
(2014) 06 BOM CK 0119

In the Bombay High Court

Case No : Criminal Writ Petition No. 1889 of 2014

Ajay Suresh Alande

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5)

Citation : (2014) 4 BomCR(Cri) 69

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.S. Chandurkar, J

Bench : Division Bench

Advocate : Aisha Mohammed Zubair Ansari, Advocate for the Appellant; J.P. Yagnik, APP, Advocate for the Respondent

Judgement

A.S. Chandurkar, J.—The short issue that arises for consideration in this Criminal Writ Petition is whether the delay in deciding the representation made by the petitioner against the order of detention passed u/s 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as, "the MPD Act", for short), vitiates the same.

2. The respondent No. 2-The District Magistrate, Jalgaon passed an order dated 21.4.2014 under provisions of Section 3(2) of the MPD Act detaining the petitioner in exercise of powers conferred u/s 3(1) of the MPD Act. On being served with the aforesaid order of detention, the petitioner made a representation dated 8.5.2014 that was received by the State Government on 9.5.2014. The present Writ Petition has been filed on 8.5.2014 challenging the aforesaid order of detention on various grounds including sufficiency of material for passing the order of detention, absence of subjective satisfaction of the detaining authority, release of the petitioner on bail in various offences referred to in the detention order etc.. It is also the case of the petitioner that there has been undue delay in deciding the representation made by the petitioner against the aforesaid order.

3. On 8.5.2014, Rule was issued in the present Writ Petition making the same returnable on 10.6.2014. In support of the order of detention, the respondent No. 2 has filed affidavit dated 17.6.2014. The order of detention is sought to be justified by stating that the same was passed after considering the entire material on record and after arriving at the subjective satisfaction as contemplated. It is further stated that the parawise comments of the detaining authority were called for by the State Government by letter dated 9.5.2014, which were received by the said Authority on 17.5.2014. It is stated in paragraph-14 of the said affidavit that the parawise remarks were sent by the said Authority to the State Government on 4.6.2014.

4. Shri Bajarang Digambar Umate, Deputy Secretary, Home Department (Special), Mantralaya, Mumbai has filed an affidavit dated 19.6.2014 and with regard to the ground as urged by the petitioner pertaining to the delay in deciding the representation, in paragraph-2 it has been stated thus:-

2. With reference to Paragraph No. 4(x) of the Petition, it is stated that the Representation of the Detenu dt. 08.05.2014 was received in the MPDA desk on 09.05.2014 through Superintendent, Nashik Road Central Prison, Nashik vide letter dated 08.05.2014. The remarks were called from Detaining Authority i.e. District Magistrate, Jalgaon vide letter dated 09.05.2014. The remarks of District Magistrate, Jalgaon were received in this desk on 06.06.2014 vide letter dated 04.06.2014. The Assistant submitted the File to the Under Secretary on 06.06.2014. The Under Secretary endorsed it on 07.06.2014 and forwarded it to Deputy Secretary on the same day. The Deputy Secretary endorsed it on 09.06.2014 and forwarded it to the Additional Chief Secretary (Home) on same day. The Additional Chief Secretary (Home) considered the representation on 11.06.2014 and rejected it. The file received in Desk on 12.06.2014 and the rejection of representation was communicated to the detenu by the State Government vide letter dt. 12.06.2014. Thus the representation of the detenu was considered by the State Government as expeditiously as possible. Hence, the contention of the petitioner raised in this paragraph is not true.

5. Mrs. A.M.Z. Ansari, the learned Counsel for the petitioner has urged that the order of detention dated 21.4.2014 was vitiated on various grounds. It was submitted that there was no material on record to justify the order of detention. The Detaining Authority did not arrive at its subjective satisfaction before passing the order of detention. The fact that the petitioner had been released on bail in various offences referred to in the order of detention has also not been taken into consideration. Insofar as the aspect of delay in deciding the representation made by the petitioner is concerned, it is submitted that though the petitioner had made due representation on 8.5.2014 the same came to be decided only on 12.6.2014. Thus, a period of more than one month was taken by the State Government in deciding the aforesaid representation. There is no satisfactory explanation as to why the State Authorities required such a long time to decide said representation. Relying upon the decision of the Supreme Court in the case

of Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Others, as well as the judgment dated 5.5.2014 passed by the Division Bench of this Court in Criminal Writ Petition No. 731/2014 (Madhukar Ramkrushna Patil Vs. District Magistrate and Ors.), it was urged that in absence of any satisfactory explanation for the delay in deciding the petitioner's representation, the order of detention stood vitiated.

6. Shri J.P. Yagnik, the learned Assistant Public Prosecutor on the other hand by relying upon the affidavits filed on behalf of respondent Nos. 1 & 2 has supported the order of detention. It is submitted that the said order was passed by the respondent No. 2 after being fully satisfied with regard to the need to detain the petitioner. It was submitted that proper explanation had been furnished with regard to the period taken for deciding the petitioner's representation. It was, therefore, submitted that there was no case made out for interfering with the impugned order.

7. As stated above, the order of detention has been put to challenge on various counts. However, considering the fact that the period of more than one month was required for considering and deciding the representation made by the petitioner, the challenge to the order of detention on the ground of delay in deciding the representation is being examined first.

8. A detenu has been conferred a statutory right under provisions of Section 3(3) of the MPD Act to make a representation against the order of detention. The right to make a representation against the order of detention is also required to be examined in the light of the provisions of Article 22(5) of the Constitution of India. The law with regard to a detenu's right to have his representation considered as expeditiously as possible is recognized in view of use of the expression "as soon as may be" occurring in Article 22(5) of the Constitution of India. The law in this regard is well settled and a reference to a few leading judgments would suffice.

In Rama Dhondu Borade (supra), a period of about 32 days which was taken from receipt of the representation and service of order of rejection was found to be fatal to the order of detention. In paragraphs 19 and 20, the Supreme Court in the said judgment observed thus:

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 of India. 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 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.

20. True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the word "as soon as may be" occurring in Article 22(5) of the Constitution reflect that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention.

In *Rajammal Vs. State of Tamil Nadu and Another*, the Supreme Court held that in matters relating to delay in deciding a representation, the test was not the duration or range of delay but as to how it was explained by the Authority concerned.

In Criminal Writ Petition No. 731 of 2014 (*Madhukar Ramkrushna Patil Vs. District Magistrate & Ors.*) decided on 5.5.2014, the Division Bench of this Court, to which one of us (A.S. Oka, J.) was a party, has held that even in absence of the remarks from the Detaining Authority, the Additional Chief Secretary (Home) was duty bound to consider and decide the representation made with utmost dispatch.

9. Thus, it is clear that once a representation is received from the detenu by the State Authorities, a decision on said representation is required to be taken "as soon as may be". A perusal of the affidavit filed on behalf of respondent No. 1, to which reference has been made earlier, reveals that after receiving the petitioner's representation, remarks were called from the Detaining Authority on 9.5.2014 and the same were received on 6.6.2014. Thereafter the said remarks were forwarded by the Under Secretary to the Deputy Secretary and thereafter by the Deputy Secretary to the Additional Chief Secretary (Home), who ultimately rejected the representation on 11.6.2014. The Detaining Authority has subsequently filed another affidavit dated 23.6.2014 in which it is stated that though parawise comments were prepared on 23.5.2014 the same were sent to the State Government only on 4.6.2014. From the above, it is clear that though the State Government was not required to call for remarks of the Detaining Authority and was required to consider the representation on the basis of the material available, it chose to seek the comments of the Detaining Authority. The Detaining Authority though prepared the parawise comments on 23.5.2014 forwarded the same to the State Government only on 4.6.2014. There is reference to personal difficulty of the Detaining Authority during said period

which according to the said Authority resulted in time being consumed for sending the comments to the State Government. But there is no explanation as to why the parawise comments were not dispatched on 23rd May, 2014 itself.

10. In view of the settled position of law, it is obvious that there is no sufficient and plausible explanation for the period of about 35 days being required for deciding the petitioner's representation. In absence of any justifiable explanation, it is clear that by consuming a period of about 35 days, for which there is no reasonable explanation, the State Authorities have taken unreasonable time in deciding the petitioner's representation. There is, thus, violation of the constitutional mandate under Article 22(5) of the Constitution of India and the same has resulted in vitiating the impugned order of detention. On this short ground, the order of detention dated 21.4.2014 will be required to be set aside.

11. As we have upheld the challenge to the order of detention on the ground of unreasonable delay in deciding the representation made against it, it is not necessary to examine other challenges raised by the petitioner. Hence, we pass the following order:

[i] Rule is made absolute in terms of prayer clause [a] which reads thus:

(a) This Hon"ble Court be pleased to issue a Writ of Habeas Corpus or any other appropriate Writ, order or direction quashing and setting aside the impugned order of detention bearing No. Dandpra-4/S-R/01/2014/2013 dated 21.04.2014 (Annexure "A"), issued by Rubal Aggarwal, District Magistrate, Jalgaon, against Chetan Suresh Alande, the detenu be released from detention forthwith and be set at liberty.

[ii] All concerned to act upon an authenticated copy of the operative part of the order.