



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 882 OF 2024

Sandip Ganesh Thakur

..PETITIONER

VERSUS

District Magistrate, Jalgaon and Others

..RESPONDENTS

....
Mr. R.A. Jaiswal, Advocate for petitioner
Mr. G.A. Kulkarni, A.P.P. for respondents
....

CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 18th JULY, 2024

PER COURT :

1. The petitioner has been detained, being a dangerous person, vide order dated 18th April, 2024 by Respondent No.1 – District Magistrate, Jalgaon. He has made representation to the State Government on 07th May, 2024. The State does not dispute the said fact. The State has, however not taken call on the said representation as yet. As such, not deciding the representation of the petitioner constitutes a breach of his fundamental right under Article 22 (5) of the Constitution of India and the detention order is, therefore, liable to be quashed.

2. 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.”

2. Although learned A.P.P. submits that no sooner the petitioner was detained, he approached this Court, and therefore, the authority concerned might not have decided the representation considering the matter to have been subjudice. We do not subscribe to the submissions made by learned A.P.P. In view of the same, we deem it fit to allow the petition. Hence the following order :-

Impugned order dated 18th April, 2024 passed by Respondent No.1 – District Magistrate, Jalgaon in file no. Dandapra/KAVI/MPDA/16/2024 is hereby set aside. The petitioner be released forthwith, if not required in any other case. Parties to act upon authenticated copy of this order.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD