

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.391 OF 2023

Akash Annasaheb Hodade,
Age : 25 years,
r/o. Kavtha (Kaji), Tq. Ausa,
Dist. Latur

..Petitioner

Vs.

1. District Magistrate,
Latur
2. State of Maharashtra,
Through Addl. Chief Secretary
to Government of Maharashtra,
Home Department, Mantralaya,
Mumbai
3. The Superintendent,
Latur Central Prison,
Latur

..Respondents

Ms.Jayshree Tripathi, Advocate h/f. Mr.Rupesh Jaiswal, Advocate for
petitioner

Mr.M.M.Nerlikar, APP for respondents

**CORAM : R.G.AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : JUNE 06, 2023

JUDGMENT (PER R.G.AVACHAT, J.) :-

Rule. Rule made returnable forthwith. Heard finally with
the consent of learned counsel for the parties.

2. The challenge in this Writ Petition under Articles 226 of the Constitution of India, is to the order of detention dated 13.12.2022 issued 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 ("the Act", for short). Vide the impugned order, the petitioner has been detained with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

3. The challenge to order impugned herein, is mainly on the following grounds:-

- (i) Non-compliance of Section 3(3) of the Act, i.e. non-reporting to the State Government the order of detention forthwith.
- (ii) Failure to decide the petitioner's representation against the order of detention, within a reasonable time.
- (iii) Non-supply of the grounds of detention and in camera statements of witnesses "A" and "B". Failure to provide translation of the documents in English, relied on for passing the impugned order.

4. Learned counsel for the petitioner first took us through the relevant provisions of the Act. He then adverted our attention to Article 22(5) of the Constitution of India and then relied on certain judgments of the Apex Court and this Court as well, to ultimately urge for setting aside the impugned order on all the aforesaid grounds.

5. Since the submissions made by learned counsel for the petitioner may be the reasons in support of the judgment, the same are not adverted to with a view to avoid repetition.

6. Learned APP would, on the other hand, took us through the affidavit-in-reply filed by respondent no.3 herein. A bunch of documents was placed on record in proof of compliance of the mandatory provisions of the Act. According to learned APP, the representation against the impugned order of detention was made long after the order of detention. The representation has been decided within a reasonable time after having considered it on merits. He would further submit that within five days of the impugned order, the same was reported to the State Government. Although the impugned order was passed on 13.12.2022, the petitioner, in fact, came to be detained with effect from 19.12.2022.

On the very next day of the petitioner's detention, the impugned order came to be reported to the statement Government. As such, no prejudice has been caused to the petitioner by reporting the impugned order six days after it was passed. On the question of supply of grounds of detention, learned APP would submit that all the documents relied on in support of the impugned order, have been provided to the petitioner. His acknowledgment in that regard has been obtained. The documents relied on and the grounds of detention have been communicated to him in vernacular. The documents, which are in English language, did not have any bearing as to the petitioner's right to make representation against the impugned order, since those were medico-legal documents and judicial orders. Learned APP was candid enough to concede the petitioner to have not been supplied with the copies of in-camera statements of witnesses "A" and "B". Learned APP would, ultimately, urge for dismissal of the petition.

7. Considered the submissions advanced. The order impugned herein reads thus:-

“ Whereas the District Magistrate, Latur, is satisfied with respect to the person known as Akash Annasaheb Hodade, Age 25 years, r/o. Kavtha (Kaij),

Tq. Ausa, Dist. Latur that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order directing him to be detained 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 (Amendment 1996, 2009 and 2015).

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the said Act read with Maharashtra Government Order, Home Department (Special) No.M.P.D.A.-0622/CR-191/Spl.3(B) dated 24.06.2022, the District Magistrate, Latur hereby directs that the said Akash Annasaheb Hodade, r/o. Kavtha (Kaij), Tq. Ausa, Dist. Latur be detained under the said Act.

Given under my signature and seal on this day of 13/12/2022.”

8. Before advertng to the factual matrix of the case, it would be apposite to refer to the relevant provisions of the Act, as under:-

2. In this Act, unless the context otherwise requires,-

(a) “acting in any manner prejudicial to the maintenance of public order” means-

(i)

(ii)

(iii)

(iv) in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to

affect adversely, the maintenance of public order;

(iv-a)

(iv-b)

(v)

(b)

(b-1) “dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959).

Section 3 of the Act reads thus:-

3.(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed [six months] but the State Government may, if satisfied as aforesaid that it is necessary so to amend such order to extend such period from time to time by any period not exceeding [six months] at any one time.

(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 no 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.

Section 8 of the Act reads thus:-

8.(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

9. Let us, now, turn to address the grounds, on which the impugned order has been assailed.

As to Ground (i):-

Section 3(3) of the Act mandates that when any order is made under Section (3) of the Act by the Officer mentioned in sub-section (2) thereof, he shall forthwith report the fact to the State

Government together with the grounds on which the order was made.

10. The impugned order has been passed on 13.12.2022. The same has been reported to the State Government on 20.12.2022. Pursuant to the impugned order, the petitioner, in fact, came to be detained with effect on 19.12.2022. The State Government approved the impugned order within 12 days from the date thereof.

11. Learned counsel for the petitioner, relying on the Apex Court judgment in the case of **Hetchin Haokip Vs. State of Manipur and ors., (2018)9 SCC 562**, would submit that for non-reporting the fact of detention to the State Government forthwith, the impugned order is liable to be set aside. The Apex Court was considering the word "forthwith" appearing in Section 3(4) of the National Security Act, 1980. Said provision is *pari materia* with Section 3(3) of the Act. In paragraph 12 of the judgment, it has been observed thus:-

“12. From the above cases, the position that emerges is that “forthwith,” under [Section 3\(4\)](#), does not mean instantaneous, but without undue delay and within reasonable time. Whether the authority passing the

detention order reported the detention to the State Government within reasonable time and without undue delay, is to be ascertained from the facts of the case. In *Keshav Nilkanth Joglekar Vs. Commissioner of Police*, AIR 1957 SC 28, there was a delay of eight days by the Police Commissioner, in sending the report to the State Government. However, the court found that the reasons for the delay were reasonable, since the Commissioner and his team were occupied in maintaining law and order during a particularly tense time in Mumbai.

12. Learned counsel for the petitioner then relied on the judgment of this Court in the case of **Dharani Raja Padyachi Vs. The State of Maharashtra and ors., 2019 All M.R. (Cri.) 3504**, to submit that delay of even four days in non-reporting the order of detention to the State Government is held to be fatal. The facts of the said case would indicate that the detention authority took a stand that the detention order was first implemented and then the order was communicated to the State Government.

13. Let us turn to the affidavit-in-reply to find as to whether any reasonable explanation has been offered by respondent no.3 for communicating the order to the State Government six days after the same was passed. Close reading of the affidavit-in-reply would suggest that no explanation, much less reasonable, has been offered in this regard. It is true that the petitioner has not pointed

out what prejudice he has suffered on account of the detaining authority to have reported the impugned order to the State Government seven days after the same was passed. When the authority concerned has not offered any explanation as to why the impugned order was not reported forthwith, it has to be taken that the State Government could have acted on the impugned order at the earliest and the petitioner would have got early opportunity to assail the impugned order before the appropriate forum, at the earliest. The Apex Court, in the case of **Hetchin Haokip** (supra) has observed thus:-

14. The High Court is not correct in holding that as long as the report to the State Government is furnished within twelve days of detention, it will not prejudice the detenu. It is settled law that a statute providing for preventive detention has to be construed strictly. While “forthwith” may be interpreted to mean within reasonable time and without undue delay, it certainly should not be laid down as a principle of law that as long as the report to the State Government is furnished within 12 days of detention, it will not prejudice the detenu. Under [Section 3\(4\)](#), the State Government is required to give its approval to an order of detention within twelve, or as the case may be, fifteen days.

15. The expression “forthwith” under [Section 3\(4\)](#), must be interpreted to mean within reasonable time and without any undue delay. This would not mean that the detaining authority has a period of twelve days to

submit the report (with grounds) to the State Government from the date of detention. The detaining authority must furnish the report at the earliest possible. Any delay between the date of detention and the date of submitting the report to the State Government, must be due to unavoidable circumstances beyond the control of the authority and not because of administrative laxity.”

In view of respondent no.3 to have failed to offer any explanation regarding non-reporting to the State Government forthwith, the impugned order is liable to be set aside.

As to Ground (ii):-

14. This ground pertains to delay in deciding the petitioner’s representation. Admittedly, the petitioner preferred representation on 24.02.2023. The same came to be turned down on 28.03.2023, i.e. after 34 days of the date of representation.

15. The Apex Court, in the case of **Rama Dhondu Borade Vs. V.K.Saraf, Commissioner of Police and ors. (1989)3 SCC 173**, has observed in paragraphs 19 and 20, as follows:-

19. The propositions deducible from the various reported decisions of this Court can be stated thus:

The detenu has an independent constitutional right to make his representation under [Article 22\(5\)](#) of the Constitution of India. Correspondingly, there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty--the highly cherished right--which is enshrined in [Article 21](#) of the Constitution.

20. True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the word "as soon as may be" occurring in [Article 22\(5\)](#) of the Constitution reflects that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention.

16. Learned APP would submit that time was spent in obtaining certain information from the concerned authorities and therefore, in the facts and circumstances of the case, deciding petitioner's representation within 34 days could not be termed to have not been decided within reasonable time. Again close reading of the affidavit-in-reply does not make out a convincing response to this ground of challenge. Although learned APP, based on the compilation of documents, tried to make out a case to have spent some time in obtaining certain information from the authorities concerned, for want of incorporating same in the affidavit-in-reply, the petitioner could be said to have been taken by surprise of the stand taken by respondent no.3 in response to this ground of challenge. It is reiterated that deciding representation of the petitioner 34 days after the same was made, necessarily results in violation of Article 22(5) of the Constitution of India and on this ground as well, the impugned order is liable to be set aside.

As to Ground (iii):-

17. The petitioner has come with a case of having not been supplied with the grounds of detention besides copies of in-camera statements of witnesses "A" and "B". It is also his case of having not

been supplied with translation of documents in English, relied on in support of the impugned order. Learned APP placed reliance on a bunch of documents indicating the petitioner to have been supplied with the same. The petitioner has signed in acknowledgment of receipt thereof. Close scrutiny of those documents lead us to observe the petitioner to have been supplied with the grounds of detention. Respondent no.3 has, however, admitted in no uncertain terms to have not supplied the petitioner with in-camera statements of witnesses "A" and B". The in-camera statements of those witnesses have also formed foundation of the impugned order of detention. The Division Bench of this Court, in the case of **Charanjitsingh @ Sonu Nanaksingh Digwa Vs. State of Maharashtra and anr. (2005(4)Mh.L.J. 996** has observed :-

“ It is well settled that the Court frowns on preventive detention without trial because the detenue is deprived of the right of proving his innocence in a trial by a Court of law. It is, therefore, of the utmost importance that all the necessary safeguards laid down by the Constitution under Article 21 or Article 22(5) of the Constitution should be complied with fully and strictly and any departure from any of the safeguards would void the order of detention. Admittedly, the copies of statements having been not supplied to the detenue, so also, copies of verification of the statements, the petitioner's right under Article 22(5) has been violated and rendered illusory. This has

materially affected his right to make effective representation.....

18. The Division Bench of this Court in the case of **Swapnil Sanjay Tahsildar Vs. The District Magistrate and ors. (Bombay High Court decision dated 17.10.2012 in Criminal Writ Petition No.2174 of 2012)** has observed :-

4. The law consistently laid down in this behalf is that the failure to supply copies of in-camera statements to the detenu which do not contain verification made by the concerned superior officer results into violation of Article 22(5) of the Constitution of India which vitiates the order of detention.....

19. Admittedly, the in-camera statements of witnesses "A" and "B" have not been supplied to the petitioner. The same results into violation of Article 22(5) of the Constitution of India and on this count as well, the impugned order is liable to be set aside.

20. For all the aforesaid reasons, the Writ Petition succeeds. Hence, the following order:-

(i) The Writ Petition is allowed, setting aside the order of detention dated 13.12.2022 issued 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.

(ii) The petitioner be released forthwith, if not required in any other case.

(iii) Rule is made absolute accordingly

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP