



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.725 OF 2024

Ravindra @ Banti s/o. Abasaheb @
Sahebrao Madne

..Petitioner

Vs.

The District Magistrate,
Ahmednagar and ors.

..Respondents

Mr.K.N.Shermale, Advocate for petitioner
Mr.S.S.Dande, APP for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : JUNE 25, 2024**

ORDER (Per R.G.AVACHAT, J.) :-

This Writ Petition has been filed for the following relief:-

C) The Rule may kindly be made absolute by allowing this writ petition, the order of detention bearing No.DC/Desk-9C1/118/2024, dated 09.02.2024 issued under Section 3 of Maharashtra Prevention of Dangerous Persons, Hand Furnace Liquor, Slum Goons, Video Pirates, Sand Mafia (smugglers) And Persons Activities of slumlords, Bootleggers, Drug offenders, Engaged in Black Marketing of Essential Commodities Act, 1981, (Mah. LV of 1981) amended section 3(1) of 1996 by the Respondent No.1 against the petitioner may kindly be quashed and set aside, on quashing of the same, the petitioner be ordered for release forthwith”

2. The challenge to the order of detention of the petitioner is mainly on the ground of non-consideration of the petitioner's

representation against his detention by the State of Maharashtra in the Department of Home.

3. The petitioner came to be detained vide order dated 09.02.2024, considering him to be a dangerous person within the meaning of sub-section (1) 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 of Essential Commodities Act, 1981.

4. Learned counsel for the petitioner brought to our notice a copy of the representation dated 27.02.2024, submitted by him to the Superintendent of Nashik Central Prison, Nashik. The representation was addressed to the Addl. Chief Secretary (Home). A postal acknowledgment, indicating the Home Ministry to have received the representation, has been placed on record.

5. When we called upon learned APP to submit what the State Government did in respect of the petitioner's representation, he was helpless to make any statement in that regard. According to him, there is no documentary evidence indicating the petitioner's representation to have been considered. Learned APP relied on the

judgment of the Division Bench in the case of **Narayan Radhakishan Bhusari Vs. District Magistrate, Beed, and ors., 2020 DGLS (Bom.) 1232**, to submit that the petitioner's right to make representation stood lost. He brought to our notice the observations in paragraph 25 in the said judgment, which read thus:-

25. Learned counsel Shri Tripathi further submitted that the petitioner had made representation but that was not decided by the State Government and, therefore, the order of detention stands vitiated on this ground alone. The petitioner has annexed the said representation with the petition. It shows that this representation was made on 21.09.2020. Detention of the petitioner was approved by the State Government on 25.08.2020 and the Advisory Board also approved detention of the petitioner on 10.09.2020. This clearly indicates that the petitioner made representation after the Advisory Board upheld his detention vide order dated 10.09.2020. As stated above, the petitioner was informed that if representation is not made before approval of his detention by the State Government, his right to representation shall automatically stand terminated/extinguished. In the case at hand, his right to make representation has been terminated/extinguished as he did not make representation before his detention was approved by the State Government.

The aforesaid observations indicate that the petitioner therein was informed that if representation is not made before approval of his detention by the State Government, his right to representation shall automatically stand terminated/extinguished. So is not the case herein. Those observations were made in the facts and circumstances of that case.

6. In our view, the petitioner has every right to make a representation to the State Government against the order of his detention. Admittedly, the State Government received the petitioner's representation. It, however, did not take a call thereon. The same is violation of the petitioner's constitutional right under Article 22(5) of the Constitution of India. On this sole ground, the petitioner's further detention becomes illegal.

7. In the case of **Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and ors., (1989)3 SCC 173**, it has been observed in paragraph 19, as below:-

19. The propositions deducible from the various reported decisions of this Court can be stated thus:-

The detenu has an independent constitutional right to make his representation under [Article 22\(5\)](#) of the 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. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty - the highly cherished right - which is enshrined in [Article 21](#) of the Constitution.

8. In view of the above, the Writ Petition is allowed in terms of the following order:-

O R D E R

The order of detention dated 09.02.2024, passed by respondent no.1 - District Magistrate, Ahmednagar, bearing No.DC/Desk/9C1/118/2024, is hereby set aside. The petitioner be released forthwith, if not required in any other case.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP