

(2022) 11 BOM CK 0070

In the Bombay High Court

Case No : Criminal Writ Petition No. 2651 Of 2022

Devendra Ramlal Bidlan

APPELLANT

Vs

Commissioner Of Police And Others

RESPONDENT

Date of Decision : 18-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 22(5)
Indian Penal Code, 1860 — Section 34, 307, 323, 504
Arms Act, 1959 — Section 4(25)

Citation : (2022) 11 BOM CK 0070

Hon'ble Judges : A.S. Gadkari, J; Milind N. Jadhav, J

Bench : Division Bench

Advocate : Jayshree Tripathi, J.P. Yagnik

Final Decision : Disposed Of

Judgement

Milind N. Jadhav, J

1. By the present Petition, Petitioner has challenged his Order of detention dated 17.05.2022 passed by Respondent No.1 – Commissioner of Police, Pune City under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons engaged in Black Marketing of Essential Commodities Act, 1981 (for short "the said Act").

2. Have heard Ms. Tripathi, learned Advocate appearing for the Petitioner and Mr. Yagnik, learned APP appearing for the Respondents and with their able assistance perused the record of the case.

3. The learned Advocate for Petitioner has pressed the following two principal grounds for challenge to the Detention Order for our consideration:-

"b. The petitioner says and submits that a representation of the petitioner dated 26.07.2022 was sent to the Superintendent Nagpur Central Prison, Nagpur 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 of the petitioner, thereby the State Government has delayed in considering the representation of the petitioner expeditiously and diligently and communicating the result to the petitioner. The said authority i.e. State Government is 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.

c. The petitioner says and submits that the detaining authority has taken into consideration C.R. No.342 of 2021 u/sec. 307, 323, 504, 34 IPC & U/Sec. 4(25) of Arms Act & U/Sec. 37(1)/135 of MPA dated 22.11.2021 against the petitioner to arrive at his subjective satisfaction and pass the detention order. The petitioner submits that in the narration of the said ground in para 5.1 of the grounds of detention it is clearly mentioned that he was arrested on the 26.11.2021, and was released on bail on 25.02.2022. It is to be noted that in the compilation of documents an operative part of the order granting bail by the Addl. Sessions Judge-Pune is placed before the detaining authority and copy furnished to the detenu. The detenu further submits that law is well settled, any said document, more so a Bail Order granting bail to the detenu in the relied on offence which may have influenced/affected the subjective satisfaction of the authorities must be placed in entirety before the authorities and copy of the same has to be furnished to the petitioner to enable him to make an effective representation, in this case there is only a cryptic order/operative order placed before the detaining authority, hence the detaining authority was not able to apply his mind to the reasons assigned by the Sessions Court while granting bail, thereby vitiating the subjective satisfaction of the detaining authority. In fact there is a bail Order running into 4 pages which is vital and most important document which is neither placed before the detaining authority nor copy furnished to the detenu in the compilation of documents running into 397 pages approx. Law is well settled that non-placement of relied on and relevant documents as vital as Bail Order Vitiates the detention order. This shows total non-application of mind of the authorities and as a result of non-furnishing such vital documents like bail application and bail order the detenu is deprived of making any effective representation guaranteed under Article 22(5) of the Constitution of India. Non placement of vital documents also results in non-communication of grounds of detention. Thus both facts of Article 22(5) of the Constitution of India is violated. The order of detention is illegal and bad in law for non furnishing of relied on and most important documents like bail order, liable to be quashed and set aside."

4. The Detention Order alongwith the ground of detention was served on the Petitioner on 22.05.2022.

5. At the outset, Mr. Yagnik would submit that in the present case copy of the

report and proceedings of the opinion of the Advisory Board dated 10.06.2022 has not been placed on record. In our opinion, however that may not be necessary for deciding the present Petition in view of the representation of the Petitioner having not been decided by the Respondents to which we have referred to in detail.

6. Admittedly, it is not in dispute that Petitioner addressed a detailed representation dated 26.07.2022 challenging his Detention Order, inter alia, on the aforementioned grounds and submitted the same to the Government through the Superintendent of Jail, Nagpur Central Prison, Nagpur. The Deputy Superintendent of Nagpur Central Prison, Nagpur (Respondent No.3) has filed her Affidavit-in-Reply dated 26.09.2022 wherein the following averments are made:-

"5. I say that the said detenu has submitted his representation dated 26.07.2022 and same is received on 29.07.2022 through his Advocate Mr. V.N.Tripathi to this office against the order of detention.

6. I say that this office completing the formalities, it was forwarded to the office of Hon. Secretary, Counselling Board (Special-10), Government of Maharashtra, Mantralaya, Mumbai vide this office letter NO. JC/Detenu/DRV/7732/22 dated 30.07.2022 by email and by post also. The copy of forwarding E-mail receipt dated 30.07.2022 is annexed herewith as Annexure No.R-I.

7. I say that inadvertently this office forwarding the representation to the office of Hon. Secretary, Counseling Board (Special-10), Government of Maharashtra, Mantralaya, Mumbai instead of forwarding to the office of Addl. Chief Secretary (Home), Home Department (Special) Government of Maharashtra, Mantralaya, Mumbai."

7. That apart, perusal of the Affidavit-in-Reply dated 02.09.2022 filed by Ramesh M. Manale, Deputy Secretary, Government of Maharashtra, Home Department (Special) reveals that the representation dated 26.07.2022 (copy of which is annexed at page No.32 and 33) was not received by the designated Competent Authority. This fact is confirmed by the Respondent No.3 in her Affidavit.

8. Thus it is seen that admittedly there has been a gross delay in forwarding the representation given by the Petitioner to the concerned Authority. In view of the same Petitioner's representation therefore could not be considered by the State Government expeditiously and in accordance with law. It is settled law as held by the Supreme Court in the case of Rashid Kapadia Vs. Medha Gadgil and Ors. (2012) 11 SCC 745, 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). That any unreasonable and unexplainable delay in considering the representation is held to be fatal to the continued detention of the detenu.

9. It can be seen from the above extracted portion from the Affidavit filed by the

Deputy Superintendent of Nagpur Central Prison, Nagpur that her office had inadvertently committed a gross mistake in forwarding the representation by email and post to the office of Hon. Secretary, Counseling Board (Special-10), Government of Maharashtra instead of forwarding it to the Competent Authority i.e. the Additional Chief Secretary (Home), Home Department (Special), Government of Maharashtra.

10. In view of the above, we have no option, but to come to the conclusion that the Detention Order dated 17.05.2022 cannot be sustained on the above mentioned ground alone and it is accordingly required to be set aside.

11. Though the Petitioner has raised several other grounds on merits, in view of the above conclusion, we do not think it necessary to go into the other contentions raised.

12. In the circumstances, we quash and set aside the impugned Detention Order dated 17.05.2022 bearing No.OW.NO./CRIME PCB/DET/BIDLAN/156/2022 and direct that the detenu be released forthwith unless wanted in some other case.

13. In view of the above, Writ Petition stands disposed of.