

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 168 OF 2016**

Chintya @ Mahesh Vilas Gaikwad	]
Age 23 years, residing at	]
Near Bhimnagar Kaman, Mundhra	]
Pune. (At present in Yerawada	]
Central Prison, Pune)	]..Petitioner
	[Detenu]

Vs.

1. The Commissioner of Police	]
Pune City	]
	]
2. The State of Maharashtra	]
(Through Addl. Chief Secretary	]
to Government of Maharashtra	]
Mantralaya, Home Department	]
Mantralaya, Mumbai)	]
	]
3. The Superintendent,	]
Yerawada Central Prison, Pune.	]..Respondents

....

Mr. Udaynath Tripathi Advocate for the Petitioner
Mrs. M.H.Mhatre A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI AND
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : APRIL 26, 2016**

ORAL JUDGMENT: [PER SMT. V.K.TAHILRAMANI, J.]:

1 By this petition, the petitioner who is the detenu, has taken exception to the order of detention dated 23.6.2015 passed by Respondent no.1 in exercise of the power conferred by Sub-Section (2) of Section 3 of the Maharashtra Prevention

of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (Mah. Act No. LV of 1981) (Amendment-1996) (Amendment-2009) (hereinafter referred to as the "MPDA Act"). By the impugned order, the petitioner has been ordered to be detained as he is a dangerous person.

2 Though large number of grounds have been raised in this petition, the learned counsel appearing for the petitioner has only urged one ground before us i.e. ground 6(b). Ground 6(b) reads as under:

"6(b) The petitioner says and submits that the detaining authority while recording his satisfaction in paragraph 7 of the grounds of detention has not disclosed his awareness about bail position of the petitioner on the day of detention i.e. on 23.6.2015. Whether the petitioner was in custody or a free person. The petitioner further submits that the detaining authority has not disclosed imminent possibility and/or real possibility of detenu's release on bail in the grounds of detention based on reliable material. This shows total non-application of mind of the detaining authority. Moreover, there are no

cogent materials before the detaining authority to come to such conclusion. The order of detention is illegal and bad in law, liable to be quashed and set aside."

3 Mr. Tripathi pointed out that the detaining authority in paragraph 7 of the grounds of detention has stated as under:

"7. I have carefully gone through the material placed before me and I am subjectively satisfied that you are acting in a manner prejudicial to the maintenance of public order. However, out of three offences registered against you, the Hon'ble Court has released you on bail in one offence with condition and in another offence you applied for bail but it was rejected. In view of your tendencies and inclinations reflected in the offences committed by you as stated above, I am further satisfied that after availing bail facility and becoming a free person, you are likely to revert to the similar criminal activities prejudicial to the maintenance of public order in future and that it is necessary to detain you under the said Act to prevent you from acting in such prejudicial manner in future".

4 Mr. Tripathi stated that as far as the third offence is concerned, the detaining authority has not made it clear

whether the detenu was granted bail or was in custody in the said case. In addition, Mr. Tripathi pointed out that though the detaining authority in the grounds of detention has stated that application for bail was rejected in the case relating to CR No. 69 of 2015, however nowhere in the grounds of detention, the detaining authority has stated about his subjective satisfaction that there was an imminent possibility of the detenu being released on bail in the said case. Mr. Tripathi submitted that on this count the order of detention is vitiated.

5 We are inclined to allow this petition on the above ground. We may point out that even if a person is in jail in connection with some criminal cases(s) there is no prohibition in law to pass the detention order. Law on this aspect is well settled and stands crystallized by plethora of judgments of the Supreme Court. However, a reading of those very judgments also clarifies that there are certain aspects which have to be borne in mind by the detaining authority and satisfaction on those aspects is to be arrived at while passing the detention order. There are three such factors which were re-stated in ***Kamrunnissa Vs. Union of India and Anr.*** reported in **1991(1)**

SCC 128 (pa.13):

"13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court."

Thus from the above decision, it is clear that the detaining authority has to first show his awareness whether the proposed detenu is in custody or is on bail. Further if the said person is in custody the detaining authority has to record his subjective satisfaction that there is a possibility of him being released on bail. This is one of the most important criteria

required when an order of detention is passed against a person who is in custody.

6 Similar view was taken by the Supreme Court in the case of ***Champion R. Sangma Vs. State of Meghalaya and Anr.*** reported in ***2015 ALL MR (Cri) 3673 (S.C.)***.

7 Mr. Tripathi submitted that the detaining authority has not made it clear whether the detenu was in custody or not in the third offence. He submitted that moreover the second requirement as laid down in the case of Kamrunnissa (supra) which has been followed in Champion Sangma (supra) is not met with in the present case. The second requirement is that when a person is in custody in any case, the detaining authority has to record his subjective satisfaction that he has reason to believe that there is real possibility or imminent possibility or every possibility of the detenu being released on bail. Mr. Tripathi pointed out that no such subjective satisfaction is to be found in the grounds of detention in the present case.

8 On going through the grounds of detention, it is noticed that the detaining authority has not clearly stated about the status of the third case. In answer, the learned

A.P.P. submitted that the third case is bailable, which is clear from the averments in the grounds of detention, hence, there was no question of the detenu being in custody in that case. Even if it is accepted that the detenu was on bail in the third case as the offences therein were bailable, the grounds of detention clearly show that the detenu was in custody in one case that is CR No. 69 of 2015. We find that the detaining authority in the grounds of detention has nowhere stated that there was a real possibility or imminent possibility or every possibility of the detenu being released on bail in CR No. 69 of 2015. If the detenu is in custody, the detaining authority in the grounds of detention has to record his subjective satisfaction in the grounds of detention that the detenu was likely to be released on bail. However, the grounds of detention in the present case are totally silent on this aspect. Only on this ground, the impugned order of detention is vitiated. Hence, Rule is made absolute in terms of prayer clause 10(b) of the petition.

[SMT. ANUJA PRABHUDESAI, J.]

[SMT. V.K.TAHILRAMANI, J.]