

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3267 OF 2022

Vijay Subhash Kore
Age : 42 Years, Occ. Farmer
R/o: Nanaj, Taluka North Solapur,
Dist : Solapur
At Present detained at – Yerwada Jail Pune
Through Rukmini Subhash Kore
Age : 60 Years, Occ. Farmer

...Petitioner

V/s.

1. State Of Maharashtra
 2. Additional Chief Secretary (Home Department)
Special Government of Maharashtra
Mantralaya, Mumbai 400 032.
 3. The District Magistrate, Solapur
Through the office of District Magistrate
Solapur Home Branch, Solapur
- ...Respondents

Mr. Rahul S. Kadam for Petitioner.
Mrs. M.H.Mhatre, A.P.P. for the Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.**
DATE : 28th NOVEMBER, 2022.

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

. Rule. Rule made returnable forthwith. Record indicates that, the pleadings in the present Petition are completed and therefore by consent of learned Advocate for the respective parties, Petition is taken up for hearing.

2. By the present Petition under Article 226 of the Constitution of India, the Petitioner has impugned Detention Order bearing No.

DCB/2/RR/3280(1)/2022 dated 5th August 2022 issued by Respondent No.3, under Section 3(1) 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") directing the preventive detention of the Petitioner for a period of one year.

3. Heard Mr. Kadam learned Advocate for Petitioner and Mrs. Mhatre, learned A.P.P. for Respondent-State. Perused record.

4. By the impugned Order dated 5th August 2022 issued by Respondent No.3 under Section 3(1) of the M.P.D. Act, the Petitioner has been directed to be preventively detained for a period of one year. Along with Detention Order, the Grounds of Detention were also served upon Petitioner on 5th August 2022 itself.

5. It is the contention of the Petitioner that, though he made representation through his Advocate on 29th August 2022, (*sic* 30th August 2022) to the Respondent No.2, the said representation was decided and rejected on 27th September 2022. That, there is a gross delay of about 27 days in deciding the said representation which has violated the right of Petitioner as contemplated under Article 22(5) of the Constitution of India. A specific ground No.7(VIII) has been taken in the Petition in support of the said contention.

6. Mr. Shirish N. Mohod, Deputy Secretary, Government of Maharashtra, Home Department, Mantralaya, Mumbai, has filed affidavit-in-reply on behalf of Respondent No.2. In Para No.3 thereof, it is stated that, the representation of the Petitioner dated 29th August 2022 was received on 30th August 2022 through Advocate for the detenu and thereafter, remarks were called for from the Detaining Authority i.e. Respondent No.3 on 30th August 2022 by Special Branch-3B Desk. That, the remarks of the Detaining Authority (Respondent No.3) were received on 22nd September 2022 vide its letter dated 19th September 2022 and thereafter, the representation of the Petitioner came to be decided as expeditiously as possible on 27th September 2022. It is to be noted here that, the representation annexed to the Petition at Page No. 226 clearly indicates that, the clerk from Home Department, Mantralaya, Mumbai received representation made by the Advocate for the detenu on 29th August 2022 itself and therefore, according to us, the statement made in Para 3 of affidavit of Shri. Shirish Mohod is incorrect to that effect.

7. If the date of 29th August 2022 is taken into consideration, then till the date of receipt of remarks from Respondent No.3 i.e. on 22nd September 2022, the period is of 23 days, for which no explanation least to say any explanation is offered by Respondent No.3 in his affidavit in reply. Thus, there is unexplained delay of about 23 days out of total 29 days in deciding the representation of the Petitioner. It is surprising to note that,

though the Order of detention was passed by Respondent No.3, the concerned authority took about more than 22 days in forwarding its remarks to the Home Department, Mantralaya, Mumbai and in particular to Respondent No.2 herein to enable it to decide the representation of the Petitioner as expeditiously as possible.

8. As noted earlier and at the cost of repetition, we may note here that, there is unexplained delay of 23 days at the end of Respondent No.3 in forwarding its remarks to respondent No.2 for deciding the representation of the Petitioner. The said delay is unacceptable and violates the right of detinue as contemplated under Article 22(5) of the Constitution of India.

Reliance is placed on the decision of the Hon'ble Supreme Court in the *case of Rama Dhondu Borade V/s. V.K.Saraf Commissioner of Police and Others reported in (1989) 3 SCC 173* and the decision of this Court in the case of *Manoj Bakku Mithapure V/s. State of Maharashtra & Ors.* in Criminal Writ Petition No.3141 of 2021 decided on 17th December 2021.

9. In view of the above, the Detention Order bearing No. DCB/2/RR/3280(1)/2022 dated 5th August 2022 issued by Respondent No.3 is liable to be set aside on the aforesaid ground alone and Writ Petition deserves to be allowed accordingly.

Writ Petition is allowed in terms of prayer Clause (A).

10. Rule made absolute in the above terms.

11. Petitioner be released from jail forthwith on production of authenticated copy of the present Order, unless required in any other case/offence.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)

SAJAKALI
LIYAKAT
JAMADAR

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signed by
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