

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

CRIMINAL WRIT PETITION NO.56 OF 2025

Yogesh Ramchandra Kolekar

.... Petitioner

versus

Commissioner of Police & Ors.

.... Respondents

.....

- Ms. Jayshree Tripathi a/w Anjali Raut, Advocate for Petitioner.
- Mr. S. V. Gavand, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 28th FEBRUARY, 2025

JUDGMENT : (PER : SARANG V. KOTWAL, J.)

1. Heard Ms. Jayshree Tripathi, learned Counsel for the Petitioner and Mr. S. V. Gavand, learned APP for the State.
2. The Petitioner who himself is a detenu has challenged the order bearing D.O. No.20/CB/DP/2024 dated 25/10/2024 issued by the Respondent No.1, i.e. the Commissioner of Police, Solapur, under section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons

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engaged in Black-marketing of Essential Commodities Act, 1981 (for short 'MPDA Act').

3. Vide the committal order dated 25/10/2024, the Petitioner was directed to be detained in Yerwada Central Prison, Pune. Along with the detention order and the committal order, the Petitioner was served with the grounds of detention dated 25/10/2024. Paragraph No.4 refers to four registered offences at Jodbhavi Peth police station and Jail Road police station between January 2021 to May 2024. Paragraph No.4.1 refers to the Chapter Case No.101/2021 dated 06/07/2021 u/s 107 of Cr.P.C. After having referred to this past material, the detaining authority has stated at the end of the paragraph that the detention order was not based on the offences and the preventive action as mentioned in paragraph No.4 and 4.1. Those were mentioned only to highlight his previous criminal history. The detention order however was based on one registered offence i.e. C.R.No.379/2024 dated 03/07/2024 at Jodbhavi Peth police station u/s 384, 341, 143, 452, 504, 506 of the Indian Penal Code and the two 'in-camera' statements of witnesses 'A' and 'B'.

4. The C.R.No.379/2024 pertains to two incidents dated 16/05/2024 and 23/05/2024. The complainant was trying to carry out repairs in his shop. The Petitioner and his family members told him to leave some space so they could access their own place. On 23/05/2024, one Suraj Gaikwad and Ritesh Gaikwad threatened the complainant. On this basis, the FIR was lodged against the Petitioner and others. The two 'in-camera' statements of witness 'A' and 'B' pertain to the two incidents, which had taken place in the first and second week of September respectively. On both these occasions, the Petitioner had threatened those two witnesses. In the first incident, the Petitioner and his associates had pelted stones on witness 'A's shop and the neighbouring shop. In the second incident, he had beaten the witness 'B' and had pushed his vehicle causing the witness 'B' and his wife to fall down.

5. In paragraph No.6 of the grounds of detention, the detaining authority has recorded his subjective satisfaction based on the material described in paragraph Nos.5.3 and 5.4 to reach the subjective satisfaction that the Petitioner was acting in

a manner prejudicial to the maintenance of public order. It was further mentioned that the Petitioner had proved himself as a dangerous person within the meaning of section 2(b-1) of the MPDA Act.

6. Learned counsel for the Petitioner relied only on one ground i.e. ground (c) mentioned in the memorandum of Petition which reads thus;

“(c) The Petitioner say and submits that a representation of the Petitioner dated 18.11.2024 was sent to the Superintendent Yerwada Central Prison, Pune 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."

7. She submitted that the representation dated 18/11/2024 was not considered and decided by the authorities at the earliest thereby infringing the detenu's right under Article 22(5) of the Constitution of India.

8. Learned APP opposed these submissions by relying on the affidavit filed by the Deputy Secretary, Government of Maharashtra, Home Department, Mantralaya, Mumbai. The detaining authority in paragraph No.10 of his affidavit has stated that with reference to ground 5(c) of the Petition, he relied on the reply of the State Government, which needs to be taken into consideration. Thus, the detaining authority on his own has not explained about the ground 5(c) raised by the Petitioner and argued by the learned counsel for the Petitioner. The reply of the State Government reflected in the affidavit of Mr. Bhalwane is as under:

“2. With reference to Para 5(c) of the Writ Petition, it is submitted that the representation dated 21.11.2024 of the detenu was received by desk Special 3-B on 02.12.2024 along with detenu’s advocate letter dated 18.11.2024 by E-office through Yerwada Central Prison, Pune vide their letter dated 21.11.2024. Therefore, the remarks were called for, from the Detaining Authority i.e. the Commissioner of Police, Solpaur on the 03.12.2024 by Special Branch-3B Desk. The remarks of the Detaining Authority were received on 13.12.2024 vide letter dated 10.12.2024. Therefore, the concerned Assistant Section Officer submitted file containing remarks of Detaining Authority along with the representation of the detenu to the Section Officer on 13.12.2024. As being holidays on 14.12.2024 (Saturday) and 15.12.2024 (Sunday), the Section Officer endorsed it on 16.12.2024 and forwarded it to the Under Secretary on the same day. The Under Secretary endorsed it on the 16.12.2024 and forwarded it to the Deputy Secretary on the same day. The Deputy Secretary endorsed it on the 16.12.2024 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 16.12.2024 by applying his mind. The rejection of representation was communicated by post to the detenu vide letter dated 16.12.2024 through the Registry section of Home Department. Thus, the representation of the detenu was considered by the State Government as expeditiously as possible.”

9. According to learned counsel for the Petitioner, there is a delay at two stages and we are inclined to agree with her. The first of this delay is between 21/11/2024 to 02/12/2024. The representation was dated 18/11/2024. But it appears to have been forwarded by the Superintendent of Yerwada Central Prison on 21/11/2024. This fact is reflected in the affidavit of the Superintendent of Yerwada Central Prison, wherein he has stated that the representation dated 18/11/2024 submitted through the Advocate for the Petitioner was received in the prison on 21/11/2024 by post and it was forwarded to the Additional Chief Secretary, Home Department Special Branch (3-B), of the Government of Maharashtra, Mantralaya, Mumbai,

through email on 21/11/2024. Therefore, this representation had reached the concerned Desk in the Home Department of the Government of Maharashtra. The affidavit of Mr. Bhalwane, Deputy Secretary, Government of Maharashtra, Home Department, Mantralaya, Mumbai, shows that it was received by that Desk on 02/12/2024. There is absolutely no explanation whatsoever as to why it took so long for the representation to reach the said Desk from 21/11/2024 to 02/12/2024. The delay has remained unexplained. Thereafter, the remarks were called for from the detaining authority on 03/12/2024, by the Special Branch 3-B Desk. The remarks of the detaining authority were received on 13/12/2024 vide the letter dated 10/12/2024. Thus, it can be seen that again the period between 03/12/2024 to 10/12/2024 has remained unexplained. If the authorities had any acceptable plausible reason for taking time to consider the representation, it was their duty to explain it before the Court. However, in the present case, the delay occurred at two stages between 21/11/2024 to 02/12/2024 and then from 03/12/2024 to 10/12/2024. This particular delay has remained completely unexplained. This has affected the valuable right of

the detenu under Article 22(5) of the Constitution of India.

Resultantly, the detention order is liable to be set aside.

10. Hence the following order is passed :

ORDER

- (i) Rule is made absolute in terms of prayer clause (b), which reads thus:

“(b) The order of Detention bearing No.20/CB/DP/2024, dated 25.10.2024 issued under Section 3 of M.P.D.A. Act 1981 by the Respondent No.1 be quashed and set aside and on quashing the same, the petitioner be ordered for release forthwith.”

- (ii) The Petitioner be released forthwith if not required in any other case.

- (iii) The Petition is disposed of.

(S. M. MODAK J.)

(SARANG V. KOTWAL, J.)