

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

CRIMINAL WRIT PETITION NO.3362 OF 2022

Mrs.Nirmala Sawant
(Mother of detenu), Age 50 years,
R/o.Indira Vasahat, Behind NDA Police
Chowky, Uttamnagar, Tal.Haveli,
District Pune.

Petitioner

versus

1. The Commissioner of Police,
Pune City.
2. The State of Maharashtra.
3. The Superintendent,
Aurangabad Central Prison, Aurangabad.

Respondents

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

**CORAM : A.S.GADKARI AND
PRAKASH D.NAIK, JJ.**

DATE : 17th January 2023

JUDGMENT – (Per : P.D.Naik, J.) :-

1. Petitioner is the mother of Detenu Sandeep Mohan Sawant who has been detained under the provisions of 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 (hereinafter referred to as `MPD Act`) vide Detention Order dated 31st March 2022. Petitioner has challenged the said Order of

Detention by invoking writ jurisdiction of this Court under Article 226 of Constitution of India.

2. Learned advocate for Petitioner submitted that impugned Order of Detention is required to be set aside on the sole ground that representation of Detenu has not been considered expeditiously thereby affecting his right under Article 22(5) of Constitution of India. It is submitted that representation dated 10th September 2022 was sent to the Superintendent, Aurangabad Central Prison, for forwarding it to the State Government for expeditious consideration. There has been delay by the State Government in considering said representation and communicating the its result to the Detenu. There is no explanation by the State Government for delay in considering the representation of Detenu.

3. Learned advocate for Petitioner has relied upon following decisions :-

- (a) Harish Pahwa Vs. State of U.P and others¹;
- (b) Rama Dhondu Borade Vs. V.K.Saraf, Commissioner of Police and others²;
- (c) Devendra Ramlal Bidlan Vs. The Commissioner of Police and others³;
- (d) Nikhil Suresh Rajput Vs. The District Magistrate

1 (1981)2-SCC-710

2 (1989)3-SCC-173

3 Division Bench decision of this High Court in Cri.W.P.No.2651/2022, decided on 18-11-2022

Jalgaonand others⁴.

4. Learned APP submitted that representation of Detenu was dealt with expeditiously and it's result has been communicated to the Detenu. The time consumed in considering the said representation has been explained in the affidavit in reply filed by Respondents.

5. The representation of Petitioner dated 10th September 2022 was sent to the Superintendent, Aurangabad Central Prison for forwarding it to the State Government for expeditious consideration. In the affidavit in reply filed by Shirish N. Mohod, Deputy Secretary, Home Department, Mantralaya, Mumbai, it is stated that representation of Detenu dated 10th September 2022 was signed by Jail Officer on 17th September 2022 and it was received by Government on 17th September 2022 via e-mail through Superintendent, Aurangabad Central Prison, Aurangabad vide letter dated 17th September 2022. 17th September 2022 was Saturday and 18th September 2022 was Sunday. Thereafter remarks were called from the Detaining Authority i.e. Commissioner of Police, Pune City, on 19th September 2022 by Special Branch-3, 'B' Desk. The remarks of Detaining Authority were received on 12th October 2022 vide letter dated 11th October 2022. The Additional Chief Secretary (Home) considered the remarks of Detaining Authority and rejected the said representation on 13th October 2022 and rejection was

4 2021-ALL MR (Cri)-4051

communicated to the Detenu vide letter dated 13th October 2022 through registry section of Home Department by speed post. Thus, according to Respondents, the representation of Detenu was considered by State Government as expeditiously as possible.

6. From the affidavit in reply it is apparent that remarks from Detaining Authority i.e. Commissioner of Police, Pune were called on 19th September 2022 and same were received by Home Department, Mantralaya, Mumbai on 12th October 2022. There is no explanation as to why it took about 20 days in sending the remarks by the Detaining Authority to the State Government. We have also perused the affidavit in reply filed by Detaining Authority. Paragraph 9 of the affidavit in reply deals with ground 5(b) of the petition with regards to the representation of Detenu addressed to the State Government. There is no explanation offered by the Detaining Authority about the time consumed in forwarding remarks pursuant to communication dated 19th September 2022 issued to the Detaining Authority. In reply, it is stated that said ground pertains to the State Government and therefore the affidavit of State Government may be perused.

7. Thus, there is no explanation from the Respondents for delay of 20 days in forwarding remarks by the Detaining Authority. Unexplained delay certainly affects the constitutional right of a Detenu under Article 22(5) of Constitution of India.

8. In the case of Harish Pahwa (supra), it was 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 representation must be taken up for consideration as soon as received and unless it is absolute necessary to wait for some assistance, it must be dealt with continuously until final decision is taken and communicated to the Detenu.

9. In the case of Rama Dhondu Borade (supra), it was observed that the Detenu has an independent constitutional right to make representation under Article 22(5) of Constitution of India. Correspondingly, there is a constitutional mandate commanding the concerned Authority to whom the Detenu forwards his representation questioning the correctness of the Detention Order clamped upon him and requesting for his release, to consider the said representation within reasonable dispatch and to dispose the same as expeditiously as possible. Though there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with, the use of the word “as soon as may be” occurring in Article 22(5) of the Constitution reflects that the representation should be expeditiously considered and disposed off with due

promptitude and diligence and with a sense of urgency and without avoidable delay.

10. This Court in the case of Nikhil Suresh Rajput (supra) and in the case of Devendra Ramlal Bidlan (supra) has considered law relating to expeditious disposal of representation and set aside Orders of Detention on the ground that there was unreasonable and unexplained delay in considering representation.

11. In the light of aforesaid factual aspects, since there is unexplained delay as aforesaid in dealing with the representation of Detenu, the constitutional right under Article 22(5) of Constitution of India stands affected and hence detention of Detenu is required to be set aside.

ORDER

- (i) Petition is allowed in terms of prayer clause (b);
- (ii) Rule made absolute;
- (iii) Petitioner be released from jail immediately, if not required in any other offence;
- (iv) All the concerned to act on an authenticated copy of this order duly issued by Registry of High Court.

(PRAKASH D. NAIK, J.)

(A.S.GADKARI, J.)