

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 CRIMINAL WRIT PETITION NO.1188 OF 2023

DNYANESHWAR NAMDEV TAYADE
VERSUS
THE DISTRICT MAGISTRATE, JALGAON AND OTHERS

...
Advocate for Petitioner : Mr. Rupesh Anil Jaiswal
APP for Respondent/State : Mrs.V.N. Patil Jadhav

.....
**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**
DATED : 4th NOVEMBER, 2023.

PER COURT :-

. Heard.

2. The challenge in this petition is to the order dated 21st June, 2023, detaining the petitioner under section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter for the sake of brevity referred to as “the M.P.D.A. Act”), for a period of 12 months.

3. The order has been challenged on many grounds. First of the grounds is non-deciding the petitioner’s representation by the detaining authority. Another one is, the similar representation is not decided by the State Government and then, the subjective satisfaction of the authority concerned has also been taken exception to.

4. In our view, this petition can be decided on one of the grounds raised, namely non-deciding by the State Government the petitioner's representation within reasonable time.

5. Admittedly, the Home Department received the petitioner's representation on 9th August, 2023 through e-mail. It has been decided yesterday i.e. on 03.11.2023. The same suggests to have been decided after little over 80 days.

6. In case of ***Santosh Kashinath Kamble Vs. State of Maharashtra and others***, reported in ***2016 All M.R. (Cri) 3601***, this Court observed in para 10 as under :-

“10. For properly appreciating the rival contentions, a reference will have to be made to some basic facts. We have been noticing that during the course of arguments in detention matters, certain general grounds are set out in pleadings regarding the infraction and breach of the constitutional guarantee and mandate but the sweep of the arguments is not restricted to those grounds or the language of the grounds on which the detention order is challenged. The arguments overlap overlooking the fundamental distinction in law between the grounds of challenge. Either the detenu challenges the legality and validity of the detention order or the continued detention pursuant to the same. In the former challenge, there is attack on the subjective satisfaction while in the latter, the emphasis is on violation of constitutional safeguards post the order and its communication. We say nothing more than inviting the attention of all concerned to the following binding principles emerging from the judgment of the Hon'ble Supreme Court reported in 2013(2) Bom.C.R.(Cri.)

517(S.C.) : A.I.R. 2013 S.C. 1376 (Abdul Nasar Adam Ismail Vs. State of Maharashtra & Ors.)¹⁹.

“17. We would like to make it clear that the delay in disposal of the representation of the detenu has vitiated only the continued detention of the detenu and not the detention order. In (Meena Jayendra Thakur Vs. Union of India)²⁰, (1999)8 S.C.C. 177, this Court was considering a case where the detenu was detained under the provisions of the said Act. This Court held that if the detaining authority on the basis of the materials before him did arrive at his satisfaction with regard to the necessity for passing an order of detention and the order is passed thereafter, the same cannot be held to be void because of a subsequent infraction of the detenu’s right or of non-compliance with the procedure prescribed under law because that does not get into the satisfaction of the detaining authority while making an order of detention under section 3(1) of the said Act. It does not affect the validity of the order of detention issued under section 3(1) of the said Act. Similar view has been taken by this Court in (Sayed Abdul Ala Vs. Union of India)²¹, A.I.R. 2007 S.C.W. 6974. In that case, this Court was concerned with an order of detention issued under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988. It was argued that there was delay in considering the representation of the detenu. Relying on Meena Jayendra Thakur, this Court expressed that even if it is to be assumed that there was some delay in considering the representation, the same would not vitiate the original order of

detention. By reason of the delay, only further detention of the detenu will become illegal. The delay in considering the representation does not vitiate the order of detention itself. In (Union of India & anr. Vs. Harish Kumar)²², A.I.R. 2007 S.C. 1430 : A.I.R. 2007 S.C.W. 1820 this Court was again considering an order of detention issued under the provisions of the said Act. This Court reiterated the same view and held that the detention order passed at the satisfaction of the detaining authority on the basis of the material available in no manner gets vitiated for the reason of non-consideration of the representation made by the detenu to the Central Government. It was held that initial order of detention was not rendered void ab initio. It may be noted that even the Constitution Bench of this Court in (K.M. Abdulla Kunhi and B.L. Abdul Khader Vs. Union of India)²³, A.I.R. 1991 S.C. 574 : A.I.R. 1991 S.C.W. 302 held that any unexplained delay in disposal of representation of the detenu would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal and set aside the continued detention of the detenu.”

7. Since the petitioner’s representation has been decided by the State Government very late i.e. after 80 days from the date of receipt thereof, the petitioner’s detention becomes illegal and bad in law. He, therefore, needs to be set at liberty forthwith. Hence the following order :-

ORDER

- (i) In view of the above, the writ petition is allowed in terms of prayer clause "b".
- (ii) The order of detention dated 21.6.2023 bearing No. Dandapra/KAVI/MPDA/56/2023 passed under Section 3 of the M.P.D.A. Act is hereby quashed and set aside.
- (iii) The continued detention of the petitioner is bad in law, therefore, the petitioner be set at liberty forthwith if not required in any other case.

(SANJAY A. DESHMUKH, J.)**(R.G. AVACHAT, J.)**

sga/