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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1031 OF 2023

Rushikesh Sunil Bagul
Age 24 years R/o 806 Kamgar Putala,
Shivajinagar, Pune & 'SRA' Building,
D Wing flat No. 905, Shinde Vasti,
Hadapsar, Pune

...Petitioner

Versus

1. Commissioner of Police Pune City
2. The State of Maharashtra
(Through Addl. Chief Secretary to
Government of Maharashtra Mantralaya,
Home Department, Mantralaya, Mumbai.
3. The Superintendent,
Kolapur Central Prison, Kolhapur.

....Respondents

Ms. Jayshree Tripathi Advocate for the Petitioner
Ms. M. H. Mhatre, APP for the State

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 8th JUNE 2023

JUDGMENT: (PER: GAURI GODSE, J.)

1. By this petition, the petitioner prays for quashing and setting

aside the order of detention bearing No. CRIME/PCB/DET/BAGUL/10/2023 dated 24th January 2023 issued by the Commissioner of Police, Pune City-Respondent No. 1 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 (hereinafter referred to as 'MPDA Act').

2. In the exercise of powers conferred under Sub-Section 2 of Section 3 of the MPDA Act, the impugned detention order was passed on 24th January 2023. A perusal of the detention order indicates that the detaining authority has recorded that with a view to preventing the applicant from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order directing him to be detained.

3. The petition raises various grounds for challenging the order of detention; however, learned counsel for the petitioner has mainly

relied upon the ground raised in paragraph 5 (f) on page 9 of the petition, which reads as under:

“(f) The petitioner says and submits that a representation of the petitioner dated 14.03.2023 was sent to the Superintendent Kolhapur Central Prison, Kolhapur 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. All respective authorities are 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.”

4. Learned counsel appearing for the petitioner submitted that

delay in deciding the representation of the petitioner is not explained by the State Government. As such, there is a violation of principles laid down in Article 22(5) of the Constitution of India. She further submitted that delay in deciding the representation rendered the continued detention of the petitioner illegal. In support of her contentions, she relied upon the Judgment of the Hon'ble Supreme Court in the cases of *Rajammal Vs. State of Tamil Nadu and Another*¹ and *Harish Pahwa Vs. State of U.P. and others*².

5. The Applicant made representation to the State Government through the Superintendent of Kolhapur Central Prison on 14th March 2023. The jail authorities received the representation on 17th March 2023, and after taking the signature of the applicant, the same was forwarded to the State Government on 20th March 2023. As per the affidavit filed by the Joint Secretary, Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai, remarks were called for from detaining authority on 20th March 2023 by Special

1 1999(1) LJ (SC) 265

2 (1981) 2 Supreme Court Cases 710

Branch – 3B Desk. As per the said affidavit, remarks of the detaining authority were received by E-mail on 12th April 2023 vide letter dated 12th April 2023. Said affidavit further states that the concerned Assistant Section Officer submitted a file containing remarks of the detaining authority along with the representation of the applicant to the Section Officer on 12th April 2023 and that the Section Officer endorsed the same on 13th April 2023 and forwarded it to the Joint Secretary (In-Charge) on the same day. Said affidavit further states that on 14th April 2023, 15th April 2023 and 16th April 2023 being holidays, Joint Secretary (In-Charge) endorsed it on 17th April 2023 and forwarded it to the Additional Chief Secretary (Home) on the same day. Accordingly, the Additional Chief Secretary (Home) considered remarks of the detaining authority and rejected the representation of the applicant on 17th April 2023.

6. There is an affidavit dated 17th April 2023 filed on behalf of respondent No. 1. Respondent No. 1 has supported the order of detention by making submissions justifying the reasons given for order

of detention. The said affidavit does not dispute that parawise comments were prepared and forwarded to the State Government on 12th April 2023.

7. Learned APP appearing for the Respondents supported the order of detention by referring to the aforesaid affidavits and submitted that the delay has been properly explained in the affidavit-in-reply filed by the detaining authority.

8. We have considered the submissions made by both parties. It is not disputed that representation of the Petitioner was received by jail authorities on 17th March 2023, which was forwarded to the State Government on 20th March 2023. On the same day, remarks were called for, from the detaining authority. An affidavit filed on behalf of respondent no. 2 shows that parawise remarks from the detaining authority were received on 12th April 2023 and representation was rejected on 17th April 2023. Thus, it is apparent that there is a delay of 22 days in sending parawise comments i.e. from 20th March 2023 to

12th April 2023 and the representation is decided after more than a month after receiving the representation by respondent No. 2. This delay is sought to be explained in the said affidavit by stating that the office of the State Government was closed on 14th April 2023 (Friday), 15th April 2023 (Saturday) and 16th April 2023 (Sunday).

9. In the aforesaid facts, it is necessary to refer to the decision of the Hon'ble Supreme Court in the case of *Rajammal* and *Harish Pawha*. The Hon'ble Supreme Court, in the case of *Rajammal*, while dealing with the issue of early disposal of the representation, has held that it is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Hon'ble Supreme Court, in the case of *Rajammal*, has thus in paragraphs 8 and 9, held as under:

“8. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the

representation the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. This position has been well delineated by a constitution Bench of this Court in **K.M. Abdulla Kunhi and B.L. Abdul Khader vs. Union of India and others (1991 (1) SC 476)**. The following observations of the Bench can profitably be extracted here:

"It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and

disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal."

9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in

disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.”

10. The Hon’ble Supreme Court in the case of ***Harish Pahwa*** has held that delay in considering representation caused in soliciting comments from other departments and allowing the representation to lie unattended would render the detention unconstitutional. The Hon’ble Supreme Court, in the case of Harish Pahwa, in paragraph 5, has held as under:

“5.We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned.....”

11. This Court, in the decision dated 31st March 2023 in the case of ***Shreekant Jaggusingh Tamchikar Vs. Commissioner of Police Pimpri***

Chinchwad and others has referred to various decisions of the Hon'ble Supreme Court and has held that delay in sending parawise comments results in delay in deciding representation of the detenu and the obvious consequence is violation of detenu's right under Article 22(5) of the Constitution of India.

12. The facts in the aforesaid cases are similar to the facts of the present case. In the present case, representation was not decided in time for want of parawise comments from the jail authorities. In the present case, there is a delay of 22 days in sending parawise comments and there is a delay of more than a month in deciding the representation. After perusing the undisputed dates as aforesaid, we find that after representation was forwarded to the State Government, there was a delay by the detaining authority in preparing and sending parawise remarks. The case of respondent no. 2 is that the delay in receiving parawise remarks has resulted in delay in deciding the representation of the Petitioner. Considering the aforesaid facts, we find that there is no satisfactory explanation given for keeping the

representation pending. In our view keeping the representation pending for want of parawise remarks from detaining authority will render the detention order unconstitutional. This unexplained delay in deciding the representation has resulted in the continued detention of the petitioner, illegal and impermissible. Thus, there is a violation of the Petitioner's right under Article 22 (5) of the Constitution of India.

13. For the reasons stated above, Petition is allowed by passing following order:

i) Rule is made absolute in terms of prayer clause (b), which reads thus:

(b) The order of Detention bearing No. CRIME/PCB/DET/BAGUL/10/2023, dated 24.01.2023 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 be released forthwith, if not required in any other case.

iii) The Petition is allowed.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.