

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 697 OF 2024

Bhimayya Lingayya Bhandari .. Petitioner
Versus
The Commissioner of Police, Pune and .. Respondents
ors

...

Ms.Jayshree Tripathi with Ms.Anjali Raut for the petitioner.
Mr.J.P. Yagnik, APP for the State.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE,JJ.
DATED : 11th JULY, 2024

P.C:-

1 Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2 Ms.Tripathi representing the petitioner detenu, Bhimayya Lingayya Bhandari, who is directed to be detained by an order of detention dated 13/1/2024 passed by the respondent no.1 in exercise of powers under Section 3(2) of the MPDA Act, has relied upon ground no.(c) in the petition amongst other grounds, and submit that the detention order is vitiated on this ground.

Ground no.(c) of the petition specifically read as under :-

“(c) The petitioner says and submits that a representation of the petitioner dated 21.02.2024 was sent to the Superintendent Nagpur Central Prison, Nagpur for further sending it to the State Government for expeditious consideration, revoke and communication. The petitioner says and submits that so far no communication has been received from the State Government as regards to the consideration of the said representation by the State Government, thereby the State Government has delayed in considering the representation of the petitioner expeditiously and diligently and communicating the result to the petitioner. All respective authorities are called upon to explain the delay, if any, occurred from the date of representation till today to the satisfaction of this Hon’ble Court failing which the continued detention will be held as illegal and bad in law, liable to be quashed and set aside.”

3 The grievance of the petitioner is that the representation made on 21/2/2024 was decided belatedly and this delay proves to be fatal, as it is imperative for the State authorities to take decision of the representation in an expeditious manner.

The learned APP Mr.Yagnik has invited our attention to the affidavit filed by the Law and Secretary, Government of Maharashtra, and in particular, paragraph no.2 of the affidavit, which offers a response to ground no.(c) of the Writ Petition. We would like to reproduce the said portion of the affidavit which reads to the following.

“2 With reference to Para 5(c) of Writ Petition, it is submitted that the representation of the detenu dated 29.02.2024 was received by Central Registry Unit of Mantralaya through Nagpur Central Prison, Nagpur vide their letter dated 29.02.2024. The same was received by Special Branch-3B Desk through e-office on dated 13.03.2024 which had not seen by Section Officer unintentionally. Therefore, remarks were called for from the Detaining Authority i.e. The Commissioner

of Police, Pune City on 19.04.2024 by Special Branch-3B Desk. The remarks of the Detaining Authority were received on 24.04.2024. The concerned Assistant Section Officer submitted file containing remarks of Detaining Authority along with the representation of the detenu to the Section Officer on 24.04.2024. The Section Officer endorsed on 24.04.2024 and forwarded it to the Deputy Secretary on the same day. The Deputy Secretary endorsed it on the 24.04.2024 and forwarded it to the Additional Chief Secretary (Home). The Additional Chief Secretary (Home) considered the remarks of the detaining authority and rejected the said representation on 25.04.2024 by applying his mind. The rejection of representation was communicated by post to the detenu vide letter dated 25.04.2024 through the Registry section of Home Department. Thus, the representation of the detenu was considered by the State Government as expeditiously as possible.”

4 From the ground raised and the response to the ground, to which we have reproduced above, it is evident that the representation of the detenu dated 21/2/2024 was rejected on 25/4/2024, and though it is claimed that it is after application of mind, the delay of 56 days though projected to be unintentional, what we can observe from the response on part of the State Government is its lackadaisical approach, as despite the representation of the detenu being received in the Central Registry Unit of Mantralaya through Nasik Central Prison, Nagpur, it was transmitted to Special branch, Desk on 13/3/2024, as it was not seen by the Section Officer. Thereafter, the remarks were called from the Detaining Authority on 19/4/2022 and a decision was taken.

5 The laxity on part of the particular Officer definitely should not construe to the detriment of a detenu who has been preventively detained by short circuiting the procedure of the

trial, and since the law expect that the representation preferred by the detenu shall be decided expeditiously, not being satisfied with the explanation offered for considering it after 56 days, in our view, the delay has proved fatal and the detention order deserve to be set aside only on this ground. As a result, Rule is made absolute.

The detention order dated 13/1/2024 is quashed and set aside.

The detenu is entitled to be set at liberty forthwith.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)