



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 546 OF 2024

Yogesh Devidas Tayade

... PETITIONER

VERSUS

1. District Magistrate, Jalgaon
2. The State of Maharashtra
(through the Secretary
Home Department (Spl.)
Mantralaya, Mumbai.
3. The Superintendent
Nagpur Central Prison, Nagpur

... RESPONDENTS

...

Advocate for the Petitioner : Mr. Rupesh Anil Jaiswal

APP for Respondents: Ms. V.N. Patil-Jadhav

...

CORAM

: MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE

: 02.05.2024

PER COURT:

Heard.

2. The petitioner is challenging the order of preventive detention purportedly passed, approved and confirmed under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (The M.P.D.A. Act).

3. Though the petitioner has been challenging the order of detention on various grounds, in our considered view, the only ground which according to us goes to the root of the order, as would be

demonstrated herein after, would be sufficient to set aside the order.

4. Contrary to the Constitutional mandate as enshrined under Article 22(5), there is whole lot of confusion about consideration of the petitioner's representation.

5. As can be seen from the affidavit-in-reply filed by the Prison Authority, he has expressly stated in paragraph No.5 about having transmitted the representation to the office of the Additional Chief Secretary, Home Department and its copy marked to the Secretary, Advisory Board, functioning under the same department, on 12.02.2024, by speed post. A copy of the covering letter is also annexed to the affidavit (Exhibit-R1).

6. However, there is no reply expressly stating about his representation having been considered and decided, till date. The learned APP, on instructions, submits that she has received the written instructions from the Home Department which she places before us and are taken on record. Para 2 of that written instructions dated 25.04.2024 reads as follows :

“2. With reference to Para 05(c) of Writ Petition, it is submitted that the representation of the detenu dated 10.02.2024 was received by Special Branch-3B Desk on 23.04.2024 through Nagpur Central Prison via whatsapp. Therefore, remarks were called for from the Detaining Authority i.e. District Magistrate, Jalgaon on the 23.04.2024 by Special Branch-3B Desk. The remarks of the Detaining Authority were still awaited.”

7. A bare perusal of the stand adopted by the Home

Department would reveal that the petitioner's representation has not been decided till date, *albeit*, he has been detained with effect from 27.12.2023 and his representation was purportedly forwarded by the jail authority on 12.02.2024.

8. As we have observed at the inception, the constitutional right of the petitioner to make an effective representation has been put at naught, whatever may be the reason and with whomsoever the lapse may be resting.

9. It is in view of such peculiar state of affairs, in our considered view, the order of detention passed and confirmed under Section 3 of The M.P.D.A. Act is liable to be quashed and set aside for the sole reason of breach of Article 22 (5) of the Constitution of India.

10. The Criminal Writ Petition is allowed.

11. The order of detention bearing No. Dandapra / KAVI / MPDA /91/2023, dated 27.12.2023 issued under Section 3 of M.P.D.A. Act, 1981 by the respondent No.1 is quashed and set aside.

12. The petitioner shall be released forthwith, if not required to be detained in any other matter.

13. Parties to act on the authenticated copy of the order.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)