
(2020) 11 BOM CK 0046

In the Bombay High Court

Case No : Criminal Writ Petition No. 1576 Of 2020

Rohit Sidram Khatal

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 27-11-2020

Acts Referred:

Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drug-Offenders/Dangerous Persons And Video Pirates Act, 1981 — Section 2(b)(1), 3
Constitution Of India, 1950 — Article 22(5), 226

Citation : (2020) 11 BOM CK 0046

Hon'ble Judges : S.S. Shinde. J;M.S. Karnik, J

Bench : Division Bench

Advocate : Jayashree Tripathi, U.N. Tripathi, J.P. Yagnik

Final Decision : Disposed Of

Judgement

,,,,

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.,,,,

2. This Petition filed under Article 226 of the Constitution of India challenges the order of detention dated 17/3/2020 issued under Section 3 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 (hereinafter referred to as "the MPDA Act" for short) by the",,,,,

respondent No.1 " the Commissioner of Police, Solapur.",,,,,

3. Briefly stated, the grounds of detention states that the petitioner/detenu is a dangerous person and weapon wielding desperado. The petitioner and",,,,,

his associates move around the various areas within the jurisdiction of Faujdar

Chawadi Police Station and commit serious offences like robbery," ,,,,

causing serious hurt, stone pelting by making unlawful assembly, extortion, attempt to commit murder, molestation, and house-trespass holding deadly" ,,,,

weapons like knife, gupti, sura, sword, hockey stick, iron pipe, stones and lathi. It is stated that the petitioner has unleashed a reign of terror and has" ,,,,

thereby become a habitual danger to the lives and properties of the people residing and carrying out their daily business in the areas. The details of as" ,,,,

many as 9 criminal cases registered against the petitioner at Faujdar Chawadi Police Station are stated. The details as regards the preventive action" ,,,,

taken against the petitioner is also stated. In-camera statements of Witness A?? A?? and A??B?? came to be recorded. Considering the materials" ,,,,

on record, respondent No.1 A?" Detaining Authority was satisfied that the petitioner is a dangerous person within the meaning of sub-section 2 (b-1) of" ,,,,

the MPDA Act. The detention order is dated 17th March, 2020." ,,,,

4. The petitioner made a representation dated 6th July, 2020 which was received by the Superintendent of Jail, Yerwada Central Prison, Pune, on 20th" ,,,,

July, 2020. On the very same day i.e. on 20th July, 2020, the representation was forwarded to the State Government vide Outward No.2894/2020" ,,,,

dated 20th July, 2020. The representation was considered by the Additional Chief Secretary (Home) and was rejected by an order dated 18th August," ,,,,

2020. ,,,,

5. Though the order of detention is challenged on various grounds as stated in the Petition, learned counsel for the petitioner restricted her challenge to" ,,,,

the grounds stated in paragraphs (d), (e) and (f) of the Writ Petition." ,,,,

6. The respondent No.1 A?" detaining authority has filed an affidavit duly affirmed by him dated 26th August, 2020 in support of the order of detention." ,,,,

An affidavit has also been filed by Shri Aniruddha Venkatesh Jewlikar on behalf of respondent No.2 A?" the State of Maharashtra dealing with the issue" ,,,,

of consideration of the representation made by the detenu and consequent rejection thereof vide order dated 20th August, 2020. Shri Umaji Tolaram" ,,,,

Pawar, Superintendent of Jail, Yerwada Central Prison, Pune A?" respondent No.3 has filed an affidavit indicating the details of the receipt of the" ,,,,

representation of the detention and forwarding the same to the State Government. ,,,,

7. We have heard learned counsel for the parties. We have gone through the

Memo of the Petition, annexures and the record. We deal with the",,,, grounds as urged by the petitioner at seriatim.,,,,

GROUND (E) OF THE PETITION:.,,,,

8. Learned counsel for the petitioner firstly pressed ground (E) of the Writ Petition. According to her, the representation made by the detenu is not",,,,

considered expeditiously and diligently, thereby violating the right to make representation under Article 22(5) of the Constitution of India. According to",,,,

learned counsel for the petitioner, long and unexplained delay in considering and deciding the representation of the detenu would vitiate the order of",,,,

detention. Learned counsel for the petitioner submitted that the representation is dated 6th July, 2020 and the same came to be decided only on 18th",,,,

August, 2020. There is no explanation whatsoever much less a satisfactory explanation for the delay in deciding the representation.",,,,

9. Learned APP Shri Yagnik invited our attention to the affidavits filed by the respondents. He would submit that there is no delay in deciding the",,,,

representation. According to him, the representation dated 6th July, 2020 was received by the respondent No.3 â€" Superintendent of Jail on 20th July",,,,

2020. The same is received in the Special Branch-3B Desk on 11th August, 2020. Thereafter, the remarks were called for of the detaining authority",,,,

on 11th August, 2020. The remarks of the detaining authority were received vide letter dated 17th August, 2020. The file containing the remarks of the",,,,

detaining authority along with the representation of the detenu was sent to the Deputy Secretary (In-charge) on 17th August, 2020. Upon",,,,

endorsement, the same was forwarded to the Additional Chief Secretary (Home) on the same day. The Additional Chief Secretary considered the",,,,

representation of the detenu and the remarks of the detaining authority and rejected the representation on 18th August, 2020 by applying his mind",,,,

independently. The rejection of the representation was communicated to the detenu vide letter dated 18th August, 2020. Shri Yagnik would submit that",,,,

the representation of the detenu was considered by the detaining authority as expeditiously as possible. According to him, this ground of challenge is",,,,

without any merit.,,,,

10. As indicated earlier, the order of detention is dated 17th March, 2020. The representation dated 6th July, 2020 of the detenu was received by the",,,,

Superintendent of Jail on 20th July, 2020. In paragraph 5 of the affidavit of

respondent No.3 it is clearly mentioned that the representation dated 6th",,,,,

July, 2020 was received by him on 20th July, 2020. On the very same day i.e. on 20th July, 2020, the signature of the detenu was obtained and after",,,,,

completing the formalities the representation was forwarded to the State Government vide letter dated 20th July, 2020 bearing Outward No.2894/2020.",,,,,

The same was also sent by Speed-post and the same was also sent by E-mail on 20th July, 2020. It is further averred that on tracking it is confirmed",,,,,

that the same was received by Home Department, Mantralaya, Mumbai. It is, therefore, stated by the Superintendent of Jail, Yerwada Central Prison,",,,,

Pune, that there is no delay on his part in forwarding the representation.",,,,

11. In the affidavit filed on behalf of the respondent No.2 " the State of Maharashtra, it is mentioned that the representation of the detenu dated 20th",,,,,

July, 2020 was received in the Special Branch-3B Desk on 11th August, 2020 through the Superintendent of Jail, Yerwada Central Prison, Pune, vide",,,,,

letter dated 20th July, 2020. No doubt, for the period from 11th August, 2020 to 18th August, 2020 viz. the date on which the representation was",,,,,

rejected and communicated to the detenu, respondent No.2 has offered a satisfactory explanation. However, for the period from 20th July, 2020 till",,,,,

11th August, 2020 there is absolutely no explanation much less a satisfactory explanation for the delay in processing the representation. It is thus seen",,,,,

that the representation dated 6th July, 2020 of the petitioner is not considered expeditiously and diligently. No doubt, the delay in consideration of the",,,,,

representation of the detenu is not fatal if the delay is satisfactorily and reasonably explained. However, in the present facts for the period from 20th",,,,,

July, 2020 till 11th August, 2020 there is absolutely no explanation forthcoming and therefore, in our opinion, the order of detention would stand vitiated",,,,,

on the ground of delay in deciding the representation. For coming to this conclusion we draw support from the decision of the Honâ??ble Supreme",,,,,

Court in the case of Harish Pahwa vs. State of Uttar Pradesh¹ and Rashid Kapadia vs. Medha Gadgil and others² where Their Lordships considered",,,,,

the question of delay in deciding the representation made by the detenu in the context of violating the valuable right conferred under Article 22 (5) of",,,,,

the Constitution of India. These decisions squarely apply in the present case.",,,,,

GROUND (F) OF THE PETITION:,,,,,

SR. NO.,Police Ofcer,"Order No. , Date",Section,Status

2,ACP Div-01,287/2013 Dt.21/11/2013,"u/s. 107 of CrPC, 1973","On 05/02/14
fnal bond

has been taken for

good behaviour.

20. Learned APP relied upon the decision of the Honâ??ble Supreme Court in the case of Piyush Kantilal Mehta vs. Commissioner of Police,",,,,

Ahmedabad City and another⁶ to submit that even the Honâ??ble Supreme Court has held that the order of detention cannot be held illegal on the,,,,

ground that detenu was wrongly described in the order in as much as his name is diferent from that as given in the order. In our opinion, the said",,,,

decision has no application to the facts of the present case.

21. As aforesaid, the petitioner has raised other point articulated in ground (d) of the Petition. However, we do not intend to dilate on the said ground,",,,,

in view of the favourable fndings recorded on the other two points urged by the petitioner. Accordingly, we hold that continued detention of the",,,,

petitioner is illegal and vitiated. It is hit by the vice of Article 22(5) of the Constitution of India, of denial of right to make efective representation at the",,,,

earliest opportunity.

22. The present Petition, therefore, succeeds. Hence the following order.",,,,

ORDER,

(i) The Writ Petition is allowed.

(ii) The respondents are directed to release the petitioner - Rohit Sidram Khatal, forthwith, who has been detained in connection with the impugned",,,,

preventive detention order dated 17th March, 2020 bearing No.D.O.No.04/CB/DP/2020, unless required in connection with some other criminal case.",,,,

(iii) Rule is made absolute accordingly.

23. The Writ Petition is disposed of accordingly.

24. This judgment will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally,

signed copy of this judgment.