
(2001) 01 BOM CK 0026

In the Bombay High Court

Case No : Criminal Writ Petition No. 1116 of 2000

Shashikant A. Alavane

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 — Section 3(1)

Citation : (2001) BomCR(Cri) 502 : (2001) 2 BOMLR 182 : (2001) CriLJ 1503

Hon'ble Judges : G.D. Patil, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Shri U.M. Tripathi, for the Appellant; Mr. P. Janardhanan, Addl. A.G. and Mrs. V.K. Tahilramani, Public Prosecutor, for the Respondent

Judgement

A. M. Khanwilkar. J.

1. By this writ petition, under Article 226 of the Constitution of India, the Petitioner, father of Shri Anil (r) Sanjay Shashikant Alavane (hereinafter referred to as the Detenu), has challenged the order dated 2nd May, 2000 passed by Shri R. S. Mendonca, Commissioner of Police, Brihan Mumbai in exercise of powers u/s 3(1) of the M.P.D.A. Act, 1981.

2. The impugned order of detention was passed against the detenu on the ground that he was a dangerous person and it was necessary to detain him with a view to prevent him from acting in any manner prejudicial to the maintenance of public order under the said Act.

3. It is not necessary for us to advert to the grounds of detention in extenso since the only question argued before us is that the impugned order of detention is vitiated because of the delay in considering the representation made to the State Government. This contention is articulated in ground No. A of the writ petition.

4. The substance of the said ground is that a representation was made by the detenu against the impugned order of detention to the State Government dated 20.6.2000. The said representation was sent by post by the Detenu to the Hon"ble the Chief Minister and Hon"ble Deputy Chief Minister for their consideration and for rectification of the detention order. The assertion made in the writ petition is that no decision has been taken on the said representation and in any case there is no communication to the detenu until the filing of the writ petition (i.e. till 25th July, 2000). It is, therefore, contended that the detention is vitiated on the ground of delay in considering the said representation and the detenu's continued detention is illegal and without authority of law.

5. In response to the writ petition, in all eight affidavits have been filed on behalf of the Respondents before this Court. We would advert only to the relevant affidavits which have dealt with the aforesaid contention. With regard to the issue of delay in considering representation the first affidavit is of Shri S. H. Bhogale, Desk Officer, Home Department (Special) dated 20.9.2000. The relevant portion in the said affidavit reads thus :

"2. With reference to para 6(A) of the petition I say that the representation dated 20.6-2000, addressed to the Hon. Home Minister, Government of Maharashtra, Mantralaya, Mumbai 400 032, was received in Hon"ble Deputy Chief Minister's Officer on 30.6.2000. However. I may state that in the Grounds of Detention, the detenu was very clearly informed that, he had a right to make a representation to the State Government, if he wished to make such a representation to the State Government, he should address it to the Secretary to the Government of Maharashtra (Preventive Detention), Home Department, Mantralaya, Mumbai-32. It is surprising to note that despite the clear intimation, the representation has been directly addressed to the Hon"ble Chief Minister and Deputy Chief Minister. It appears that this has been done purposely with mala fide intention.

On 2.7.2000 there was a holiday being Sunday, hence the representation was processed and thereafter it was forwarded to Home Department. It was received in the Home Department on 3.7.2000, as the material was available on record, the representation was scrutinized and processed through Desk Officer to the Deputy Secretary for his consideration on 6.7.2000. The Deputy Secretary considered and forwarded it to the Secretary (Preventive Detention) for his consideration on 6.7.2000. The Secretary (Preventive Detention) considered and forwarded it to the Additional Chief Secretary (Home) for his consideration on 10.7.2000. On 8.7.2000 and 9.7.2000 there were holidays. The Additional Chief Secretary (Home) carefully considered and forwarded it to the Hon"ble Deputy Chief Minister on 11.7.2000. The Hon"ble Deputy Chief Minister carefully considered and rejected the said representation on 20.7.2000. It is submitted that there was a holiday on 16-7.2000. Accordingly a reply rejecting the said representation was given to the detenu vide Government letter dated 21.7.2000. Thus the said representation was considered independently and as expeditiously as possible. Therefore the averments made in this para are denied."

6. The second affidavit is of Shri M. B. Khopkar, Desk Officer, Home Department (Special], dated 8.11.2000. The relevant portion from the said affidavit reads thus :

"2. With reference to para 6(A) of the Writ Petition, I have to further say and submit that the powers of the State Government to consider the representation of the detenu under the M.P.D.A. Act had been delegated to the Additional Chief Secretary (Home) under the rules of business of the Government of Maharashtra by order dated 30.12.1999, vide Order No. PSA/2096/CR/81/SPL-3A. The said powers were delegated due to the extremely busy schedule of the original authority and due to the fact that he had to attend to urgent and confidential work at extremely short notice and was also required to go out of the city on official work at very short notice.

(a) I say that though it is mentioned in para 6(A) that the representation dated 20.6.2000 were sent by post the detenu to the Hon"ble Chief Minister and Deputy Chief Minister, however, only one representation dated 20.6.2000 was received. The said representation was received by the Office of the Deputy Chief Minister and it was addressed to the Hon"ble Deputy Chief Minister, Home Ministry. Maharashtra State, Mantralaya. Mumbai.

(b) As stated in the earlier affidavit filed by Shri S. H. Bhogale, Desk Officer, Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai, the representation dated 20.6.2000 was received in the office of the Hon"ble Deputy Chief Minister on 30.6.2000. Thereafter it was processed and it was placed before the Additional Chief Secretary (Home) for his consideration on 10.7.2000. The Additional Chief Secretary (Home) carefully considered the representation and the other papers which had been forwarded by the Detaining Authority on 11.7.2000. However, as there were remarks of the office of the Hon"ble Deputy Chief Minister on the representation that the file of the detenu be submitted to the Hon"ble Deputy Chief Minister therefore, the file was forwarded by the Additional Chief Secretary (Home) to the Hon"ble Deputy Chief Minister on 12.7.2000.

(c) I say that from 12.7.2000 till 16.7.2000 the Deputy Chief Minister in addition to his usual work schedule, he was extremely busy with confidential and secret meetings relating to the Law and Order situation not only in Mumbai but the entire State of Maharashtra due to certain development which could have had serious and wide reaching implications.

(d) I say that on 15.7.2000 the Deputy Chief Minister had a meeting with the delegates relating to Nirbhay Bano Andolan. On that day he also had to attend a meeting at the Mumbai Education Trust at Bandra (West) Mumbai. Thereafter, he had to attend a function at the Mumbai Zilha Madhyavarti Bank at Bandra (West) Mumbai.

(e) I say that on 16.7.2000 the Deputy Chief Minister in addition to other work had to go to Mankhurd at Navi Mumbai. He had to go there in connection with a

meeting of the United Nations Organisation in relation with the rehabilitation and resettlement of the slum dwellers residing next to the railway tracks, who had been affected by the Mumbai Traffic Project-2. On the same day in the evening the Hon''ble Deputy Chief Minister had to attend to another meeting at Sahyadri Guest House at Malbar Hill in relation to the Monsoon Session of the Assembly.

(f) I say that the Session of Legislative Assembly started on 17.7.2000 and the Hon''ble Deputy Chief Minister was busy for the Legislative Assembly work.

I further say that on 17.7.2000, the Hon''ble Deputy Chief Minister in addition to other urgent work had to attend two separate meetings of the Vidhan Sabha and Vidhan Parishad.

(g) I say that on 18.7.2000, in the morning the Hon''ble Deputy Chief Minister had a prior discussion relating to 3 important topics which were to be discussed in the Vidhan Sabha in the afternoon. In the afternoon, he attended the Vidhan Sabha and later the Vidhan Parishad. In the evening, he attended the meeting related to the report of State Backward Classes Committee. Thereafter, after the work of the both the houses of the Assembly was over, he proceeded towards his residence. There he attended another meeting relating to official work which went on late into the night.

(h) I say that on 19.7.2000, in the morning the Hon''ble Deputy Chief Minister had a prior discussion relating to important topics which were to be discussed in the Vidhan Sabha in the afternoon. In the afternoon, he attended the Vidhan Sabha and later the Vidhan Parishad. From 7.00 p.m. till about 9.30 p.m., the Hon''ble Deputy Chief Minister attended a meeting at Malbar Hill at the State Guest House. That day at about 11.30 p.m. he attended another meeting in relation to a confidential topic.

(i) I say that on 20.7.2000, the Hon''ble Deputy Chief Minister carefully considered the representation of the detenu and rejected the same. Thereafter the file was received back in the Home Department. Thereafter, the rejecting the representation was typed and it was sent to the detenu vide letter dated 21.7.2000. Thus, the representation was considered independently and as expeditiously as possible. I say that in the grounds of detention, the detenu was very clearly informed that, he had a right to make a representation to the State Government, if he wishes to make a representation to the State Government, he should address it to the Secretary to the Government of Maharashtra (Preventive Detention), Home Department, Mantralaya. Mumbai 400 032. However, despite the clear intimation, the representation was directly addressed and forwarded to the Hon''ble Deputy Chief Minister. It appears that this has been done purposely with malafide intention to see that there is delay in considering the representation. I say that if the detenu had addressed the representation correctly, the representation would have been dealt with independently and expeditiously. In any event, it is submitted that it is clear from the facts and circumstances of this case, that the representation of the detenu was considered

independently and expeditiously. Thus there is no merit in the say of the petitioner in this para."

7. Another affidavit of Shri M. B. Khopkar, Desk Officer, Home Department (Special) dated 23.11.2000 has been filed before us with a view to clarify certain matter relating to the issue of delay in considering representation. The explanation offered in the said affidavit is reproduced thus :

"2. With reference to para 6(A) of the Writ Petition, I have to further say and submit that the powers of the State Government to consider the representation of the detenu under the M.P.D.A. Act had been delegated to the Additional Chief Secretary (Home) under the rules of business of the Government of Maharashtra by order dated 30.12.1999, vide Order No. PSA/2097/CR/8/SPL-3A. The Hon"ble Deputy Chief Minister has to attend to urgent and confidential work at extremely short notice and is also required to go out of the city on official work at very short notice, due to which it is not always possible to deal with the work of considering the representation expeditiously, hence, with a view to ensure that the representation of the detenu should be dealt with expeditiously, hence, the powers to consider the representation were delegated to the Additional Chief Secretary (Home).

(a) I say that in the earlier affidavit filed by me. I have stated that the Hon"ble Deputy Chief Minister attended the meeting relating to Nirbhay Bano Andolan on 15.7.2000. In this regard I have to further say that on 10.7.2000 a letter of Advocate Shri Ahmed was received by the Hon"ble Deputy Chief Minister. The said letter was in relation to the Police atrocities which had occurred due to the desecration of the statue of Dr. Ambedkar on 11.7.1997, which had led to the formation of the "Gundewar Commission". In the said letter, it was further stated that a meeting had been arranged in relation to the above in which the representatives of various Sanghatanas and eminent citizens under the leadership of retired Lordship Justice Daud of the Hon"ble High Court would be meeting. Hence, time was sought from the Deputy Chief Minister to be present at such meeting. The Deputy Chief Minister had an extremely busy and tight schedule but looking to the extremely sensitive subject matter of the meeting i.e. communal riots in which many lives were lost and specially looking to the fact that the meeting was under the Chairmanship of the Hon"ble Lordship Justice Daud and looking to the fact that the meeting had to be held as close to 11th of July, 2000 as possible, the earliest appointment which could be given i.e. in the afternoon of 15.7.2000 was given. Looking to the nature of the matter, the fact that it is even today a very sensitive issue and looking to the fact that many eminent persons, were attending the meeting which was under the Chairmanship of the Hon"ble Lordship Mr. Justice Daud, the Deputy Chief Minister found it impossible to cancel the said meeting, though he was extremely busy with confidential meetings on an extremely sensitive issue.

(b) In respect of the other function attended by the Hon"ble Deputy Chief Minister on 15.7.2000 relating to Zilha Madhyavarti Bank at Bandra (W), I have

to say that the appointment of the Deputy Chief Minister relating to the said function was sought by letter dated 22.5.2000. On 6.7.2000 it was finally decided that the Deputy Chief Minister would attend the function which was on 15.7.2000 at 4.00 p.m. Accordingly, the concerned persons were informed. I say that as the discussions regarding the Deputy Chief Minister attending the said function were going on since more than one and half month and the details were finalised well in advance, hence despite the fact that the Deputy Chief Minister was busy with confidential and secret meetings in the period between 12.7.2000 till 16.7.2000, it was not feasible for the Deputy Chief Minister left Mantralaya at 3.20 p.m. to go towards Bandra (W) at 3.35 p.m. he reached the Mumbai Education Trust. He attended a meeting at the Mumbai Education Trust at Bandra (West), Mumbai. Due to extreme paucity of time, he could be there for hardly 5 minutes. Immediately, thereafter, he attended the function at the Mumbai Zilha Madhyavarti Bank at Bandra (West), Mumbai.

(c) I say that on 16.7.2000, the Deputy Chief Minister had to go to Mankhurd at Navi Mumbai. He had to go there In connection with a meeting in relation with the rehabilitation and resettlements of the slum dwellers. The said meeting related to a Global Campaign for secure tenure - a United Nations initiative to promote adequate shelter for the world's poor. This was in partnership with the National Slum Dwellers Federation, the Government of India, the Government of Maharashtra, Municipality etc. The appointment for the said meeting which was scheduled on 16.7.2000 was sought by letter dated 27.6.2000. I say that looking to the fact that a large number of Slum Dwellers would benefit, therefore, though it was a holiday and no official work was being done on that day, the Hon''ble Deputy Chief Minister decided to attend this function. Accordingly, the concerned authorities were informed that the Deputy Chief Minister would attend the function. In view of the nature of the said function which would affect the lives of a large number of Slum Dwellers, though it was a holiday and the Deputy Chief Minister was busy with an extremely sensitive issue, the Deputy Chief Minister attended the said function.

(d) I say that the Hon''ble Deputy Chief Minister and his personal secretary and other close staff were out of India in the last few days and they are expected back today i.e. 22.11.2000 hence, I crave leave to file a further detailed affidavit giving further details between 12.7.2000 till 20.7.2000 relating to the work and work schedule of the Deputy Chief Minister during that period, if necessary. Hence, it is prayed that time may be granted to file further affidavit till 28.11.2000.

(e) I say that on 20.7.2000, the Hon''ble Deputy Chief Minister carefully considered the representation of the detenu and rejected the same. Thereafter the file was received back in the Home Department. Thereafter, the rejecting the representation was typed and it was sent to the detenu vide letter dated 21.7.2000. Thus, the representation was considered independently and as expeditiously as possible. I say that in the grounds of detention, the detenu was

very clearly informed that, he had a right to make a representation to the State Government, if he wished to make a representation to the State Government, he should address it to the Secretary to the Government of Maharashtra (Preventive Detention). Home Department, Mantralaya, Mumbai 400 032. However, despite the clear intimation, the representation was directly addressed and forwarded to the Hon''ble Deputy Chief Minister. It appears that this has been done purposely with malafide intention to see that there is delay in considering the representation. I say that if the detenu had addressed the representation correctly, the representation would have been dealt with independently and expeditiously. In any event, it is submitted that it is clear from the facts and circumstances of this case, that the representation of the detenu was considered independently and as expeditiously as possible in the facts and circumstances of this case. Thus there is no merit in the say of the petitioner in this para."

8. Again further affidavit of Shri M. B. Khopkar, Desk Officer (Special), dated 27.11.2000 has been filed to explain some more details as to the steps taken while considering the representation which is reproduced thus :

"2. I file the affidavits in Writ Petitions relating to M.P.D.A. matters. I say that on 20.9.2000, I was out of Mumbai and hence, I did not file the affidavit in the present matter. I say that due to inadvertence the details relating to the processing of the representation (dated 20.6.2000) on 4.7.2000 and 5.7.2000 were not given. I crave leave of the Hon''ble Court to place those details on record.

(a) As stated in the earlier affidavit filed by Shri S. H. Bhogale, Desk Officer, Home Department (Special), Government of Maharashtra, Mantralaya, Mumbai, the representation dated 20.6.2000 was received in the Home Department on 3.7.2000. Thereafter it was processed. It was placed before the Deputy Secretary and the Secretary (Preventive Detention) on 4.7.2000. The Secretary (Preventive Detention) raised certain query in this matter. Hence, it was received back in the Department for answering the query. All the files were checked, necessary enquiries were made by the Desk Officer on 5.7.2000. Thereafter, he submitted note, answering the query and it was placed before the Deputy Secretary on 6.7.2000. I say that the further details relating to the dealing of the/ representation by the Home Department have been given in the affidavit-dated 20.9.2000 filed by the Home Department.

I say that on 20.7.2000 the Hon''ble Deputy Chief Minister carefully considered the representation of the detenu and rejected the same. Thereafter the file was received back in the Home Department. Thereafter, the memo rejecting the representation was typed and it was sent to the detenu vide letter dated 21.7.2000. Thus, the representation was considered independently and as expeditiously as possible.

It is submitted that It is clear from the facts and circumstances of this case, that the representation of the detenu was considered independently and as

expeditiously as possible. Thus there is no merit in the say of the petitioner in this para."

9. During the course of hearing of this petition, one of the Issue which arose for consideration was the manner of handling the files with regard to representations in detention matters. In response to the said issue further affidavit of Shri M. B. Khopkar, Desk Officer, Home Department (Special) has been filed before this Court dated 7.12.2000. The relevant portion from this affidavit is reproduced thus :

"3. As stated in the earlier affidavits the representation dated 20.6.2000 was received in the office of the Hon"ble Deputy Chief Minister on 30.6.2000. Thereafter it was processed and placed before the Addl. Chief Secretary (Home), who carefully considered the file on 11.7.2000. The Addl. Chief Secretary (Home) carefully considered the representation and the other papers which had been forwarded by the Detaining Authority. However, as there were remarks of the office of the Hon"ble Deputy Chief Minister on the representation that the file of the detenu be submitted to the Hon"ble Deputy Chief Minister, therefore, after the Addl. Chief Secretary (Home) considered the file on 11.7.2000, the file came to be returned back to the department on 12.7.2000. I say that in the peculiar facts of this case the papers were sent to the Deputy Secretary on 12.7.2000.

However, he did not attend the office, hence, the file was forwarded to the Hon"ble Deputy Chief Minister. The file was actually received by the Hon"ble Deputy Chief Minister's office on 14.7.2000. I say that the delay, if any, in consideration of the representation was due to the fact that the said representation was addressed and submitted directly to the office of the Hon"ble Deputy Chief Minister.

4. Without prejudice to the above, I further say that in the period between the receipt of the file in the office of the Hon"ble Deputy Chief Minister till 20.7.2000 no file pertaining to any detention matter was dealt with by the Hon"ble Deputy Chief Minister. The file relating to the present detenu was dealt as an urgent file.

(a) In the period between receipt of the file till 20.7.2000 only one file was dealt with by the Hon"ble Deputy Chief Minister. The said file was relating to the "Shrikrishna Commission". The said file was received on 11.7.2000. As this file related to judicial work this file was placed in the urgent category. The Hon"ble Deputy Chief Minister dealt with this file and on 15.7.2000 it was forwarded to the Home Department.

(b) In the period between receipt of the file by the office of the Hon"ble Deputy Chief Minister till 20.7.2000 only two other files were dealt with by the Hon"ble Deputy Chief Minister's office. Both the files were received on 14.7.2000 i.e. on the same day as the file pertaining to the representation of the detenu was received in the office of the Hon"ble Deputy Chief Minister.

(c) I say that one of the aforesaid files i.e. relating to the land at Latur was

directly forwarded to the office of the Hon''ble Deputy Chief Minister as he was the appropriate authority to deal with the file. The said file was not dealt with personally by the Hon''ble Deputy Chief Minister.

(d) The other file was forwarded to the Home Department on 15.7.2000. However, the said file does not pertain to our branch therefore at present I am unable to give any details pertaining to the said file. I crave leave to give the details pertaining to the said file as and when the same is available, if required. At present, I am unable to state whether the said file was personally dealt with by the Hon''ble Deputy Chief Minister or any other details pertaining to the said file.

5. I say that in the grounds of detention, the detenu was very clearly informed that, he had a right to make a representation to the State Government, if he wished to make a representation to the State Government, he should address it to the Secretary to the Government of Maharashtra (Preventive Detention), Home Department, Mantralaya, Mumbai 400 032. However, despite the clear intimation, the representation was directly addressed and directly forwarded the same to the office of the Hon''ble Deputy Chief Minister. It appears that this has been done purposely with malafide intention to see that there is delay in considering the representation. I say that if the detenu had addressed the representation correctly, the representation would have been dealt with independently and expeditiously. In any event, it is submitted that it is clear from the facts and circumstances of this case, that the representation of the detenu was considered as independently and expeditiously as possible. Thus therefore is no merit in the say of the petitioner in this para."

11. The sum and substance of the stand taken on behalf of the Respondents is that there is no delay in considering the said representation. The position that would emerge from the explanation offered by the Respondents in the form of various affidavits can be culled out in the following manner :-

Claim No. Particulars Amount (Rs.)

1. Towards interest @ 25% p.a. for delayed payment under various interim certificates 5,67,491.95

2. Market rate for the quantities allegedly executed beyond the deviation limit. 35,94,930.51

3. Towards refund of retention money. 1,87,500.00

12. Placing reliance on the abovesaid chronology of events it was vehemently argued on behalf of the Respondents that satisfactory explanation has been offered on behalf of the Respondents as to the reason for the time required for considering the representation which was received on 30.6.2000 and disposed of on 20.7.2000. Besides offering explanation, it was argued that the detenu cannot be permitted to take advantage of his own wrong if the detenu chose to make representation to the Deputy Chief Minister notwithstanding the express

appraisal to him that if he desires to make any representation to the State Government, the same should be addressed to the Secretary, Government of Maharashtra (Preventive Detention), Home Department, Special, Mantralaya, Mumbai to be submitted through the Superintendent of Jail. This fact has been apprised by the Detaining Authority to the detenu in para 7 of the grounds of detention furnished to the detenu. It is, therefore, contended that if the detenu chose to make representation in the manner other than the mode made known to him that he should not be permitted to make complaint about the time taken for disposal of his representation. In other words, it was submitted that the Respondents and consciously indicated the manner of making representation to the State Government to ensure early disposal of his representation which was in the interest of the detenu. But the detenu in the present case did not take recourse to the said mode suggested to him and took the risk of making representation directly to the Deputy Chief Minister. It was argued that the power vested with the State Government to consider the representation of the detenu under the Act was delegated to the Additional Chief Secretary, Home Department under the Rules of business of the Government of Maharashtra by order dated 30.12.1999 vide No. PS/2096/CDR/81/Spl--3A. The argument pressed into service on behalf of the Respondents is that the Court may consider the explanation with regard to the delay, if any, in the context of the reason for delegation of the authority by the State Government in favour of the Additional Chief Secretary. According to the Respondents the reason for delegation of powers was to ensure that the representations are attended with utmost dispatch. But, in a given case, if the detenu did not chose to opt for the said mode, then the ground of delay in consideration of his representation will not be available to him.

13. The Respondents in the last affidavit made an attempt to explain the movement of the file right from the time it was received in the office of the Deputy Chief Minister on 30.6.2000 till it was considered and rejected on 20.7.2000. Besides explaining the movement of the file the Respondents have also asserted that after the rejection of the representation the detenu was duly informed about the same by post on 21.7.2000. It may be noted that during the course of arguments the Petitioner has not made any grievance regarding non-communication of the decision, obviously because after the institution of the writ petition the detenu must have received the communication. In the circumstances, the present petition will have to be adjudicated only in the context of the question of delay in consideration of the representation between 30.6.2000 till 20.7.2000.

14. The counsel for the petitioner on the other hand would contend that the delay in consideration of the representation made to the Dy. Chief Minister is unexplained or that no satisfactory explanation is offered. According to him, although para 7 of the grounds of detention served on the detenu indicates that the representation to the State Government should be addressed to the Secretary to the Government of Maharashtra, but that by itself would not absolve

the Dy. Chief Minister of the statutory obligation to consider the representation as and when made to him by the detenu, it is submitted that it is the Dy. Chief Minister who is primarily responsible under the rules of business and is the State Government for that purpose with regard to the subject of preventive detention. The learned, counsel relied on the decision of the Apex Court in support of the submission that since the representation was addressed to the Dy. Chief Minister and he being the Competent Authority it was Incumbent upon the Dy. Chief Minister to consider the representation himself and the fact that the power of the State Government to consider representation had been delegated to the Addl. Secretary is of no consequence. The learned counsel for the petitioner further contends that in any case the said question does not arise for consideration in the present case having regard to the fact that on receipt of the representation on 30.6.2000 the Dy. Chief Minister has made an endorsement that the file be processed and note be submitted to him for appropriate action in the matter. It is, therefore, submitted that since the Dy. Chief Minister has himself entertained the representation the fact that the power was delegated to the Addl. Chief Secretary would be inconsequential while considering the question of delay in consideration of the representation by the Dy. Chief Minister. The learned counsel relied upon the observations of the Apex Court to contend that even if the representation was made to some other authority but if that authority was also competent to decide the representation then it is not open for that authority to not to consider the representation with utmost despatch. According to the petitioner, from the affidavits filed before this Court, it cannot be said that satisfactory explanation has been offered on behalf of the respondents to justify the delay of around 20 days in considering the representation. The learned counsel relied upon the decision of the Apex Court to contend that the Apex Court has frowned upon the slackness of the authorities in this behalf and has quashed the detention order even when the delay in consideration of the representation was as short as 5 days. He contends that it is the duty of the authority to deal with the representation continuously and from the explanation offered by different affidavits it was evident that the detenu's representation in the present case was not so handled. The petitioner has placed reliance on the decision of the Apex Court in; Kundanbhai Dulabhai Shaikh v. Distt. Magistrate, Ahmedabad and Ors., (Head Notes A, B and C and paras 22 and 23); Rumana Begum v. State of Andhra Pradesh and Anr.,; Raghavendra Singh v. Superintendent, District Jail, Kanpur and Ors., (Para 3) Mohinuddin v. District Magistrate, Beed and Ors.,; (Paras 5 to 8); Rajammal v. State of Tamil Nadu and Anr., (Paras 6 to 10); Rama Dhondur Borade v. V. K. Saraf, Commissioner of Police and Ors., (Paras 19 and 20) and of this Court Mahendra @ Babuwa Dashrath v. Satish Sahaney & Ors.,.

15. On the other hand the learned counsel for the respondents has relied upon the decision of the Apex Court in Raverdy Marc Germain Jules v. State of Maharashtra and Ors., and the unreported decisions of this Court in Cri. W. P. No. 565 of 1998 decided on 10.3.1999 (Paras 7 and 8) (Vishnu Sahai and Ranjana

Desai, JJ.) and Cri. W. P. No. 1241 of 1993 -decided on 9.11.1993 (Para 3) (M. L. Pendse and M. F. Saldanha, JJ.) to contend that if the detenu has committed mistake in sending representation to the wrong authority he is himself to be blamed for the said mistake.

16. There can be no doubt, about the settled legal position that the authority which is obliged to consider the representation should act with utmost despatch. Moreover, no delay should be caused on account of any indifference or lapse in considering the representation, for such delay would adversely affect the continued detention of the detenu. The mandate of law in consideration of representation is that there should be no indifference, slackness or callous attitude and any unexplained delay in the disposal of representation would be in breach of constitutional imperative and would render the continued detention impermissible and illegal. However, when the delay, if explained, it is the duty of the Court to examine whether the explanation is satisfactory and if the Court finds that there was justification for the time taken to consider the representation in that situation the question of infringement of any right of the detenu would not arise. The Court while considering the explanation, will keep in mind that the explanation is not vague and general but should receive acceptance of the Court that the representation was considered with utmost expedition. All the authorities cited on behalf of the petitioner have reiterated this well settled position. Keeping in mind the principles enunciated by the Apex Court we would proceed to examine the present writ petition.

17. There is no doubt that the grounds of detention furnished to the detenu, particularly para 7, would indicate that the detenu had a right to make representation to the State Government against the detention order and should he wish to make such a representation the same was to be addressed to the Secretary to the Government of Maharashtra, Preventive Detention, Home Department (Special). Mantralaya to be submitted through the Superintendent of Jail where the detenu was detained. In spite of this intimation the detenu chose to make representation directly to the Dy. Chief Minister, who is undoubtedly the State Government as provided for in the Rules of Business. The question whether the detenu can be permitted to take advantage of having addressed representation to the wrong authority need not detain us in this case, for the Dy. Chief Minister on receipt of the representation on 30.6.2000 made an endorsement to submit a note so that the representation could be decided by him. In view of this the question of the detenu being faulted with having made representation to the wrong authority does not arise for our consideration. Accordingly, the decisions relied on by the Respondents will have no application to the facts of the present case. It is also well settled, as would appear from the decisions of the Apex Court referred to above, on which the petitioner relies, that even if the representation was sent to the authority other than the authority mentioned in the grounds of detention that would not absolve that authority to act with utmost despatch if it was competent to decide the representation so received by it. However, as observed above, we are not called upon to examine

this aspect, for the Dy. Chief Minister, who was the State Government to whom representation could be made, himself took cognizance of the representation made by the detenu on 30.6.2000 and desired to consider the same himself on receiving necessary assistance in the form of note to be prepared by the concerned office. In the circumstances, from the pleadings filed before us, what transpires is that after the abovesaid endorsement was made by the Dy. Chief Minister, the file was handled by various persons on day-to-day basis from 3.7.2000. At this stage it would be appropriate to point out that 2.7.2000 was a holiday. From 3.7.2000 till 14.7.2000 the file was processed by different officers and ultimately reached the office of the Dy. Chief Minister ready for being considered by him. At this stage we may point out that there is slight discrepancy in the affidavits filed on behalf of the Respondents inasmuch as in affidavit dated 20.9.2000 it is stated that the representation was forwarded to the office of the Deputy Chief Minister on 11th July, 2000, whereas in subsequent affidavits dated 8.11.2000 and 23.11.2000 it is stated that the same was forwarded to his office on 12th July, 2000. Now in the last affidavit dated 7.12.2000 the Respondents for the first time have attempted to assert that the file was returned to the Department on 12.7.2000 and eventually reached the office of the Deputy Chief Minister only on 14.7.2000. Even if we were to accept the contents of the last affidavit that the file reached the office of the Deputy Chief Minister ready for consideration on 14.7.2000, however, the matter does not end at that. For the representation was eventually rejected by the Dy. Chief Minister only on 20.7.2000 and for which reason the petition is entitled to complain that there is delay in consideration of his representation. It is relevant to note that the later affidavits were filed by the Respondents during the course of hearing of the matter.

18. Insofar as the period between 14th to 20th July, 2000 is concerned the various affidavits filed before us reiterated the position that though the file reached in the office of the Dy. Chief Minister on 14.7.2000 ready for consideration, but the Dy. Chief Minister was busy with a sensitive issue of some significance which would have had direct repercussion at the State level on account of which he could not attend to the file in question even on 15.7.2000. On the following day, i.e. 16.7.2000, being holiday, the Dy. Chief Minister did not attend to any official work but was busy with the engagements which were fixed well in advance. With regard to 17th to 19.7.2000 the explanation offered on affidavit is that because of the Legislative Assembly and Vidhan Sabha and Vidhan Parishad in session the Dy. Chief Minister was required to attend to the same on priority basis and could not attend to any other work. The affidavit also indicates that the representation was considered and rejected on 20.7.2000 as soon as the Dy. Chief Minister was free from all other commitments and attended to official work in his office. The stand taken before this Court is that there is good and valid reason for the inability of the Dy. Chief Minister to consider the representation between 14.7.2000 till 20.7.2000 and it is not possible to even suggest that the representation remained unattended or that the same was

treated casually and not with utmost despatch.

19. The Petitioner's grievance is that the Deputy Chief Minister could find time to attend the meeting at Bandra and also at Mankhurd relating to slum dwellers and also other meetings but did not show any inclination to decide the representation pending before him since 14.7.2000. The Petitioner also vehemently criticized the explanation in the affidavits that the Deputy Chief Minister was busy in the Legislative Assembly and Vidhan Parishad and Vidhan Sabha on 17th to 19th. The said explanation offered in the affidavit is blissfully vague and far too general to receive acceptance by the Court. We were impressed by this argument and therefore called upon the Respondents to place on record the details as to how many files were attended by the Deputy Chief Minister between the relevant period. In response, the affidavit would indicate that no file pertaining to any detention matter was dealt with by the Deputy Chief Minister except that the present detenu on 20.7.2000. The affidavit also categorically asserts that from 14.7.2000 till 20.7.2000 only one file was dealt with by the Deputy Chief Minister which was relating to the matter arising out of SHRI KRISHNA COMMISSION. The file relating to the matter arising out of SHRI KRISHNA COMMISSION was received in the office of the Deputy Chief Minister on 11.7.2000 and the said file was placed in urgent category. This file was cleared from the desk of the Deputy Chief Minister only on 15.7.2000 and thereafter only 2 files were dealt by him. The affidavits suggest that the said two files were received in the office of the Deputy Chief Minister on 14.7.2000, on the same day along with the file pertaining to the representation of the detenu. Amongst the said two files one file related to the land at Latur with which the Deputy Chief Minister had no concern, therefore, it was directly forwarded to the office of the Chief Minister. The affidavit records that the other file was forwarded to the Home Department on 15.7.2000 and that even the said file did not pertain to the subjects which were handled by the Deputy Chief Minister. The information provided on affidavit was made good by the Respondents by producing the original record before this Court to indicate that no other file was dealt with during this period.

20. In other words, the categoric case made out by the Respondents is that the detenu's representation, which- was received in the office of the Deputy Chief Minister on 14.7.2000, ready for consideration, was not ignored nor superseded by any other file. However, insofar as the practice adopted by the Government in treating the files with regard to the representation in detention matters, the Respondents have stated before us across the bar on instructions that such files are treated in the category of "IMMEDIATE" files so as to receive priority. It was thus contended that detention matters or representations in those cases are treated as IMMEDIATE files so as to receive precedence and immediate disposal. Regarding the practice adopted in the office regarding marking and manner of disposal of files, reliance was placed on the Office Working Procedure Rules. Rule 23 of the said Rules categorizes the different files to be handled on priority basis in the office. This rule classifies such files in 5 different categories, which can be stated as :

- (1) rkarMhps (Urgent)
- (2) rkRdky (Immediate)
- (3) VapkbZ izkFkE; (Scarcity Priority)
- (4) fo/kkulHkka fo/kku ifj"knA Bjko (Legislative Assembly / Legislative Council Question / Resolution)
- (5) fudMhps (Emergent) (Translation)

Besides the aforesaid 5 categories the other category is that of "Ordinary" files, to be considered in due course. It is true that the said rules do not specifically provide for matters pertaining to the representation relating to detention. What is relevant for our purpose is that the rules specifically provide that files flagged as "IMMEDIATE" should be presented preferably on the same day and latest by the morning on the following day from the day it was received, whereas the files flagged as "URGENT" should be presented within 4 days from the receipt and the ordinary files be presented within one week. In the backdrop of the provisions of the aforesaid Rules we will have to examine as to the manner in which the detenu's representation was treated by the office of the Deputy Chief Minister. The affidavits dated 7.12.2000 filed before us concede that the representation in question was treated only as an "URGENT" file. During the course of arguments the Counsel for the Respondents stated on instructions that the office of the Deputy Chief Minister, who is obliged to consider the representation of the detenu's detained under the provisions of COFEPOSA, treats the said representation as "IMMEDIATE" files. Similarly, the files relating to the representation of the detenu's detained under other enactments, though addressed to the State Government, sent for consideration to the Additional Chief Secretary are also treated as "IMMEDIATE" files. On the other hand, in the present case the file relating to the detenu's representation was admittedly dealt only as an "URGENT" file. This admission is found in para 4 of the affidavit of Shri M. B. Khopkar, Desk Officer, Home Department (Special) dated 7.12.2000.

21. As observed above, from the instructions contained in the Rules pertaining to the Office Working Practice and Procedure "IMMEDIATE" files are expected to receive utmost priority and are to be handled on the same day or latest by the following day unlike "URGENT" files to be handled within 4 days from the receipt thereof. From this it is evident that the file pertaining to the detenu in this case was not handled in the manner it ought to have been treated with regard to the settled practice adopted by the office of the Deputy Chief Minister of treating the same as "IMMEDIATE" file. It is obvious that because of the said lapse or laxity committed in the present case the representation in question did not receive priority at the hands of the Deputy Chief Minister. It is quite possible that if the file was flagged as "IMMEDIATE" file, the file would have received utmost priority at every level from the day on which it was received in the office of the Deputy Chief Minister on 30.6.2000 and that the Deputy Chief Minister may have reacted in a different manner. In fact the Deputy Chief Minister was under an obligation

to dispose of the same in the manner provided under the said Rules, namely, latest by the following day. In other words, after the Deputy Chief Minister had made his endorsement on the 30.6.2000, as per the said Rule the -file was expected to be presented for decision latest on the following day from its receipt. Naturally, therefore, the file should have been made ready for consideration in the manner provided under the said Rules as "IMMEDIATE" file, but this is not what has happened in the present case. For, the file became ready for consideration only on 14.7.2000. If the file was treated as "IMMEDIATE" file, instead of "URGENT" file, in that case the Deputy Chief Minister would have decided the said representation on 14.7.2000 itself or at the most on the following day i.e. 15.7.2000. We are inclined to observe this because the Respondents have stated on affidavit that the other two files received at the same time, Including the file of SHRIKRISHNA COMMISSION, were only urgent files. Naturally, the "Immediate" file would have received precedence over those files. Therefore, the Petitioner would be justified in making a grievance that the representation was not handled continuously and at any rate in the manner in which it ought to have been handled and obviously there was laxity In its disposal. A fortiori, the representation in question has not been considered in conformity with the law enunciated by the Apex Court in Harish Pahwa v. State of U. P., and the host of other cases relied upon by the petitioner. The relevant portion of the said decision is reproduced thus : "we may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu".

22. In the back drop of the explanation offered by the Respondents, we need not look for any other reason to hold that the representation in question was not dealt with utmost expedition and continuously as required in law. Thus the stand taken on affidavit itself would indicate that the representation was not handled in the manner in which it ought to have been handled, namely, by not treating the same as "IMMEDIATE" file which would have received the attention of Deputy Chief Minister within one day or maximum the following day as prescribed in the said rule. The affidavits also do not offer any explanation as to why the present file was treated as only "URGENT" file and not "IMMEDIATE" file. On this count atone, the petitioner should succeed.

23. Consequently, the impugned detention order deserves to be quashed and set aside and the detenu be set at liberty forthwith unless required in some other

case. Rule made absolute. Order accordingly.