



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

CRIMINAL WRIT PETITION NO.1522 OF 2023

Puja Samadhan Chaudhari

..Petitioner

vs.

District Magistrate, Jalgaon and ors.

..Respondents

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

Ms.R.R.Tandale, APP for State

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

DATE : DECEMBER 13, 2023

ORDER :-

Heard both sides.

2. The challenge in this petition under Article 226 of the Constitution of India, is to the order dated 29.08.2023 passed by the District Magistrate, Jalgaon, detaining the petitioner's - husband namely, Samadhan s/o. Lotan Chaudhari (detenu) under 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 ("M.P.D.A", for short).

3. The challenge is mainly on the ground of delay in deciding the representation preferred by the detenu against the order of detention and non-subjective satisfaction of the detaining authority.

4. Learned counsel for the petitioner would submit that the order of detention is dated 29.08.2023. The detenu presented his representation on 25.09.2023. It reached the State Government in Home Department on 02.10.2023. The same was turned down on 16.11.2023. As such, there is delay of about 44 days in deciding the representation from the date of receipt thereof. Same caused prejudice to the detenu's fundamental right under Article 22(5) of the Constitution of India. In support of her contentions, learned counsel relies on the decisions in the cases of (i) **Rama Dhondurao Borade Vs. V.K.Saraf, Commissioner of Police and ors., (1989)3 SCC 173** and (ii) **Rashid Kapadia Vs. Medha Gadgil and ors., (2012)11 SCC 745**.

5. As regards subjective satisfaction, learned counsel for the petitioner would submit that only one crime and two in-camera statements have been relied on. The crime pertains to the offence

under Section 376 of Indian Penal Code, wherein the detenu was granted anticipatory bail. This fact was not considered by the detaining authority. The in-camera statements indicate that the witnesses were not victims of the activities of the detenu. These statements pertain to offence under Section 376 of Indian Penal Code, wherein, the detenu was granted anticipatory bail. As such, it was very scanty material relied on, while passing the order of detention. Learned counsel, therefore, urged for allowing the petition.

6. Learned APP would, on the other hand, submit that there were 13 crimes registered against the detenu. Same indicates that his criminal activities have an ascending graph. The last crime was serious one, i.e., for offence under Section 376 of Indian Penal Code. The statements given by both witnesses in in-camera statements speak about very crime. As such, according to learned APP, the detaining authority was justified in passing the order of detention considering the number of crimes registered against the detenu. As regards delay in deciding the detenu's representation, she would submit that the authority concerned had called from the detaining authority parawise remarks. The detaining authority took a month's

time to submit the same. On receipt of the parawise remarks, the representation of the detenu was decided. According to learned APP, as such, there was, in fact, no delay and if, at all, there is any delay, same has been explained. She, therefore, tried to justify the order of detention with further contention that the subjective satisfaction cannot be a matter of judicial review.

7. Considered the submissions advanced by learned counsel for the parties.

8. The order of detention is dated 29.08.2023. The date of representation preferred by the detenu is 25.09.2023. Same was received by the State Government on 02.10.2023, i.e. seven days after the representation was made. Admittedly, the order of detention along with the grounds thereof and the documents relied on were submitted to the State Government within 12 days of passing of the order. Same suggests that the entire material relied on for passing the order of detention was available with the State Government for deciding the detenu's representation. There is nothing before us as to what prompted the very authority to ask the detaining authority to forward the parawise remarks. Even if we consider the authority to be justified in asking for the parawise

remarks from the detaining authority, the detaining authority took not less than 30 days in submitting the same and thereafter, the representation was rejected on 16.11.2023.

9. In the case of **Rama Dhondu Borade** (supra), there was delay of 28 days in deciding the representation, while in the case of **Rashid Kapadia** (supra), it was delay of 15 days and the Apex Court found that there was delay in deciding the representation(s), resulting into prejudice to the petitioners therein.

10. In the present case, the delay is of 50 days from the date of representation and 44 days from the date of its receipt by the State Government. This sole ground leads us to allow the present Writ Petition.

11. Moreover, the last crime being Crime No.105 of 2023 relied on by the detaining authority, pertains to offence under Section 376 of Indian Penal Code. In the said case, the detenu was granted anticipatory bail. The same suggests merits of that matter. Needless to mention, these observations are restricted to deciding present petition only and the trial court shall not be influenced thereby.

12. The two in-camera statements are not of the victims of the criminal activities of the detenu. The witnesses speak of the very crime, wherein the detenu has been granted anticipatory bail. So far as other crimes are concerned, those crimes and the order of detention has no live-link. Therefore, on this second ground as well, the petition deserves to be allowed.

13. Hence, the following order:-

- (i) The Criminal Writ Petition is allowed in terms of prayer clause (b).
- (ii) The petitioner's husband, i.e. detenu – Samadhan s/o. Lotan Chaudhari, be released forthwith, if not required in any other case.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP