



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION (ST) NO. 24829 OF 2024

**Sagar Alias Sachin Rajendra
Kusekar**
Pimpale Jagtap, Tal. Shirur,
District Pune

.....Petitioner

Versus

1. District Magistrate, Pune.

2. The State of Maharashtra
(Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department,
Mantralaya, Mumbai.

3. The Superintendent
Yerwada Central Prison,
Pune

.....Respondents

Ms. Jayashree Tripathi a/w Anjali Raut- Advocate for the
Petitioner.

Mr. S. V. Gavand - APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
S.M. MODAK, JJ.**

DATE : 13th JANUARY 2025

JUDGMENT : (Per SARANG V. KOTWAL, J.)

1. The Petitioner has challenged the detention order bearing
no. PHM/MPDA/SR/07/01/2024 dated 01.10.2024 issued by

1 of 7

the District Magistrate, Pune, who is Respondent No. 1. The record shows that by a separate committal order, on the same date, the Petitioner was directed to be detained at Yerwada Central Jail. He is in detention from 01.10.2024.

2. The grounds for detention mention that the detention order was passed on the basis of the material mentioned in paragraph no. 4, which is sub-divided into paragraph nos. 4(a) and 4(b). In paragraph no. 4(a), there is a reference to C.R. No. 387 of 2024 registered at Shikrapur Police Station under Sections 341, 323, 504 and 506 of the Indian Penal Code. It is registered at the instance of one Katkar in respect of the incident dated 05.04.2024 which had taken place at around 06.45 p.m. in the vicinity of village Kendur Parhadwadi, Taluka Shirur, District Pune. The allegations are made that Petitioner stopped the informant's car, threatened him and damaged the car.

3. Paragraph no. 4(b) refers to two in-camera statements of witnesses (A) and (B) which were recorded on 03.07.2024 and 07.07.2024 respectively. Those were in respect of the incidents dated 26.06.2024 and 19.06.2024. By these two separate

instances, the Petitioner had extorted money from these witnesses.

4. Learned counsel appearing for the Petitioner, however relied on the sole ground for challenging the detention proceeding. She submitted that the Petitioner had submitted a representation to the State of Maharashtra for challenging the detention order. That representation was not considered expeditiously affecting his right under Article 22 (5) of the Constitution of India and hence the detention order is liable to be set aside.

She submitted that she had taken a specific ground (c) in her petition. She relied on that ground which mentions that the Petitioner had forwarded his representation dated 13.11.2024 to the State Government for expeditious consideration. However, till filing of the petition, there was no communication received from the State Government. There was delay in considering the representation and therefore, the detention was illegal. She submitted that the affidavits filed by the Superintendent of Yerwada Central Prison as well as Deputy Secretary, Home

Department do not explain his delay.

5. Learned APP Shri Gavand submitted that the Petitioner's representation is considered within a reasonable time and therefore, there is no delay in considering the same.

6. We have considered these submissions. The affidavit filed by the Superintendent of Yerwada Central Prison mentions that he had received the representation dated 13.11.2014 on 16.11.2024 by post, addressed in the name of Superintendent of Yerwada Central Prison, Pune. The signature of the detenu was taken on it on 16.11.2024 and it was forwarded to the Additional Chief Secretary, Home Department Special Branch (3-B), Government of Maharashtra, Mantralaya Mumbai through mail dated 16.11.2024.

The affidavit filed by Shri Bhalwane, Deputy Secretary, Home Department, Government of Maharashtra, Mantralaya Mumbai mentions that the representation was received by desk Special 3-B on 03.12.2024 by e-mail through Yerwada Central Prison, Pune alongwith the detenu's advocate letter dated

13.11.2024. Thereafter, the remarks from the District Magistrate, Pune on 03.12.2024 were called. The remarks were received on 09.12.2024 and thereafter, the representation was rejected on 12.12.2024.

In this connection, the affidavit of the District Magistrate mentions that the request for parawise remarks was received on 03.12.2024. The comments were prepared and finalized on 09.12.2024.

7. Thus, it can be seen that there is no explanation whatsoever offered by any of the authorities as to how the representation took so long to travel from Yerwada central prison to Mantralaya from 16.11.2024 to 03.12.2024. It is not that the every delay in considering the representation affects the detention; but it is only the unexplained delay which would affect the detention order adversely. In this case, the authorities could have explained the delay in between 16.11.2024 to 03.12.2024. However, there is no whisper in any of the affidavits as to why there was delay in sending the representation from Yerwada Central Prison on 16.11.2024 and it reaching in the Mantralaya on 03.12.2024;

particularly when according to the Superintendent of Yerwada Central Prison, the representation was sent through email. Thus, this particular delay between 16.11.2024 to 03.12.2024 has remained totally unexplained. The delay could have been explained by the authorities but all these affidavits are conspicuously silent on this aspect. Therefore, it is quite clear that the delay has remained unexplained. In such case the valuable right of the detinue of making the representation expeditiously and duty on the authorities to consider it at the earliest is adversely affected. Therefore, in this case, the detention order is liable to be set aside. Hence, the following order:-

ORDER

- (i) The Rule is made absolute in terms of prayer clause 'b', which reads thus:-

“(b) The order of Detention bearing No. PHM/MPDA/SR/07/01/2024, dated 01.10.2024 issued under Section 3 of M.P.D.A. Act 1981 by the Respondent No. 1 be quashed and set aside and on

quashing the same, the petitioner be ordered for release forthwith”.

(ii) The Petitioner shall be released forthwith if not required in any other case.

(iii) The Writ Petition is disposed of.

(S.M. MODAK, J.)

(SARANG V. KOTWAL, J.)