

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

WRIT PETITION (CRL.) NO(s). 138 OF 2006

HARSHALA SANTOSH PATIL

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ORS

Respondent(s)

(With appln(s) for bail and office report)

(For final disposal)

Date: 02/11/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

Mr.K.K. Mani, Adv.

Mr. Maqsood Khan, Adv.

Mr. Medhavi Kumar, Adv.

Mr. Satish Pandey, Adv.

Mr. K.B. Sandeep, Adv.

Mr.Prakash Kumar Singh,Adv.

For Respondent(s)

Mr. V.N. Raghupathy,Adv.

UPON hearing counsel the Court made the following

O R D E R

For the reasons mentioned in the signed order, the writ petition is allowed.

The detenu-Santosh Pandurang Patil be released forthwith.

(Meenu Sethi)

(Pushap Lata B

hardwaj)

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRI

T PETITION(CRL.) No. 138/2006

Harshala Santosh Patil ... Petitioner

VERSUS

State of Maharashtra & Ors. ... Respondent

s

O R D E R

The petitioner (wife of the detenu- Santosh Pandurang Patil) herein inter alia prays for issuance of a writ of Habeas Corpus for quashing an order of detention dated 21.7.2005 passed against the detenu under Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,1974 ['COFEPOSA Act'].

For alleged commission of an offence on the part of the detenu under Section 135 of the Customs Act on an allegation that common salt has been exported by mis declaring it as high value 'G' Salt a criminal proceeding was initiated against him. The said incident is said to have taken place on 10.2.2005.

The detenu was arrested on 9.3.2005. He was released on bail on 7.4.2005. Indisputably, the detenu made two pre-detention representations one on 23.5.2005 and another on 27.6.2005 whereafter the impugned order of detention was prepared.

It is not in dispute that the order of detention was passed by the empowering authority being Principal Secretary(Appeals and Security),

Government of Maharashtra, Home Department. The detenu was arrested at Delhi on 16.2.2006 and he was, thereafter, taken to Mumbai and order of detention was served upon him on 17.2.2006, whereafter the order of detention was served on him.

The petitioner(wife of the detenu)herein filed a writ petition before this Court under Article 32 of the Constitution of India and by an order dated 24.3.2006, this Court dismissed the writ petition directing:

" Having heard the learned counsel for the parties,we are of the opinion that a fresh representation may be filed on behalf of the detenu before the appropriate authority, which may be disposed of as expeditiously as possible, preferably within a period of two weeks from the date of receipt of this order. In the event the said representation is rejected, it will be open for the petitioner to move this Court again.

We hope and trust that in the meantime, the Advisory Board shall also take up the matter and dispose of the same"

Pursuant to and in furtherance thereof, two representations were made by him on 10.4.2006; one before the detaining authority and another before the State Government which were received by the said authorities on 12.4.2006. A communication rejecting the representation by the State was received by the detenu on 3.5.2006.

Before advertng to the contentions raised by Mr. K.K. Mani, learned counsel appearing on behalf of the petitioner, we may notice that this Court on 26.9.2006, while hearing the writ petition observed from the affidavit filed on behalf of the respondents

that no statement had been made therein to the effect that the detaining authority had also disposed of the representation made by the detenu although the State of Maharashtra did so by an order dated 2.5.2006.

Two affidavits were filed on the 26.9.2006; one affirmed by Sharad Balkrishna Pawaskar, Under Secretary, Home Department(Special), Government of Maharashtra and another by Chandra Iyengar, Principal Secretary (Appeals and Security), Home Department, Government of Maharashtra. The detaining authority, however, in its affidavit did not make any statement as regards rejection of the representation by the detenu. Thereafter, two affidavits have been affirmed on 7.10.2006 one by Chandra Iyengar, Principal Secretary (Appeals and Security) Home Department, Government of Maharashtra and another by Neela Satyanarayana, Principal Secretary(Forest) Revenue and Forest Department, Government of Maharashtra.

The principal contention raised by Mr. Mani, learned counsel now before us is that there has been a gross un-explained delay in disposing of the representations.

In the affidavit affirmed by Shard Balkrishna Pawaskar, Under Secretary, Home Department (Special), Government of Maharashtra on 7.10.2006 it is stated that the representation of the detenu was received by

the Home Department on 13.4.2006 and from 13.4.2006 to 2.5.2006, the concerned file was with the Detaining Authority. The detention order was considered and rejected by the Additional Chief Secretary(Home) on 2.5.2006, who was delegated with the power to deal with the matter by the State Government on the said date.

Mr.V.N.Raghupathy, learned counsel appearing on behalf the State,however, has drawn our attention to the statements made at para 5 in the affidavit affirmed by Chandra Iyengar, Principal Secretary(Appeals and Security), Home Department, Government of Maharashtra on 7.10.2006 wherein it is stated as under:

" 5. With reference of the para 4 & 5 of the petition I say that the order dated 24.3.2006 of the Hon'ble Supreme Court in earlier Writ Petition(Crl.) 82 of 2006 filed by the present petitioner was received by the Registry of the Home Department on 12.4.2006 and the same was received in the section on 12.4.2006 at 5.20 p.m. Similarly representation dated 10.4.2006 was received in the Home Department on 12.4.2006 and the said representation was sent to the concerned section on 13.4.2006.On 14.4.2006 was holiday on account of Dr. Ambedkar Jayanti. On 15.4.2006 the concerned Assistant of the Section submitted the proposal for approval to call for comments of the Sponsoring Authority. On 16.4.2006 was holiday i.e.Sunday. On 18.4.2006 I granted approval to call for remarks of the Sponsoring Authority and on the same date letter along with copy of the representation made by the petitioner was sent to the Sponsoring Authority. The comments of the Sponsoring Authority were received on 21.4.2006. 22nd and 23rd were 4th Saturday and Sunday and therefore the office was closed. Thereafter, I considered the representation of the petitioner in detail and also in the light of the comments of the Sponsoring Authority. As the representation made by the petitioner was in detail and it contained references to number of judgments, the copies of the same were attached. After considering the

judgments and remarks fo the Sponsoring Authority I decided to reject the representation and accordingly I rejected the representation on 29.4.2006. On 30.4.2006 was holiday i.e.Sunday and on 1.5.2006 was holiday on account of Maharashtra Day I say that though I am Detaining Authority my office is part of the Home Department of the Government of Maharashtra for administrative purposes and therefore rejection reply to the petitioner was communicated through Home Department by letter on 2.5.2006 and was signed by the Under Secretary of the Home Department. The said letter was issued on 2.5.2006 and was received by the detenu on 3.5.2006 in Nashik Road Central Prison where he is lodged and acknowledgment of the detenu is obtained by concerned Jail Officer. True copy of the said letter is annexed herewith(Annexure R-I). I say that rejection of the representation by me as Detaining Authority was also communicated to the detenu's wife Smt.Harshala Patil through Speed Post."

Having heard the learned counsel for the parties and having considered the statements made in the aforementioned affidavits, we are of the opinion that the respondents have not been able to satisfactorily explain the delay caused in disposal of the representations made by the detenu. We say so for two reasons; firstly because the representations made by the detenu were required to be considered both by the detaining authority as also the State Government. They were,thus, required to be considered on their own merit upon application of independent mind on the part of the authorities concerned. If the Additional Chief Secretary of the State of Maharashtra was not in possession of the original records, in our opinion, it was obligatory on his part to call for the records or requisition at least the Xerox copies thereof from the office of the detaining authority.

He should not have waited for the receipt of the records from the office of the detaining authorities for the period from 13.4.2006 to 2.5.2006. We will also deal with the effect of that aspect of the matter a little later.

So far as the consideration of the representation of the detenu by the detaining authority is concerned, it is evident that although the comments of the Sponsoring Authority, which had been called as back as on 15.4.2006, were received on 24.4.2006, the detaining authority failed to apply its mind thereupon till 29.4.2006. We are not satisfied that having regard to the nature of the representation made by the detenu and/or reliance having been placed upon several judgments as also the remarks of the Sponsoring Authority, the detaining authority was required to take five days therefor. He, evidently, sent the record to the Home Department only on 2.5.2006.

Keeping in view the conduct of the detaining authority vis-a-vis the Additional Chief Secretary of the State in handling the matter, we have no doubt in our mind that the order of rejection of the representation made by the detenu at the hands of the detaining authority was also available to the Additional Chief Secretary which only enabled him to dispose of the representation of the detenu on 2.5.2006 itself on which date he received the entire file.

On the one hand the contention of the learned counsel appearing on behalf of the State is that keeping in view the complexity of the nature as also the bulk of the file, the detaining authority required at least five days' time

to dispose of the said representation. Curiously the Additional Chief Secretary could do so in course of the day nay in few hours. This indicates, as noticed hereinbefore,

non application of mind on the part of the Additional Chief Secretary who was acting on behalf of the State. It is also established that he must have with him a copy of the order of rejection which was passed by the detaining authority.

For the reasons aforementioned, the order of detention cannot be sustained which is quashed accordingly. The writ petition is allowed accordingly. Let the detenu be released forthwith.

.....J.

(S.B.SINHA)

.....J.

(MARKANDEY KATJU)

New Delhi,

November 2, 2006.