



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.742 OF 2024

Sadhu Bhaskar Pawar] .. Petitioner
vs.
State of Maharashtra & Anr.] .. Respondents

Mr.Narayan Gopinath Rokade a/w Udaysinh Deshmukh, Pratibha Pawar, Abhay Suryawanshi, S. Ugalmugle and Dhananjay Bhosale for the Petitioner.

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

CORAM : BHARATI DANGRE & MANJUSHA DESHPANDE, JJ

DATE : 3rd JULY, 2024.

P.C.

1] While exercising the power of detaining a person in custody, by short circuiting the procedure of trial, in form of preventive detention necessarily cast an onerous responsibility upon the State Government as well as Detaining Authority to follow the provisions contemplated in Article 22 of the Constitution at every stage, including the stage of taking decision on the representation preferred by the detenu by virtue of the right conferred on him under Clause (5) of Article 22 of the Constitution of India.

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Time and again the personal liberty of a person has been the focus, while determining whether the Authorities are acting with utmost promptitude and whether the exercise of responsibility, which was expected to be discharged in preventively detaining a person is found to be justiciably exercised since, it is a well settled law that when liberty of a person is imperiled, immediate action should be taken by the relevant authorities.

2] In the present Writ Petition, the Petitioner/detenu is detained by an order of detention dated 19.12.2023 passed by the District Magistrate, Pune, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order and therefore, in exercise of power under Sub-Section (1) of Section 3 of the Act, he was directed to be detained for one year by the Detaining Authority by an order which was followed by a committal order directing him to be detained in Yerwada Central Prison, Pune.

The grounds of detention were also communicated to him and the State Government on 28.12.2023, confirmed his detention.

3] On being communicated with the grounds of detention, the Petitioner availed his right, by preferring a representation for consideration, by specifically highlighting the grounds on which, the order of detention was assailed, the representation being preferred on 25.01.2024.

One of the ground raised by the Petitioner amongst many others, is as regards the delay in decision on the representation and the ground is formulated as follows :-

“15. Petitioner further submits that, disposal of representation must be considered with reasonable expedition. So, non-decision of representation of the Petitioner, his continued detention is rendered, invalid and deserves to be set aside as it has affected the constitutional rights of detenu under Article 22(5) of the Constitution of India.

4] We have heard the learned counsel for the Petitioner in support of the ground which is attempted to be traversed by the Detaining Authority through its Affidavit dated 29.06.2024 and the Affidavit filed by the State Government on 21.03.2024 through the Joint Secretary of the Home Department.

On careful perusal of both the Affidavits, it is evident that upon the detention order being passed by the Detaining Authority, the Report under Section 3(3) of the Act of 1981 was received by the Government on 21.12.2023 and on due consideration, the detention order was approved on 28.12.2023.

A reference was made to the Advisory Board under Section 10 of the Act, on 28.12.2023 and the Advisory Board forwarded its opinion/ recommendation on 19.01.2024 and upon receipt of the same by the State Government on 30.01.2024, the order of detention was confirmed by the State Government.

5] As far as Ground No.15 of there being delay in deciding the

representation, the State Government has offered the following explanation :-

“2. With reference to Para 1, 6 and 8(10)(11) of Writ Petition, it is submitted that the representation of the detenu dated 25.01.2024 was received by Special Branch -3B Desk on 25.01.2024 (Late Evening) through Yerwada Central Prison, Pune vide their letter dated 25.01.2024. As being holidays on 26.01.2024 (Republic Day), 27.01.2024 (Saturday) and 28.01.2024 (Sunday), therefore, remarks were called for from the Detaining Authority i.e. The District Magistrate, Pune on the 29.01.2024 by Special Branch- 3B Desk. The remarks of the Detaining Authority were received on 21.02.2024 vide letter dated 21.02.2024 through E-mail. The concerned Assistant Section Officer submitted file containing remarks of Detaining Authority along with the representation of the detenu to the Section Officer on 22.02.2024. Section Officer endorsed on 23.02.2024 and forwarded it to the Joint Secretary (In-Charge) on the same day. As being holidays on 24.02.2024 (Saturday) and 25.02.2024 (Sunday), the Joint Secretary (In-charge) endorsed it on the 26.02.2024 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 26.02.2024 by applying his mind. The rejection of representation was communicated by post to detenu vide letter dated 26.02.2024 through the Registry section of Home Department. Thus, the representation of the detenu was considered by the State Government as expeditiously as possible. Thus it is wrong to say that State Government has not decided the representation.”

6] From the aforesaid Affidavit, it is evident that upon receipt of the representation, remarks were called from the Detaining Authority by the communication forwarded on 29.01.2024 and these remarks were received on 21.02.2024 via e-mail communication and thereafter, the State Government proceeded to consider the representation, which was ultimately rejected on 26.02.2024.

For the period consumed from 29.01.2024 to 21.02.2024 by the Detaining Authority, we have perused the Affidavit of the Detaining

Authority where an explanation is offered to the following effect :

“12. With reference to Para 8 (12 to 14 and 15) of the ground, I say that, the contentions therein are denied. The detention order shall be passed on the basis of two CR's and two in camera statements. The detaining authority has taken into consideration the material to arrive at his subjective satisfaction and pass the detention order. It is submitted that. the representation of the detenu dated 25/01/2024 was received by SP. Branch 3-B desk on 25/01/2024 from Yerwada Central Prison and parawise comments was called by the State on 29/01/2024 and representation of the detenu send on 30/01/2024 to the sponsoring authority to prepare the reply by proper channel. The concerned police station was busy in bandobast duty and other official work. Hence time was consumed from 30/01/2024 and some of the staff were on election duty and in between there was a holiday on Saturday and Sunday. On 04/02/2024, 10/02/2024, 11/02/2024, 18/02/2024 and on 19/02/2024 was a Shivaji Jaynti. Hence Parawise Comments received by my office on 20/02/2024 and then after the same has been submitted to State Government on 21/02/2024 and subsequently representation of the detenu was rejected on 26/02/2024. Hence there is no delay”.

7] It is the submission of the learned APP Mr. Yagnik that there is no delay in deciding the representation, but we are not ready to accept his submission as it is clearly seen from the response of the Detaining Authority, as well as the State Government that from receipt of the representation on 25.01.2024, it was decided on 26.02.2024 i.e. almost after a period of one month.

It being trite position of law that in case if the explanation offered is found to be satisfactory, the period consumed in taking a decision on the representation of detenu, may not amount to delay but when the expectation is that the detenu's representation has to be decided in an

expeditious manner, we have examined the reasons cited for explaining 30 days period consumed in deciding the representation. The Detaining Authority in a very casual manner has explained that parawise comments were called by the State Government on 29.01.2024 and the representation of the detenu was sent to the Sponsoring Authority to prepare a reply and thereafter it is stated that since the concerned Police Station was busy in bandobast duty and other official work and some of the staff was on election duty and in between there was Saturday and Sunday and even the Shivaji Jayanti intervened between this period, time was consumed to prepare the parawise comments to be offered to the Detaining Authority, which were in turn to be forwarded to the State Government.

8] Since the gap between the receipt and disposal of the representation is 30 days and the explanation offered, lack promptitude and expediency, as it is expected that the Authorities who are responsible for curtailing the fundamental rights of a citizen should act with utmost promptitude and diligence and with a sense of urgency, since we have noticed that this is precisely what is lacking in the approach of the Respondent-Authorities.

We are satisfied that there is unexplained delay in taking decision on the representation of the Petitioner and this delay not being convincing, has proved to be fatal to his right which is bestowed

upon him by the Constitution, with an expectation that the decision on his representation shall be taken by the State Government with striking urgency.

Since we are satisfied on this ground itself, that the Detention Order cannot sustain and is liable to be set aside.

For this reason, Writ Petition is made absolute by setting the impugned order of detention dated 19.12.2023.

Pursuant to the quashing of the said order of detention, the Petitioner is entitled to be set at liberty forthwith.

[MANJUSHA DESHPANDE, J]

[BHARATI DANGRE, J]