



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.832/2023

Santosh S/o Ramesh Bhati,
aged about 32 Yrs., Occ. Labourer,
R/o Belpura, Amravati, Tq. and
Distt. Amravati.

(Kapil Ramesh Bhati - Detenue)

... Petitioner

- Versus -

1. State of Maharashtra,
through Secretary, Preventive
Detention, Home Department,
(SPL) Mantralaya, Mumbai -32.

2. Commissioner of Police, Amravati.

... Respondents

Mr. Jemini Brijmohan Kasat, Counsel for the Petitioner.
Mr. I.J. Damle, A.P.P. for Respondent Nos.1 and 2.

CORAM: VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 6.5.2024.
DATE OF PRONOUNCING THE JUDGMENT: 8.5.2024.

ORAL JUDGMENT (Per Vrushali V. Joshi, J.)

Heard Mr. Jemini Brijmohan Kasat, learned Counsel
for the petitioner and Mr. I.J. Damle, learned A.P.P. for
respondent Nos.1 and 2. **Rule.**

2. The present petition is filed by the elder brother of detenue challenging the detention of his younger brother namely Kapil Ramesh Bhati vide order dated 31.8.2023 passed by respondent No.2 and confirmed by respondent No.1 on 11.9.2023.

3. The respondent No.2 Commissioner without lawfully verifying the truthfulness of the proposal of detention and in absence of any cogent material recorded the subjective satisfaction for detaining the detenue as per the proposal and passed the impugned order dated 31.8.2023 thereby detaining the detenue under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short "MPDA Act").

4. Three crimes are considered by respondent No.2 for passing the detention order. The detenue was released on bail in the said crimes and on the date of passing of the detention order

the detenue was not behind the bar and, therefore, the subjective satisfaction reached by respondent No.2 for detaining the detenue is illegal and unsustainable.

5. The detaining authority relied on two in-camera statement of witnesses while passing the impugned order of detention, however, the said in-camera statements have not been verified by the detaining authority. Therefore, it cannot be inferred that these in-camera statements are truthful and as such could not have been relied upon while passing the impugned detention order and, therefore, on this count alone the impugned detention order deserves to be quashed and set aside.

6. On the basis of in-camera statements the detenue was detained which do not show incidents of breach of public order but relate to law and order and, therefore, there is no breach of public order and detention order passed is illegal and liable to be quashed and set aside.

7. Learned A.P.P. has stated that the detenue was detained earlier and immediately after coming out he has committed the offences. Though he was released on bail he continued to commit the offences which reflects necessity of passing the detention order. Though the crimes are registered and he was on bail the detenue has continued his activities and, therefore, the detention order is rightly passed. The learned A.P.P. has reiterated the contents of the detention order in his reply and prayed to dismiss the petition.

8. Heard both sides. Perused the record.

9. The ground urged by the learned Counsel for the petitioner is that the detaining authority has not recorded its subjective satisfaction while passing the impugned order, particularly, the truthfulness of the incidents, which is a mandatory requirement of law.

10. We have perused the original record made available for our perusal. We find that the confidential statements of witnesses were submitted on 16.8.2023, both the statements were verified by the A.C.P. on 28.8.2023 and on 30.8.2023 the Assistant Commissioner of Police has 'seen' it. It clearly shows that the detaining authority has not lawfully verified the truthfulness of the incidents stated by the witnesses in their in-camera statements.

11. There remains no doubt in the light of the law laid down by the Apex Court in the case of Mrs. Mrunali Virdenra Lonare V/s. Commissioner of Police and others reported in 2014 SCC OnLine Bom 5115 that in-camera statement of person/witness can be utilized by the detaining authority for the purpose of arriving at subjective satisfaction for passing the order of detention. However, the Apex Court made it clear that the facts stated in the material relied upon should be true and have a reasonable nexus with the purpose for which the order is passed.

Necessary corollary, therefore, is that the detaining authority must be satisfied about the truthfulness of the statements made in the in-camera statements. Testing it from this touchstone, we find that neither in the detention order nor in the grounds of detention, the detaining authority has stated anything that he was satisfied about the truthfulness of the statements made in in-camera statements.

12. The detaining authority has to apply its mind to the truthfulness of the assertions made in the in-camera statements. In absence of the subjective satisfaction recorded in that behalf, the order of detention stands vitiated. In the present case though it is stated to be verified by respondent No.2, the detaining authority has put remark 'seen' on it which is not sufficient for reaching the subjective satisfaction.

13. Another ground of the petitioner is that the representation of the detenue is not disposed of expeditiously and there is delay in disposing the representation of the detenue. The

detention order was passed on 31.8.2023 and the Commissioner of Police issued approval on 11.9.2023. The Advisory Board has decided the representation on 17.10.2023. Thus, there is delay in deciding the representation of the detainee.

14. We shall now examine the proposition of law relating to delay in consideration and disposal of the representation of a detainee with reference to the judicial pronouncements. There are number of decisions of the Hon'ble Supreme Court dealing with in this aspect of law, we shall make reference to few.

15. In a decision in the case of Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and others reported in (1989)

3 SCC 173 the Supreme Court in para 19 has held as under:

“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. 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 the 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”

16. In the case of Mahesh Kumar Chauhan alias Banit Vs. Union of India and others reported in (1990) 3 SCC 148, relied by the learned counsel for the petitioner, the Supreme Court expressed its view in para 16, which reads thus:

“16. Now the unchallengeable legal proposition that emerges from a host of decisions, a few of which we have referred to above, is that a representation of a detenu whose liberty is in peril and deprived should be considered and disposed of as expeditiously as possible; otherwise the continued detention will render itself impermissible and invalid as being violative of the constitutional obligation enshrined in Article 22(5) of the Constitution and if any delay is occurred in the disposal of a

representation, such delay should be explained by the appropriate authority to the satisfaction of the Court.”

17. In the case of R. Paulsamy Vs. Union of India and another reported in 1999 CRI.L.J. 2897 the Supreme Court in para 5 has held as under:

“5. Mr. Jain has placed reliance on a decision of this Court (rendered by one of us Nanavati, J.) in Venmathi Selvam (Mrs.) v. State of Tamil Nadu and Anr. MANU/SC/0398/1998 : [1998]3SCR526. This Court held that though the delay was not long, it had remained unexplained and further though the delay by itself was not fatal, the delay which remains unexplained would be unreasonable. It was further observed that inspite of this well settled legal position, the State Government failed to explain satisfactorily that it had not dealt with the representation of the detenu as promptly as possible. The Court found in that case that representation was dealt with in routine manner and in view of indifference on the part of the Government the continued detention of the detenu was held to be illegal.”

18. In the case of Rashid Kapadia Vs. Medha Gadgil and others reported in (2012) 11 SCC 745 the Supreme Court in para 13 has observed as under:

“13. It is well settled that the right of a person, who is preventively detained, to make a representation and have it considered by the Authority concerned as expeditiously as possible, is a Constitutional right under Article 22(5). Any unreasonable and unexplainable delay in considering the representation is held to be fatal to the continued detention of the detenu. The proposition is too well settled in a long line of decisions of this Court. We do not think it necessary to examine the authorities on this aspect, except to take note of a couple of Judgments where the principle is discussed in detail. They are; Mohinuddin alias Moin Master v. District Magistrate, Beed and Ors. MANU/SC/0121/1987:(1987) 4 SCC 58 and Harshala Santosh Patil v. State of Maharashtra (2006) 12 SCC 211.”

19. It will be profitable to make reference of Harish Pahwa Vs. State of UP and others reported in (1981) 2 SCC 710

in which in para 5 the Supreme Court has held as under:

“5. In our opinion, the manner in which the representation made by the appellant has been dealt with reveals a sorry state of affairs in the matter of consideration of

representations made by persons detained without trial. There is no explanation at all as to why no action was taken in reference to the representation on 4th, 5th and 25th of June, 1980. It is also not clear what consideration was given by the Government to the representation from 13th June, 1980 to 16th June, 1980 when we find that it culminated only in a reference to the Law Department, nor it is apparent why the Law Department had to be consulted at all. Again, we fail to understand why the representation had to travel from table to "table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This

not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith.”

20. Now, the unchallengeable legal proposition that emerges from a host of decisions, a few of which we have referred to above is that the representation of a detainee whose liberty is in peril and deprived should be considered and disposed of as expeditiously as possible; otherwise the continued detention will render itself, impermissible and invalid as being violative of the constitutional obligation enshrined in Article 22(5) of the Constitution. If any delay is occurred in the disposal of the representation, such delay should be explained by the appropriate authority to the satisfaction of the Court.

21. Reverting to the fact of the present case as submitted by Mr. Kasat, learned counsel appearing on behalf of the petitioner, that there is delay in deciding the representation of the detainee for which there is absolutely no explanation as to why such delay had occurred. In the absence of any explanation wink

at or skip over or ignore such an infringement of the constitutional mandate and uphold an order of detention merely on the ground that the enormity of allegations made in the grounds of detention is of very serious nature, and it will vitiate the detention order. Therefore, we have no other option except to allow this petition on the ground that this undue and unexplained delay is in violation of the constitutional obligation enshrined in Article 22(5) of the Constitution of India rendering the impugned order invalid.

22. For the foregoing reasons, the petition is allowed.

We hereby quash and set aside the order dated 31.8.2023 passed by respondent no.2, so also order dated 11.09.2023 passed by the respondent no.1 and direct the detenue to be set at liberty forthwith, unless his detention is required for some other cause.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Tambaskar.