

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 5327 OF 2025**

Umar Ali Shakir Shaikh Alias Umar Ali Gafar Shaikh

Age-23 years,

R/o. 169, Behind Ayana Masjid, Nana Peth,

Pune City.

... Petitioner

Vs.

1. Commissioner of Police, Pune

2. The State of Maharashtra

(Through the Secretary, Home Department (Spl),

Mantralaya, Mumbai.

3. The Superintendent,

Jalna Prison, Jalna.

... Respondents

Ms. Jayshree Tripathi a/w. Anjali Raut for the Petitioner.

Mr. J. P. Yagnik, APP for the Respondent-State.

P.S.I. Smt. Santoshi Jadhao a/w. H.C. Jorkar, Samarth Police Station, Pune.

CORAM : A. S. GADKARI AND

RANJITSINHA RAJA BHONSALE , JJ.

DATED : 23rd DECEMBER, 2025.

JUDGMENT (Per : A. S. Gadkari, J.):-

1) Detenu has invoked jurisdiction of this Court under Article 226 of the Constitution of India, impugning Detention Order dated 2nd June, 2025, bearing No. OW.CRIME PCB/DET/SAMARTH/SHAIKH/484/2025, passed 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 (Maharashtra Act No. LV of 1981) (Amendment-2015) (*for short* 'MPDA') by Respondent No.1 and the Committal Order of the even date, thereby directing his detention in Jalna Prison. The said Order is executed on the Petitioner on 2nd June, 2025.

2) Heard Ms. Tripathi, learned Advocate for the Petitioner and Mr. Yagnik, learned APP for the Respondent-State. Perused Affidavit filed by the Respondent-Authorities and the record produced before us.

3) Record reveals that, the Sponsoring Authority after perusing the record of the Petitioner reached to a conclusion that, the Petitioner is a dangerous person as contemplated u/s. 2(b-1) of the MPDA and therefore initiated the proposal to detain him under the provisions of MPDA. They accordingly forwarded their proposal to the Detaining Authority i.e. Respondent No.1. Respondent No.1 after reaching to its subjective satisfaction that, the Petitioner is a dangerous person as contemplated under the definition of the said Act, passed the impugned Detention Order dated 2nd June, 2025, and also passed Committal Order of even date. As noted above, the said Order is immediately executed on the Petitioner on the same date and he has been detained at Jalna Prison on 3rd June, 2025. As per the mandate of law, along with the Detention Order, the grounds of detention and the documents referred to and relied upon in the said

grounds are also supplied to the Petitioner.

4) Paragraph No.12 of the grounds of detention reads 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.”

As stated in paragraph No.12 of the Detention Order, it being a fundamental right of the Petitioner to make a representation to the State Government against the Detention Order, he through his Advocate, made a representation to the State Government. It is the contention of the learned Advocate for the Petitioner that, there is an inordinate delay of about 30 days in considering and deciding the representation made by the Petitioner to the State Government and therefore the Order of Detention cannot be sustained further and needs to be quashed and set aside.

5) Perusal of record indicates that, the Petitioner through his Advocate had submitted a representation dated 4th October, 2025, with the Superintendent of Jalna Prison i.e. Respondent No.3. Respondent No.3 forwarded the proposal of the Petitioner to the State Government, which

was received by the Desk Officer of Respondent No.2 on 10th November, 2025. The State Government after getting necessary information/remarks from the Detaining Authority, considered the said representation and rejected it on 13th November, 2025. Thus, there is delay of about 30 days in forwarding the representation of the Petitioner by Respondent No.3-Jail Authority to the State Government. The Affidavit-in-reply filed by the Superintendent of Jalna District Prison is as vague as possible. Paragraph No.5 of the said reply reads as under:-

“5. The Petition it is submitted that, the representation of the petitioner was received on 09.10.2025 representation was signed by the detainee on 10.10.2025 the said representation was sent to his lawyer on 10.10.2025 as per the request of the detainee and on 06.11.2025 the letter of the Hon. Government No. MPDA-0625/CR-279/Spl-3B was received in this office on 10.11.2025 and the Hon. Government has taken a decision regarding whether the detainee representation was received through the said letter and at that time the Hon. Government has submitted the said representation to the Hon. Government on 10.11.2025.”

We are amused after reading the submission on Affidavit that, the representation dated 4th October, 2025 was again forwarded to his lawyer after the Petitioner signs it. This unusual and novel practice is unknown to the established procedure adopted by all the concerned. It was the duty of the Superintendent of Prison to forward the proposal of

the Petitioner expeditiously to the State Government for its consideration.

The Deputy Secretary of Respondent No.2 has filed an Affidavit dated 4th December, 2025. In paragraph No.2 thereof, the concerned Authority has stated that, the representation dated 4th October, 2025 of the Detenu was received by its Desk Officer on 10th November, 2025, through Jalna Prison vide their letter dated 10th November, 2025. It is thus admitted by Respondent No.2-State that, the representation dated 4th October, 2025 was forwarded by the Jail Authority vide its letter dated 10th October, 2025 to the State Government on 10th November, 2025. The delay occurred in forwarding the said representation to the State Government for its consideration has not been explained by the Jail Authority in its Affidavit. The Hon'ble Supreme Court in the case of *Aslam Ahmed Zahire Ahmed Shaik Vs. Union of India & Ors.*, reported in (1989) 3 SCC 277, in paragraph Nos.11 and 12 has held as under:-

“11. Reverting to the instant case, we hold that the above observation in Vijay Kumar case will squarely be applicable to the facts herein. Indisputably the Superintendent of Central Prison of Bombay to whom the representation was handed over by the detenu on June 16, 1988 for mere onward transmission to the Central Government has callously ignored and kept it in cold storage unattended for a period of seven days, and as a result of that, the representation reached the government eleven days after it was handed over to the Jail Superintendent. Why the representation was retained by the

Jail Superintendent has not at all been explained in spite of the fact that this Court has permitted the respondent to explain the delay in this appeal, if not before the High Court.

12. In our view, the supine indifference, slackness and callous attitude on the part of the Jail Superintendent who had unreasonably delayed in transmitting the representation as an intermediary, had ultimately caused undue delay in the disposal of the appellant's representation by the government which received the representation eleven days after it was handed over to the Jail Superintendent by the detenu. This avoidable and unexplained delay has resulted in rendering the continued detention of the appellant illegal and constitutionally impermissible.”

As noted above and at the cost of repetition, we reiterate that, there is unexplained delay of 30 days in forwarding the representation of the Petitioner dated 4th October, 2025 (*sic*) 10th November, 2025 to the State Government. The Petitioner is having the right of his representation being decided expeditiously and a case of an inordinate or unexplained delay interferes with and violates his right under Article 22(5) of the Constitution of India. After applying the ratio laid down by the Supreme Court in the case of *Aslam Ahmed Zahire Ahmed Shaik* (*supra*), the unexplained delay by the Jail Authority has resulted in rendering the continue detention of the Petitioner as illegal and constitutionally impermissible.

6. We therefore allow the Petition by setting aside the impugned Detention Order.

6.1) Hence, the following Order:-

- (a) Detention Order dated 2nd June, 2025, bearing No. OW.CRIME PCB/DET/SAMARTH/SHAIKH/484/2025, issued by the Respondent No.1 is quashed and set aside.
- (b) Petition is allowed in terms of prayer clause (b).
- (c) Petitioner be released from Jail forthwith, if not required in any other case/cases, on production of an authenticated copy of the operative part of this Judgment.
- (d) Rule is made absolute in the aforesaid terms.
- (e) All concerned to act on the basis of an authenticated copy of operative part of this Judgment.

(RANJITSINHA RAJA BHONSALE, J.)

(A. S. GADKARI, J.)