

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.562 OF 2023

Shreekant Jaggusing Tamchikar

..... Petitioner

Vs.

Commissioner of Police Pimpri Chinchwad
& Ors.

..... Respondents

Ms. Jayshree Tripathi for the Petitioner.

Mrs. M. H. Mhatre, APP for Respondent.

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 31 MARCH 2023.

ORDER (Per Sharmila U. Deshmukh, J.)

1. By this petition, the petitioner seeks quashing and setting aside of the order of detention bearing D. O. No.PCB/DET/104/2022, Pimpri Chinchwad dated 10th December 2022 issued 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

by Respondent No.1.

2. In exercise of the powers conferred under sub-section (2) of Section 3 of MPDA Act, 1981, the impugned detention order has been passed on 10th December, 2022. Perusal of the detention order indicates that the detaining authority has taken into consideration C. R. No.680/2022 and C. R. No.922/2022 and six in-camera statements of witnesses "A" to "F". By communication dated 10th December, 2022, the detenu was communicated the grounds of detention and he was informed that he has right to make representation to the State Government against the detention order.

3. On 11th January, 2023, the Petitioner made a representation to the State Government through the Superintendent of Yerwada Central prison. The representation of the detenu was rejected by the State Government on 8th February, 2023.

4. Although the petition raises number of grounds

assailing the order of detention, learned counsel for the petitioner has pressed into service ground 5(f) which reads as under:

"The petitioner says and submits that a representation of the petitioner dated 11th January 2023 was sent to the Superintendent Yerwada Central Prison, Pune for further sending it to the State Government for expeditious consideration, revoke and communication. The petitioner says and submits that so far no communication has been received from the State Government as regards to the consideration of the said representation by the State Government, thereby the State Government has delayed in considering the representation of the petitioner expeditiously and diligently and communicating the result to the petitioner. The detaining authority is called upon to explain the delay, if any, occurred from the date of representation till today to the satisfaction of this Hon'ble Court failing which the continued detention will be held as illegal and bad in law, liable to be quashed and set aside."

5. Ms. Tripathi, Learned counsel for the petitioner submits that the delay in deciding the representation of the petitioner has not been explained by the detaining authority and as such there is violation of Article 22(5) of the Constitution of India. She submits that the delay in deciding the representation has rendered the continued detention illegal. In support of her contentions she relies upon the following decisions:

- 1. Kundanbhai Dulabhai Shaikh v. Dist. Magistrate, Ahmedabad & Ors., (1996) 3 Supreme Court Cases 194;*
- 2. Raj Gulab Shaikh vs. The Commissioner of Police, Criminal Writ Petition No.1457/2022 and*
- 3. Riyaz Ahmed Batatawala v. The State of Maharashtra & Ors., Criminal Writ Petition No.643/2014.*

6. To counter the pleadings of ground 5(f), the detaining authority has stated in paragraph 13 of its affidavit in reply as under :

"With reference to ground 5(f) of the petition, it is submitted that the representation of the detenu in the month of January 2023 was received in jail registry on 17th January 2023. The said representation was forwarded by the State Government and received to my office on

19th January 2023. The parawise comments were prepared and forwarded on 06th February 2023. After considering the said parawise comments, the Government has decided the representation of the detenu and rejected the same on 08th December 2022. I say that from 19th January 2023 to 06th February 2023 there were 7 holidays being Saturday and Sunday and Republic day and 6 proposals of M.C.O.C.A. Act and one proposal of other detenu were pending for consideration."

7. Mrs. Mhatre, Learned APP appearing for Respondent supports the order of detention and submits that the delay has been properly explained in the affidavit in reply of the detaining authority.

8. Considered the submissions.

9. The representation of the detenu was received in the jail Registry on 17th January 2023 which was forwarded by the State Government and received by the detaining authority on 19th January 2023. Thereafter parawise comments were prepared and forwarded on 6th February 2023. From the dates indicated in the affidavit in reply, it is apparent that there is delay of 17 days in

sending parawise comments i.e. from 19th January 2023 to 6th February 2023. This delay is sought to be explained by stating that during the period from 19th January, 2023 to 6th February, 2023 there were 7 holidays including Saturday and Sunday. It is further sought to be explained by stating that there were 6 proposals of M.C.O.C. and one proposal of other detenu pending for consideration.

10. At this stage it would be beneficial to refer to the decision of the Apex Court in the case of ***Kundanbhai Dulabhai Shaikh*** (*supra*). The Apex Court in the said case while dealing with the issue of early disposal of the representation has held that right to make representation against the order of detention is not only the constitutional right but also statutory right as well. The Apex Court has held in paragraph 14 as under:

"From the above, it will be seen that the right to make representation against the order of detention is not only a constitutional right but a statutory right as well. Since the Constitution as also the Act specifically provide that the detenu shall be given the earliest opportunity of making a representation against the order of detention, it is implicit that there is corresponding duty on the authorities to

whom the representation is made to dispose of the representation at the earliest or else the constitutional and the statutory obligation to provide the earliest opportunity of making a representation would lose both its purpose and meaning."

11. The facts of the case before the Apex Court is similar to the facts of the present case in as much as in that case the representation could not be disposed of for want of comments from the State Government. In the present case there is delay of 17 days in sending the parawise comments.

12. This court in the case of ***Raj Gulab Shaikh*** (*supra*) has held that when the delay is undue and unexplained, the benefit has to be given to the detenu as it violates Article 22(5) of the Constitution. Similarly, this court in the case of ***Riyaz Ahmed Batatawala*** (*supra*) has held that as the delay in submitting parawise comments is not satisfactorily explained in affidavit, therefore, continuation of the order of preventive detention stands vitiated.

13. In the present case, we find that after representation was forwarded by the State Government and received by the Detaining Authority on 19th January 2023 there was delay of 17

days in preparing parawise comments. Even if explanation of 7 days on account of the holidays is accepted, there is an unexplained delay of 10 days. Learned APP submits that during this period there were 6 proposals of M.C.O.C. Act and one proposal of other detenu pending for consideration. However the Affidavit in reply is completely silent as to whether the pending proposals and representations were prior in time to the Petitioner's representation. The Apex Court in the case of ***Kundanbhai*** (*supra*) has held that even if related to preventive detention, then such of those representations which were ready for disposal and in respect of which comments from various departments had been gathered and other formalities completed, should have been disposed of immediately and should not have been kept pending on the ground of "chronological disposal" by saying that representation filed earlier by other detenus were still to be disposed of. The Affidavit in reply of the detaining authority does not state as to whether in respect of the proposal of other detenu, parawise comments from the various departments had been received and other formalities completed. Considering the affidavit in reply, we find that there is unexplained delay of 10 days in sending parawise comments

resulting in delay in deciding the representation of the detenu, the obvious consequence being violation of petitioner's right under Article 22(5) of the Constitution.

14. As a result, the petition succeeds. Hence, we pass the following order:

i) Petition is allowed in terms of prayer clause 'b', which reads as under:-

“b. The order of Detention bearing D.O. No.PCB/DET/104/2022, Pimpri Chinchwad, dated 10.12.2022 issued under Section 3 of M.P.D.A. Act 1981 by the Respondent No.1 be quashed and set aside and on quashing the same the Petitioner be ordered for release forthwith.”

ii) The petitioner is set at liberty forthwith, if not required in any other case.

All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J. REVATI MOHITE DERE, J.