

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

CRIMINAL WRIT PETITION NO. 3705 OF 2023

Mrs. Shabana Iqbal Shaikh
(Mother of the Detenu)
Aged 37 years,
R/o. 386, Bhavani Peth,
Overa Construction, Opp. Chudaman Talim,
Pune
v/s.
.... Petitioner

- 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,
Amravati Central Prison, Amravati
.... Respondents

Ms. Jayshree Tripathi a/w. Ms. Anjali Raut for the Petitioner.
Mr. J.P Yagnik, APP for the State.

**CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATED : 26th MARCH, 2024.

ORAL JUDGMENT : (PER : SHYAM C. CHANDAK, J.) :-

- 1) Petitioner is the mother of Detenu namely Azam Iqbal Shaikh. Petitioner has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India, impugning the Detention Order dated 11th October, 2023 issued by the Respondent No.1 under Section 3(2) 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 (for short 'the MPDA Act').

1.1) Along with the said Order dated 11th October, 2023, the Committal Order and Grounds of Detention dated 11th October, 2023 were served upon the Detenu and the Detenu was directed to be detained at Amravati Central Prison, Amravati.

2) Heard Ms. Tripathi, learned Advocate for the Petitioner and Mr. Yagnik, learned A.P.P. for the State. Perused entire record produced before us.

3) Learned Advocate for the Petitioner has raised only one ground i.e., delay in considering the representation of the Detenu by the State Government from the date of its submission to the Jail Authorities till its actual decision and its communication to the Detenu.

4) Record reveals that, in paragraph no.12 of the Grounds of Detention, the Detenu has been informed as under :-

“12. You are informed that you have a right to make representation to the State Government against the detention order and that you shall be afforded the earliest opportunity to make such representation. If you wish to make such representation, you should address it to The Additional Chief Secretary (Home), Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai – 400032 and submit it through the Superintendent of the Jail, where you have been detained.”

5) Petitioner accordingly through his Advocate submitted his Representation on dated 07th November, 2023 to the Superintendent of Amravati Central Prison, Amravati. The said Representation along with Covering Letter is annexed at Exhibit-D (page nos. 26 to 30) to the Petition.

6) The Superintendent of Amravati Central Prison, Amravati has filed Affidavit dated 23rd January, 2024. In paragraph no. 2 thereof, it is stated that, the Representation of the Petitioner submitted through Advocate on 07th November, 2023 was received by him on 16th November, 2023 by 'post'. That, the signature of the Petitioner was taken on the same day and it was forwarded to The Additional Chief Secretary, Home Department (Special), Special Branch (3-B) Government of Maharashtra, Mantralaya, Mumbai by 'post' on 17th November, 2023.

7) Mr. Anil Kulkarni, Joint Secretary, Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai on behalf of Respondent No.2, has affirmed the Affidavit dated 17th January, 2024. In paragraph no.2 thereof, he has stated that, the Representation dated 17th November, 2023 signed by the Detenu before the Jail Officer on 02nd January, 2024 was received by Special Branch-3B Desk on 15th January, 2024 *via* Registry Section of the Home Department.

8) At the outset, it is to be noted here that, the Superintendent of

Central Prison, Amravati in his Affidavit has stated that, the signature of the Petitioner on the representation was taken on 16th November, 2023 itself and the same was forwarded to the Respondent No.2 by 'post' on 17th November, 2023. However, the Joint Secretary, Home Department has stated that, he received the said Representation dated 17th November, 2023 signed by the Detenu/Petitioner before Jail Officer on 02nd January, 2024 in its Special Branch on 15th January, 2024. There is material contradiction in the pleadings of the said two Authorities *qua* the date of the signature by the Petitioner on his representation.

9) A bare perusal of pleadings along with record clearly indicates that, the Respondent No.2 has not explained the inordinate delay of 60 days in deciding the Representation from its date of dispatch i.e., 17th November, 2023 till its decision on 16th January, 2024.

10) It is the mandate of the Constitution that, the Representation made by the Detenu has to be expeditiously decided by the concerned Authority without any delay and if any delay occurs in deciding the said Representation, the same has to be satisfactorily explained by the concerned Authority. As noted earlier, in the present case, the delay of about 02 months in deciding the Representation of the Petitioner has not at all been explained by the concerned Authority. Paragraph no.2 of the Affidavit of Respondent No.2 is filled with general pleadings.

11) In a catena of the decisions and in particular in the case of

Aslam Ahmed Zahire Ahmed Shaik v/s. Union of India and others (1989) 3 SCC 277, the Hon'ble Supreme Court has categorically held that, the Representation to the Central (State) Government must be considered with reasonable expedition. In the said case, even unexplained delay of 07 days on the part of the Jail Superintendent in transmitting the representation to Central Government was held to be fatal and perilous to the Constitutional mandate under Article 22 (5). Reliance is also placed on the decisions of Hon'ble Supreme Court in the cases of *Rama Dhondur Borade v/s. V.K. Saraf, Commissioner of Police and others* reported in (1989) 3 SCC 173 and *Harish Pahwa v/s. State of U.P. and others* reported in (1981) 2 SCC 710.

12) As enunciated by the Hon'ble Supreme Court in the case of *Vijay Kumar v/s. State of Jammu and Kashmir and Other*, [1982] 2 SCC 43, "The Jail authority is merely a communicating channel because the representation has to reach the Government which enjoys the power of revoking the detention order. The intermediary authorities who are communicating authorities have also to move, with an amount of promptitude so that the statutory guarantee of affording earliest opportunity of making the representation and the same reaching the Government is translated into action. The corresponding obligation of the State to consider the representation cannot be whittled down by merely saying that much time was lost in the transit. If the Government enacts a

law like the present Act empowering certain authorities to make the detention order and also simultaneously makes a statutory provision of affording the earliest opportunity to the detenu to make his representation against his detention, to the Government and not the detaining authority, of necessity the State Government must gear up its own machinery to see that in these cases the representation reaches the Government as quick as possible and it is considered by the authorities with equal promptitude. Any slackness in this behalf not properly explained would be denial of the protection conferred by the statute and would result in invalidation of the order.”

13) Conspectus of the aforesaid discussion is that, there is unexplained delay in dealing and deciding with the Representation of the Detenu. Even though sufficient opportunity was afforded to the Respondents, they have not explained that delay. Said delay was avoidable by sending the representation through a special messenger, however, it is not tried to be avoided. Therefore the Detenu’s constitutional right under Article 22(5) of the Constitution of India is affected. As a result, the Detention Order stands vitiated and the continued detention of the Detenu is illegal and constitutionally impermissible. The detention of the Detenu is therefore liable to be quashed. Thus, we are inclined to quash and set aside the impugned Order dated 11th October, 2023.

13.1) Hence, the following Order :-

- (a) Detention Order dated 11th October, 2023 bearing O.W.No./CRIME PCB/DET/KHADAK/SHAIKH/485/2023 passed by the Respondent No.1 is quashed and set-aside.
- (b) Petition is allowed in terms of prayer clause (b).
- (c) Detenu- Azam Iqbal Shaikh be released from jail forthwith, on production of authenticated copy of the Operative part of the present Order, if not required in any other case/cases.
- (d) Rule is made absolute in the aforesaid terms.

PREETI
HEERO
JAYANI

Digitally signed by
PREETI HEERO
JAYANI
Date: 2024.04.12
12:34:00 +0530

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)