

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

WRIT PETITION NO.2881 OF 2024

Arbaz Khudbuddin Atar Age: 29 years, R/O: Room No. 1, Abdul Chawl Sutar Pakhadi, Sahar Cargo Road, Vile Parle (East), Mumbai – 400 099. (At present in Nashik Road Central Prison)	}	Petitioner
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Versus

1. Commissioner of Police, Brihan Mumbai 2. The State of Maharashtra (Through the Secretary Home Department (Spl) 3. The Superintendent, Nashik Road Central Prison, Nashik	}	Respondents
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Ms Jayshree Tripathi a/w Ms Anjali Raut, for the Petitioner.

Ms M. M. Deshmukh, APP, for the Respondent – State.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED : 23rd SEPTEMBER, 2024

P.C:-

1. The only ground on which the Writ Petition assailing the order of Detention dated 02.05.2024 deserves to be allowed is the ground of delay in deciding the representation.

The Petition stood amended in terms of our order dated

20.08.2024 by inserting ground (g), which reads to the following effect:

“(g) The petitioner says and submits that the detaining authority in the Committal order dated 02.05.2024 clearly states that the detenu shall be detained in the Thane Central Prison, Thane till he is produced before the Advisory Board and thereafter in the Nashik Central Prison, Nashik for further detention. It is to be noted that the Advisory Board was held on 10.06.2024. Thereafter, a representation of the detenu by his Advocate, through Nashik Central Prison was sent on 21.06.2024. A letter dated 24.06.2024 was received in the Advocate’s office on 27.06.2024. after taking due instructions, again the representation was again sent to Thane Central Prison, Thane on 05.07.2024. (as the detenu was in Thane Central Prison) 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 sent to Thane Central Prison, till the communication of rejection/revocation of the representation to the detenu, 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. The petitioner says and submits that due to the delay occurred in sending the representation back and forth, has deprived the detenu of the earliest opportunity of making a representation against the order. Thereby vitiating his right guaranteed to the detenu/petitioner U/Article 22(5) of the Constitution of India. The continued detention of the petitioner is illegal and bad in law liable to be revoked and set aside.”

2. When our attention was invited to the affidavit of the Superintendent, Thane Central Prison, in paragraph 5, he has specifically deposed as under:

“(5) I say that the said detenue was explained to submit representation before the hearing of the Advisory Board on 10.06.2024 to Thane but the advocate has submitted representation dated 04.06.2024 by Thane Central Prison, which is received on dated 08/07/2024 and this office immediately submitted the representation to The Additional Chief Secretary (Home), Home Department (Spl-10), 12th floor, New Administrative building, Mantralaya, Mumbai on 09.07.2024 after signature of detenue and the copy of the same has been submitted through email on 10.07.2024 to the Secretary Advisory Board, Home Department (Spl), Mantralaya, Mumbai. Both the copies are attached herewith collectively.”

In contrast, the additional affidavit filed by the Deputy Secretary, Home Department, pursuant to the amendment, make a reference to the receipt of the representation of the detenu dated 09.07.2024 to desk Special Branch- 10 i.e. Secretary, Advisory Board by email vide their letter dated 09.07.2024. It is thus the contention of the Deputy Secretary that, the representation appeared to have been received in the email inbox of desk Special Branch- 3B, Home Department, on 10.07.2024, but since the representations are usually received from concerned prison directly by desk Special Branch- 3B, it was not checked until 09.08.2024, and this was inadvertently. However once the representation is received, remarks were called from the Detaining Authority and the process was expedited and, ultimately, the representation was rejected by the Additional Chief Secretary (Home) on 16.08.2024.

3. The learned counsel for the petitioner has urged before us that, the Government has failed to act with utmost promptitude in taking decision on the representation of the detenu, and we find substance in the same, as according to the

State Government, since the email was received in the inbox of desk Special Branch-3B of the Home Department and not directly, and its cognizance was taken only on 09.08.2024, for one month the representation was not at all attended to. However contradicting the Home Department, the Superintendent, Thane Central Prison, who has filed his affidavit has categorically stated that, the Advocate of the detenu had submitted a representation dated 04.06.2024, which is received on 08.07.2024 and the representation was addressed to the Additional Chief Secretary (Home), Home Department (Spl-10), 12th floor, New Administrative Building, Mantralaya, Mumbai.

Merely because, we do not find substance in the argument of learned APP, Ms Deshmukh on behalf of the State Authorities that the floor of the building was wrongly mentioned and the floor which was mentioned was in fact the place of the office of Advisory Board. We are not impressed by the said submission since if it was addressed to the Additional Chief Secretary (Home), at whatever place it was received in Mantralaya, it should have been forwarded to the office of the Additional Chief Secretary which is in the same building.

Lethargic approach on behalf of the State Authorities has defeated a valuable right of the detenu of getting his representation decided expeditiously. On this ground, the detention order dated 02.05.2024 cannot be sustained, and by quashing and setting aside the same, the Rule is made absolute.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)