



varsha

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

CRIMINAL WRIT PETITION NO. 2353 OF 2023

Devidas Madhukar Tarawane

Age 29 years, an Indian Inhabitant, residing
at Siddheshwar Nagar,

Old Saikheda Road, Ganesh Vatika Row ... Petitioner
House, Jail Road, Nashik Road, Nashik.

vs.

1. The State of Maharashtra

Through Secretary Home

Department (Special)

Mantralaya, Mumbai – 400 032.

2. Ankush Shinde,

The Commissioner of Nashik City,
Nashik.

3. The Advisor Committee

Through Section Officer Section

to Home Department(Special)

Mantralaya, Mumbai – 400 032.

... Respondents

Mrs. Aisha Ansari for the Petitioner.

Mr. J.P. Yagnik, APP for the State.

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

DATED: 27th SEPTEMBER 2023

JUDGMENT (PER: GAURI GODSE, J.) :-

1. This petition is filed to challenge the order dated 18th May 2023, passed by respondent no. 2-Commissioner of Police, Nashik City, in exercise of the power conferred under sub-section (2) of 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 Essential Commodities Act, 1981 ('MPDA Act') for detaining Sachin @ Ghodya Madhukar Torawane. The petitioner is the brother of the detenu.

2. A perusal of the detention order indicates that the detaining authority has relied upon two complaints registered against the detenu vide CR No. 343 of 2022 for offences punishable under sections 143, 147, 148, 149, 427, 436 of the Indian Penal Code, section 4 read with 25 of the Arms Act and

Section 135 of the Maharashtra Police Act and CR No. 330 of 2022 for offences punishable under sections 392, 34 of the Indian Penal Code. The detaining authority has also relied upon the in-camera statements of two witnesses.

3. The learned counsel for the petitioner has raised various grounds to challenge the order of detention however, has pressed into service ground (viii) of paragraph 5 of the petition, which reads as under:

“(viii) The Petitioner says and submits that the detenu is submitting representation to the. Nasik Road Central Prison where he has been detained which is addressed to the State Government. The Petitioner says and submits that on this Petition being admitted and Rule Nisi being issued, it will be incumbent upon the State Government to satisfy this Hon'ble Court whether any para wise comments were called from the sponsoring authority, if called when it has been called and that as to when the said para wise comments were received by the State Government and also by which mode of communication it was sent and received.

The State Government should disclose to this Hon'ble Court, whether the said Representation was considered by the State Government expeditiously. Whether the result of the consideration was communicated to the detenu without any delay and loss of time.

The Petitioner says and submits that the prison authority should disclose to this Hon'ble Court whether the result of consideration of representation has been communicated to the detenu without any delay or loss of time, on the failure of the State Government and prison authority to satisfy this Hon'ble Court on the aforesaid count, the continued detention of the detenu be held as having been vitiated.”

4. Learned counsel for the petitioner submitted that the representation dated 29th June 2023 was received by respondent no.1 on 30th June 2023, and parawise remarks were called for from the detaining authority on the same day. She submitted that parawise remarks were received by respondent no.1 on 21st July 2023, and the representation was rejected on 26th July 2023, and the same was communicated to the detenu on 27th July 2023.

5. Learned counsel thus submitted that except for want of parawise remarks, there is no explanation given on behalf of respondent no.1 to keep the detenu's representation pending for almost 21 days. She submitted that there is no explanation for keeping the representation pending from 30th June 2023 to 21st July 2023. Learned counsel, therefore, submitted that the unexplained delay in deciding the representation has vitiated the detention order and has rendered continued detention of the detenu illegal and impermissible.

6. Learned APP supported the detention order by relying upon the affidavit dated 5th September 2023 of Ankush Shinde, Commissioner of Police, Nashik City. The affidavit dated 5th September 2023 of Deepak V. Sawant, Secretary to Advisory Board, Mumbai and the affidavit dated 3rd August 2023 of Anil Eknath Kulkarni, Joint Secretary, Government of Maharashtra, Home Department(Special), Mantralaya, Mumbai. Learned APP submitted that the representation of the detenu was signed before the Jail Authority on 29th June 2023 and was received by the Special Branch-3B Desk on 30th June 2023 vide letter dated

29th June 2023 of the Superintendent, Nashik Road Central Prison. She submitted that on the same day, parawise remarks were called for from the detaining authority, which were received on 21st July 2023. Thereafter, the concerned Assistant Section Officer submitted the file containing remarks of detaining authority and the detenu's representation to the Section Officer on 21st July 2023. She submitted that 22nd July 2023 and 23rd July 2023 were holidays being Saturday and Sunday; the Section Officer endorsed the file on 24th July 2023 and forwarded it to the Joint Secretary(In-charge) on the same day. Thereafter, the Joint Secretary(In-charge) endorsed the file on 25th July 2023 and forwarded it to the Additional Chief Secretary(Home). The Additional Chief Secretary(Home) considered remarks of the detaining authority and rejected the said representation of the detenu on 26th July 2023 and communicated the same to the detenu on the same day by post. Learned APP thus submitted that the representation of the detenu was considered and decided by the State Government as expeditiously as possible, and hence, there is no substance in the ground of challenge raised on behalf of the detenu.

7. We have considered the submissions made by both the parties. We have perused the record of the petition as well as affidavits relied upon by the learned APP. There is no dispute that the representation of the detenu was kept pending by the State Government from 30th June 2023 till 21st July 2023 only for want of remarks from the detaining authority. Except for want of parawise remarks, there is no explanation given by the State Government for keeping the representation pending. The affidavit-in-reply filed on behalf of the detaining authority is bereft of any explanation for not sending the parawise remarks immediately. A perusal of the affidavit-in-reply submitted on behalf of the State Government indicates that the parawise remarks were called for from the detaining authority on 30th June 2023, and after receipt of the same on 21st July 2023, the file containing parawise remarks and the representation of the detenu was proceeded for consideration. The explanation in the affidavit-in-reply on behalf of the State Government refers to only the steps taken after receipt of the parawise remarks. Except for the explanation that the parawise remarks were called for from the detaining authority, there is no other explanation

coming forth on behalf of the State Government for keeping the representation pending from 30th June 2023 till 21st July 2023. Thus, it is apparent that there is an unexplained delay of more than 21 days in deciding the detenu's representation on 26th July 2023.

8. The State Government, after receiving parawise remarks, has considered and decided the representation in 5 days; however, the representation was kept pending for more than 21 days i.e. from 30th June 2023 till 21st July 2023 only on the ground of want of parawise remarks from the detaining authority. It is well well-settled principle of law that the unexplained delay in deciding the representation results in continued detention of detenu illegal and impermissible, thereby violating constitutional rights under Article 22(5) of the Constitution of India.

9. In the aforesaid facts, it is necessary to refer to the decision of the Hon'ble Supreme Court in the case of *Harish Pahwa Vs. State of U.P. and Others*¹ where it was held that delay in

¹ (1981) 2 SCC 710

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. In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of representations made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on June 4, 5 and 25, 1980. It is also not clear what consideration was given by the government to the representation from June 13, 1980 to June 16, 1980 when we find that it culminated only in a reference to the Law Department, nor it is apparent why the Law Department had to be consulted at all. Again, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. **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. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith.

Emphasis Applied

10. This Court, in the case of *Riyaz Ahmed Batatawala Vs. The State of Maharashtra and Others*² has relied upon the principles

² 2015(2) Bom CR599 (Cri)

laid down by the Hon'ble Supreme Court in the case of *Harish Pahwa* and held that the delay in submitting the para-wise comments, when not explained, results in the continued detention illegal. This Court has thus held that the delay in submitting para-wise comments not being satisfactorily explained continues the detention, and thus, the order of preventive detention would stand vitiated.

11. In the present case, it is not disputed that the representation was kept pending for more than 21 days only for want of parawise comments from the detaining authority. There is no explanation coming forthwith from the detaining authority for not forwarding the parawise comments immediately as called for by the State Government. An affidavit filed on behalf of the detaining authority does not explain the reason for the delay in sending parawise remarks. Thus, in the facts of the present case, the principle of law laid down in the aforementioned decisions is squarely applicable to the present case.

12. Considering the aforesaid facts, we find that there is no satisfactory explanation given for keeping the representation

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

13. Hence, for the reasons stated above, the petition is allowed by passing the following order:

ORDER

- i) The Petition is allowed and Rule is made absolute in terms of prayer clause (a), which reads as under:

“(a) This Hon’ble Court be pleased to issue a Writ of Habeas Corpus or any other appropriate writ, order direction quashing and setting aside the said order of detention dated 18.05.2023 having No. D.O. 2023/MPDA/DET-04/CB-47 and be pleased that to direct that the detenu Sachin @

*Ghodya Madhukar Torawane be set at liberty
forthwith.”*

iii) The petitioner’s brother is set at liberty forthwith, if
not required in any other case.

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

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)