

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

CRIMINAL WRIT PETITION NO.644 OF 2023

Rahul @ Rama @ Ramnath Navnath Mule ... **PETITIONER**

VERSUS

District Magistrate, Aurangabad ... **RESPONDENT**

.....
Mrs. Jayshri Tripathi, Advocate with
Mr. R.A. Jaiswal, Advocate for petitioner
Mr. M.M. Nerlikar, A.P.P. for respondent
.....

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

DATE : 19th JUNE, 2023

ORDER :

Heard. The challenge in this writ petition, under Article 226 of the Constitution of India, is to the order of detention of the petitioner, passed 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 (M.P.D.A. Act for short). The challenge is mainly on the following grounds :-

- (a) Delay in deciding the petitioner's representation made to the State Government and

(b) Delay in execution of the order of detention.

2. So far as the challenge on the first ground is concerned, learned counsel for the petitioner referred to certain dates, which are, the order of detention is dated 7/9/2022. It was served on the petitioner on 22/2/2023. The petitioner preferred representation against order of his detention to the State Government on 31/3/2023. The same was decided on 26/4/2023 and communicated to the petitioner on 8/5/2023. Relying on following judgments of the Apex Court, learned counsel for the petitioner would submit that, the respondent authority has not come with any explanation much less reasonable to meet the case of the petitioner.

3. The learned A.P.P. would, on the other hand, submit that, the affidavit-in-reply filed by the Joint Secretary, Home Department indicates that no sooner the representation was received, remarks of the Detaining Authority were called for. The same were received on 24/4/2023 and within two days thereof, the representation came to be decided. According to learned A.P.P., as such, the delay has rightly been explained. He would further submit that, on the very day the order was dispatched through Speed Post for being served on the petitioner. According to him, this promptness indicates the authorities were alive to the mandatory provisions of the M.P.D.A. Act. According to him, the delay might

have been with the postal authority. According to him, the delay of each day need not be explained.

4. In the present case, although the authorities concerned had acted promptly in calling for the remarks from the detaining authority, there is no explanation as to why the detaining authority took two weeks time to respond to the requisition. This is a gross delay. Moreover, the order of detention has been communicated to the petitioner 12 days after the same was passed, although it was dispatched the same day. This delay of 12 days in communicating the order also proves fatal to the case of the respondents. On these grounds, we are inclined to allow the petition.

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause (b).
- (ii) The order of detention dated 7/9/2022, issued under Section 3 of the M.P.D.A. Act by the respondent is quashed and set aside.
- (iii) The petitioner be released immediately, if not required in any other case.

Parties to act upon authenticated copy of this order.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-