendent of Nashik Road Central Prison as to whether facility of Internet is available or otherwise at the Nashik Road Central Prison. In several matters of detention, which come up before us, the representations and parawise remarks are being sent by the Authorities through Email. Since the representation must be dealt with expeditiously,

it is necessary that speedy communication facilities such as electronic communication must be put in use by the concerned Department of the State Government.

17. We, therefore, deem it necessary to direct the Secretary (Home) of the State of Maharashtra as well as the Principal Secretary, Law and Judiciary to look into the matter as expeditiously as possible and ensure that all the prisons in the State of Maharashtra are provided with Computers and Internet facility as well as other electronic modes of communication so that the representations made, not only by the detenues, but other under trial prisoners and convicts are forthwith communicated to the concerned Authorities.

18. The net result is that the petition is allowed in terms of prayer clause (a), which reads thus:

(a) This Hon'ble Court be pleased to issue a Writ of Habeas Corpus or any other appropriate writ, order direction quashing and setting aside the said order of detention

dated 16.03.2022 having
No.TC/PD/DO/MPDA/05/2022 and be
pleased to direct that the detenue Trishant
Dilip Salve be set at liberty forthwith";

(ii) The detenue be set at liberty forthwith,
if not required in any other case.

19. All concerned to act on the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.] [REVATI MOHITE DERE, J.]