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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 1576 OF 2020
(CRIMINAL WRIT PETITION - ASDB - LDVC- 243 OF 2020)**

Rohit Sidram Khatal (Detenu)

Age : 29 years,

r/o. 3152, June Mill Chawal,

Morarji Peth, Solapur

(at present Yerwada Jail)

..Petitioner (Detenu)

vs.

1. The Commissioner of Police

Solapur.

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 i/b. Mr. U.N. Tripathi for the Petitioner
(Detenu).

Mr. J.P. Yagnik, APP for State.

CORAM

**: S.S.SHINDE &
M.S.KARNIK, JJ.**

RESERVED ON : NOVEMBER 24, 2020

PRONOUNCED ON : NOVEMBER 27, 2020

JUDGMENT : (PER M.S. KARNIK, J.)

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 thier 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' and 'B' came to be recorded. Considering the materials on record, respondent No.1 - 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 - 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 - 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 - 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 - 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 Hon'ble Supreme Court in the case of **Harish Pahwa vs. State of Uttar Pradesh**¹ and **Rashid Kapadia vs. Medha Gadgil and others**² 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 :

12. The next ground urged on behalf of the petitioner is ground (F). According to petitioner, he is well versed with Marathi language. The compilation of the documents containing Marathi translation of original English documents running into 152 pages in all are furnished to the petitioner. According to the petitioner, wrong translation of the original English version is furnished to the petitioner, thereby depriving him of making an effective representation.

1 (1981) 2 SCC 710

2 (2012) 11 SCC 745

13. Learned counsel for the petitioner invited our attention to the grounds of detention in English and corresponding Marathi translation. It is contended by her that in paragraph 4 of grounds of detention in English version it is stated “Faujadar Chawadi Police Station” whereas in Marathi ground of detention it is translated as “Salgar Wasti Police Station”.

14. With reference to paragraph 4.1 in English version of grounds she submitted that a total of 9 cases are shown to be registered against the petitioner whereas in Marathi translation only 7 cases are shown. Thirdly, learned counsel for the petitioner urged that in the column of ‘status’ in the table of cases furnished in paragraph 4.2 there is a variance in the English and Marathi translation. Learned counsel would submit that thus the petitioner is deprived from making effective representation since he has not been furnished true and faithful translation of original English version thereby creating confusion to make effective representation as such his right to make representation under Article 22(5) of the Constitution of India is violated.

15. In support of her submission, learned counsel for the petitioner relied upon the decision of this Court in the case of

Shri Noor Mohamed Khan vs. Shri M.N. Singh & ors.³. She also relied upon the decision of this Court in the case of **Yogesh Nandu Pujari vs. Commissioner of Police, Thane & ors.**⁴.

16. Learned APP on the other hand submitted that no prejudice whatsoever is caused to the petitioner as the discrepancies pointed out by the petitioner in the Marathi translation are mere typographical errors. He would further submit that the representation was made by the petitioner through his Advocate which did not raise any objection about the said discrepancies, additions and omissions. In support of his submission, learned APP relied upon the decision of this Court in the case of **Amar alias Amarsingh Gulabsingh Rathod vs. State of Maharashtra & anr.**⁵ holding that the grievance of detenu that the documents were not explained to him in his language does not survive as a representation was made through his counsel.

17. In our opinion, the discrepancies pointed out by learned counsel for the petitioner in Marathi translation are not mere typographical errors but in fact are substantial mistakes. Mere reading of the order of detention in English language and translations supplied to the detenu in Marathi language would

3 2001 ALL MR (Cri) 1988

4 2013 ALL MR (Cri) 1779

5 2003 ALL MR (Cri) 1671

indicate that in paragraph 4.1 of the English version of the grounds, total of 9 cases are shown to be registered against the detenu whereas in Marathi translation only 7 cases are shown. Even in paragraph 4.2 of the grounds of detention, so far as the table providing 'status' of the 3 cases mentioned therein, we find that the translated version is at variance with the English version of the grounds of detention. In the 'status' in paragraph 4.2, so far as Serial No.2 is concerned, we find that in the English version the same is mentioned as :

SR. NO.	Police Officer	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 final bond has been taken for good behaviour.

The translation reads thus :

क्र.	पोलिस अधिकारी	आदेश क्रमांक व दिनांक	कलम	सदयस्थिती
१	सहा. पोलिस आयुक्त, विभाग — १	२८७/१३, दि. २१/११/२०१३	सीआर.पी.सी. कलम १०७ प्रमाणे	दि. ०५/०२/२०१४ रोजी एक वर्षाकरिता शांतता राखण्यासाठी अंतिम बंधपत्र घेण्यात आलेले होते.

We find that the mention of period "one year" in Marathi translation does not find place in English version. So far as Serial No.3 of the table in paragraph 4.2 of the grounds of detention is concerned, again the period of "one year" mentioned in the Marathi translation is not be found in the English translation.

Another noticeable addition in Marathi translation which does not find place in the English version of the grounds of detention are the words “for maintenance of peace”. We further find that whereas in English version in the grounds of detention it is mentioned that the bond has been taken for good behaviour, the same does not find a mention in translated version of Marathi. We thus notice that there is variance in the copy of the grounds of detention in English and its translation in Marathi apart from there being additions and omissions. We may also note that in paragraph 4 of English version it is stated that “known criminal registered in Gunda register at Faujdar Chawadi Police Station, Solapur” whereas in Marathi translation the name of the Police Station is mentioned as “Salgarwasti Police Station”. A cumulative reading of the discrepancies, additions and omissions lead us to a conclusion that the detenu has not been furnished with true and faithful translation of the original version and thus deprived from making effective representation as such his right to make representation under Article 22(5) of the Constitution of India is violated.

18. In this context, we may refer to the decision rendered by the Division Bench of this Court in the case of **Shri Noor Mohamed Khan** (supra). In paragraph 7 it is observed that

“7. We have reflected over Mr. Thakur’s submission and are constrained to observe that we do not find any merit in it. It is well-settled that in a preventive detention matter the question of prejudice is extraneous. While dealing with the question of infirmity in the translation, the time-honoured norm, which this Court takes into account, is whether on account of the infirmity therein the detenu could have been misled or confused in exercising his fundamental right of making an effective representation, guaranteed by Article 22(5) of the Constitution of India, and if in a given case the answer is in the affirmative, the detention order would have to be quashed and if in the negative, it would be sustained. We have already, in paragraph 5, given our reasons as to why the detenu could have been misled in the instant case.”

19. We, therefore, have no hesitation in coming to the conclusion that in the light of the infirmity in the translation the detenu could have been misled and confused in the instant case.

20. Learned APP relied upon the decision of the Hon’ble Supreme Court in the case of **Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad City and another**⁶ to submit that even the Hon’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 different from that as given in the order. In our opinion,

6 1989 SCC Supl.(1) 322

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 findings 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 effective 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.

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)