

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 4505 OF 2022**

Sangharsh Alias Bhavya Nitin Adsul

Age-19 years, R/o. Riverside, Near

Sariputt Budh Vihar, 13 Tadiwala Road, Pune

...Petitioner

Versus

1. The 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,

Mumbai Central Prison Mumbai

...Respondents

Ms. Jayshree Tripathi Advocate for Petitioner.

Mrs. S. D. Shinde, APP for Respondent-State.

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

**DATE : 15<sup>th</sup> FEBRUARY, 2023.**

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**JUDGMENT :- (Per: Prakash D. Naik, J.)**

1. Petitioner has challenged the Order of detention dated 29<sup>th</sup> September 2022 issued by the Commissioner of Police, Pune City under Section 3(2) of "Maharashtra Prevention of Dangerous Activities of Slumlord, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and persons engaged in Black-Marketing of Essential

Commodities Act, 1981” (hereinafter referred to M.P.D.A. Act) along with Order of detention, ground of detention and the documents relied upon by detaining Authority while issuing detention Order were served upon petitioner/detenu.

2.           impugned Order of detention is based on C.R. No. 180 of 2022 registered with Bundgarden Police Station, Pune for offences punishable under Sections 324, 323, 504, 506 of the Indian Penal Code and C.R. No. 182 of 2022 registered with Bundgarden Police Station, Pune for offences punishable under Sections 353, 332 of IPC. The detaining Authority has also relied upon the statement of two witnesses recorded in-camera for issuing the Order of detention.

3.           The solitary ground urged by Petitioner which is sufficient to set aside the impugned Order of detention is that the representation addressed to the State of Maharashtra at the instance of the Petitioner was not dealt with expeditiously. In paragraph No. 5(G) of the Petition, it is urged that the representation of the Petitioner dated 1<sup>st</sup> December 2022 was sent to the Superintendent Mumbai Central Prison, Mumbai for forwarding it to State Government for expeditious consideration. On the date of filing of this Petition, the detenu had not received any communication from the State Government as regards to the consideration of the said representation by the State Government.

4. Ms. Tripathi learned Advocate appearing for Petitioner submitted that, representation dated 1<sup>st</sup> December 2022 was forwarded through Mumbai Central Prison where the Petitioner was detained with covering letter of the Advocate for Petitioner, requesting the Superintendent of Mumbai Central Prison to obtain the signature of detenu/Petitioner on the representation and forward it to the Additional Chief Secretary (Home), Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai. The Superintendent of Mumbai Central Prison Mumbai had received the representation on 1<sup>st</sup> December 2022. The representation was rejected on 3<sup>rd</sup> February 2023. The Messenger from Mumbai Central Prison had wrongly delivered the representation to the Office of the Advisory Board instead of the Additional Chief Secretary (Home), Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai. Thus the representation dated 1<sup>st</sup> December 2022 was ultimately rejected by the State Government on 3<sup>rd</sup> February 2023 and the result was communicated to the detenu on 8<sup>th</sup> February 2023. Even after, representation was received in the Office of the Additional Chief Secretary (Home), Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai, there has been delay in dealing with the said representation which has affected the constitutional right of the detenu under Article 22(5) of the Constitution of India.

5. Ms. Tripathi, learned Advocate appearing for Petitioner has relied upon the following decisions are as under:-

(i) *Devendra Ramlal Bidlan Vs. The Commissioner of Police Pune City and Ors.* delivered by this Court in Criminal Writ Petition No. 2651 of 2022 decided on 18<sup>th</sup> November 2022.

(ii) *Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India and Ors.*<sup>1</sup>

(iii) *Mahesh Kumar Chauhan @ Banti Vs. Union of India and Ors.*<sup>2</sup>

6. Learned APP submitted that, after receipt of the representation by the Office of Additional Chief Secretary (Home), Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai on 21<sup>st</sup> January 2023, it was promptly dealt with and the decision was taken on 3<sup>rd</sup> February 2023. Information of rejection was communicated to the detenu on 8<sup>th</sup> February 2023. Learned APP has relied upon the reply filed by Deputy Superintendent, Mumbai Central Prison, Mumbai wherein it is stated that, the concerned person from Mumbai Central Prison had wrongly transmitted the representation to the Office of Advisory Board, (Home) Department (Special) Government of Maharashtra Mantralaya Mumbai. The Joint Secretary, Government has filed the affidavit dated 5<sup>th</sup> January 2023 wherein it is stated that, no such representation of the detenu dated

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1 AIR 1989 SC 1403

2 (1990) 3 SCC 148

1<sup>st</sup> December 2022 has been received from the Superintendent, Mumbai Central Prison, Mumbai so far. On the date of filing said affidavit in reply, Office of Additional Chief Secretary (Home), Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai had not received the said representation which is subsequently received after inquiry was made from the Office of Advisory Board (Home) Department (Special) Government of Maharashtra Mantralaya Mumbai on 24<sup>th</sup> January 2023 and the representation was rejected on 1<sup>st</sup> February 2023.

7. It is not disputed that, the Advocate for Petitioner had forwarded the representation to the Superintendent Mumbai Central Prison, where the Petitioner was detained with request to send it to the Additional Chief Secretary (Home), Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai. The affidavit of Deputy Superintendent Mumbai Central Prison Mumbai refers to the fact that, the representation against the detention Order of Petitioner dated 1<sup>st</sup> December 2022 addressed in the name of Additional Chief Secretary, (Home), Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai was received by Mumbai Central Prison on 1<sup>st</sup> December 2022 through letter sent by Advocate for detenu. On the same day signature of the detenu has been taken on the representation and copy was forwarded to the Additional Chief Secretary (Home) vide office letter dated 2<sup>nd</sup> December

2022. However, the said representation was not received by Office of Additional Chief Secretary (Home) Department (Special) Government of Maharashtra Mantralaya, Mumbai. After inquiry, it was revealed that the prison guard, who was assigned the duty of distribution of local official letters had inadvertently delivered the said representation to the Secretary, Advisory Board, (Home) Department (Special) Government of Maharashtra Mantralaya, Mumbai. Show cause notice was issued to the Guard and disciplinary action has been proposed against the concerned prison staff as per Prison Rules. The Secretary, Advisory Board, (Home) Department (Special) Government of Maharashtra Mantralaya, Mumbai confirmed that, they have received copies of said representation through email on 2<sup>nd</sup> December 2022 and the same was forwarded to Additional Chief Secretary (Home) Department (Special) Government of Maharashtra Mantralaya, Mumbai on 24<sup>th</sup> January 2023. The Mumbai Central Prison again forwarded copies of representation to the Additional Chief Secretary (Home) Department (Special) Government of Maharashtra on 1<sup>st</sup> February 2023. The Additional Chief Secretary (Home) Department (Special) Government of Maharashtra Mantralaya, Mumbai has taken decision on 3<sup>rd</sup> February 2023 on the representation and it was rejected. Information of rejection of representation was received by Mumbai Central Prison and it was intimated to the Petitioner/detenu on 8<sup>th</sup> February 2023.

8. Thus, the representation dated 1<sup>st</sup> December 2022 was signed by detenu on 2<sup>nd</sup> December 2022. It was received by Advisory Board instead of Office of Additional Chief Secretary (Home) Department (Special) Government of Maharashtra Mantralaya, Mumbai and the same was rejected on 3<sup>rd</sup> February 2023. Delay in considering the representation of the detenu has affected right of the detenu under Article 22(5) of the Constitution of India. It is also pertinent to note that even after receiving the copies of representation by the office of Additional Chief Secretary on 24<sup>th</sup> January 2023 it is not explained why it was rejected on 3<sup>rd</sup> February 2023.

9. In the case of *Aslam Ahmed Zahire Ahmed Shaikh* (supra) it was observed that, the disposal of representation must be considered with reasonable expedition. Unexplained delay of seven days by Jail Superintendent in forwarding representation and subsequent delay of 11 days in its disposal by Government would affect right of detenu under Article 22(5) of Constitution of India. In the case of *Mahesh Kumar Chauhan* (supra) it was observed that, delay in disposal of representation should be satisfactorily explained by all the concerned Authorities individually. Delay is fatal to the detention irrespective of enormity and gravity of allegations against the detenu. The representation of detenu, whose liberty is in peril should be considered expeditiously otherwise the

continued detention will render itself impermissible and invalid as being violative of Article 22(5) of the Constitution of India. In the case of *Devendra Ramlal Bidlan* (supra) decided by this Court, the detenu had addressed the representation to the concerned Authority and forwarded it through the Jail where he was detained. The reply filed by concerned Authority indicated that the representation was not received by Competent Authority. The Office of Superintendent of Nagpur Central Prison, Nagpur had inadvertently committed gross mistake in forwarding the representation by e-mail and post to the Secretary, counseling Board (Special -10) Government of Maharashtra instead of forwarding it to the Additional Chief Secretary (Home) Home Department (Special), Government of Maharashtra. It was held that, there was gross delay in considering the representation and hence detention Order would not sustain.

10. On account of delay in considering the representation of the Petitioner, his continued detention is rendered, invalid and deserves to be set aside as it has affected the constitutional right of the detenu under Article 22(5) of the Constitution of India.

### **ORDER**

- a) Writ Petition is allowed.
- b) Detention Order bearing OW.NO./CRIME PCB/DET/ADSUL/317/2022

dated 29<sup>th</sup> September 2022 issued by Respondent No.1 is hereby set aside.

- c) Petitioner be released from Jail forthwith, if not required in any other crime.
  - d) Rule is made absolute in the aforesaid terms.
11. All the concerned to act on the basis of an authenticated copy of this Order.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)