

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2189 OF 2016**

Shri. Dashrath Madhukar Kasabe	]
Age 36 years, residing at	]
Mukund Nagar, Bhavani Peth	]
Solapur (At present Yerawada	]
Central Prison, Pune)	].. Petitioner

Vs.

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

....

Mr. U.N. Tripathi Advocate for Petitioner

Mrs. M.H. Mhatre A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI AND
MRS. MRIDULA BHATKAR, JJ.**

DATED : OCTOBER 06/07, 2016

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

1 The petitioner / detenu – Dashrath Madhukar Kasabe

has preferred this petition questioning the preventive detention order passed against him on 3.5.2016 by the Commissioner of Police, Solapur. The said detention order has been passed in exercise of powers under Section 3(1) 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 (No. LV of 1981) (Amendment- 1996 and 2009) (hereinafter referred to as the "MPDA Act") as the detenu is a dangerous person whose activities are prejudicial to the maintenance of public order. The said detention order is based on the basis of one C.R. and statements of two incamera witnesses i.e. Witness "A" and Witness "B". The said C.R. is C.R. No. 285 of 2015 of Jodbhavi Peth Police Station, Solapur City. The said C.R. is under Sections 353 read with Section 34 of IPC. The order of detention, grounds of detention along with accompanying documents were served on the detenu on 3.5.2016.

2 Though a number of grounds have been raised in the present petition whereby the detention order has been

assailed, however, the learned counsel Mr. Tripathi appearing for the petitioner has pressed only two grounds before us. They are ground (d) and ground (b). Ground (d) briefly stated is that the detenu was already in judicial custody when the detention order was passed and there was no material before the detaining authority to be subjectively satisfied that there is imminent possibility of the release of the detenu on bail since the petitioner's bail application was rejected by the Sessions Court. In such case, the detention order was unjustified and unwarranted and it shows total non-application of mind of the detaining authority, hence, the detention order is illegal and liable to be quashed and set aside.

3 To support the contention raised in ground (d), Mr. Tripathi placed reliance on the decision of the Supreme Court in the case of **Champion R. Sangma Vs. State of Meghalaya and Anr.**¹ Mr. Tripathi pointed out that in the said case in paragraph 13, an earlier decision of the Supreme Court in the case of **Kamarunnissa Vs. Union of India and Anr.**² was referred. Paragraph 13 of the decision in the case of

1 2015 ALL MR (Cri.) 3673 (S.C.)

2 1991(1) SCC 128

Kamarunnissa (supra), reads as under:

“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. What this Court stated in the case of Ramesh Yadav was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the

High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody”.

4 Mr. Tripathi submitted that the criteria as set out in 2(a) in paragraph 13 of ***Kamarunnissa (supra)*** is not met with in the present case. Criteria 2(a) is in relation to the fact that an order of detention can be passed against a person who is in custody if the detaining authority has reason to believe on the basis of reliable material placed before him that there is a real possibility of the person being released on bail. In view of criteria set out in 2(a) which according to Mr. Tripathi, has not been met with in the present case, we proceed to examine whether there was reliable material before the detaining authority on the basis of which he had reason to believe that there is a real possibility that the detenu would be released on bail.

5 On perusal of the grounds of detention, we find that

the detaining authority has shown his awareness that the detenu is in custody in C.R. No. 299 of 2015. This is found in 4(6) of the grounds of detention.

07.10.2016

6 In paragraph 4(6) of the grounds of detention, the detaining authority has further stated that he is aware that on 9.3.2015 the detenu had applied for bail in connection with C.R. No. 229 of 2015 of Jodbhavi Peth Police Station, Solapur. On 12.4.2016 the Sessions Court rejected the said bail application, hence, the detenu was in magisterial custody in connection with the said C.R.. Thereafter in the very same paragraph, the detaining authority has stated as under:

"I am aware that you have applied for bail in Honourable High Court, Mumbai vide Criminal Bail Application No. 852 of 2016. As per this application, there is a possibility of your bail. So I am satisfied that in view of your tendency and inclination reflected in the offence committed by you as stated above you are likely to revert to the similar activities prejudicial to maintenance of public order in future".

Thus, the detaining authority in the grounds of detention has not only shown his awareness about the detenu being in custody in C.R. No. 229 of 2015, in addition, he has stated that on the basis of material before him, there is a real possibility of the detenu being released on bail and on being so released, the detenu would in all probability, indulge in similar prejudicial activities. Thus all the *criteria* as set out in the decision of the Supreme Court in the case of **Kamarunnissa (supra)**, have been met.

7 Mr. Tripathi again drew our attention to the decision of the Supreme Court in **Champion R. Sangama (supra)**, especially to paragraphs 11 and 12 thereof. Paragraph 11 shows that the detenu in the said case was under incarceration as he was implicated in eight cases and the detenu was in custody as he had not been granted bail in any of these cases. It was observed in the said decision that in view of this fact, it was for the respondents to satisfy the Court as to whether the triple requirements, as postulated in **Kamrunnissa (supra)**, stand satisfied. In the peculiar facts of **Champion R. Sangama (supra)**, the Supreme Court held that the respondents

miserably failed to fulfil this requirement. The Supreme Court further observed therein in paragraph 12 as under:

“12..... In the instant case, though the detention order and even the grounds of detention record the factum of appellant's being in custody, no satisfaction has been recorded by the detaining authority that there was reliable material before the authority on the basis of which it would have reasons to believe that there was real possibility of his release on bail. It is not mentioned as to whether any bail application was even moved by the appellant or not, what to make out likely fate of such an application. The order is also conspicuously silent on the aspect as to whether there was any probability of indulging in activity if the appellant would be released on bail.”

8 In the present case in the grounds of detention, the detaining authority has recorded his satisfaction that on the basis of reliable material before the authority it had reason to believe that there was a real possibility of the detenu being released on bail. In the grounds of detention, it is mentioned that though earlier application of the detenu for bail was rejected by the Sessions Court, thereafter the detenu had applied for bail before the High Court. Looking to the material before the detaining authority, the detaining authority was

subjectively satisfied that there is a possibility of the detenu being granted bail. The detaining authority has further observed that after the detenu is granted bail, he will indulge in similar activities prejudicial to the maintenance of public order.

9 In the present case, not only there was material before the detaining authority that the detenu had applied for bail before the High Court and hence, there was possibility of being granted bail, but, there was also material before the detaining authority that is the charge-sheet had been filed in C.R. No. 229 of 2015. C.R. No. 229 of 2015 was mainly under Section 307 of IPC and in such cases, normally bail is granted after the investigation is over. In such case, there was reliable material before the detaining authority to reach his subjective satisfaction that the detenu would be released on bail. The facts in the present case being entirely different than the one in ***Champion Sangama (supra)***, the said decision would not be applicable in the present case.

10 The next contention is found in ground (b) of the petition. Briefly stated the contents of the said ground are that

the detaining authority has taken into consideration extraneous material while issuing the order of detention. Thus, there is non-application of mind on the part of the detaining authority, hence, the detention order is liable to be quashed. The extraneous material is C.R. No. 229 of 2015. Mr. Tripathi submitted that in paragraph 7 of the grounds of detention, it is stated that the detention order is not based on offences as mentioned in paragraphs 4(3), 4(5) and 4(6). The detaining authority has made a reference to C.R. No. 229 of 2015 which is found in paragraph 4(6) of the grounds of detention. The reference to this C.R. is also found in paragraph 7 of the grounds of detention. Thus, Mr. Tripathi submitted that the detaining authority has relied upon this C.R. to issue the order of detention.

11 In the facts of this case, it cannot be said that extraneous material was taken into consideration by the detaining authority. The detaining authority has not at all taken into consideration the incident pertaining to C.R. No. 229 of 2015 to issue the order of detention. The detention order is only based on C.R. No. 285 of 2015 and statements of

incamera witness "A" and witness "B". Reference is made in paragraph 7 to C.R. No. 229 of 2015 because in paragraph 4 (6) of the grounds of detention, the detaining authority has shown his awareness that the detenu was in custody in C.R. No. 229 of 2015. Reference is again made to C.R. No. 229 of 2015 in paragraph 7 of the grounds of detention only to show the awareness of the detaining authority that the detenu was in custody in C.R. No. 229 of 2015 and that the detenu had preferred an application for bail in the said C.R. which was rejected by the Sessions Court and thereafter the detenu applied for bail in the said case before the High Court. Thus, it is clear that no reliance was placed on the incident relating to C.R. No. 229 of 2015 to issue the order of detention but reference was made to that C.R. only to show the awareness of the detaining authority that the detenu was in custody and he had preferred an application for bail before the High Court in CR No. 229 of 2015 hence, there was reliable material before the detaining authority to reach his subjective satisfaction that there is possibility of the detenu being granted bail in the said case and the said material was the application of the detenu for bail before the High Court in C.R. No. 229 of 2015.

12 Mr. Tripathi, the learned counsel for the petitioner placed reliance on the decision of this Court in the case of **Mushtaque Ali s/o Mohammad Ali Vs. State of Maharashtra and Anr.**³ He pointed out that in the said case, the Court held that the past history of the detenu was taken into consideration to issue the order of detention, hence, the detention order was quashed. In **Mushtaque Ali's** case, it was observed in paragraph 6 as under:

“6..... Thus, though on the face of it and from outer appearance of the detention order it may be argued that the said past incidents have not been considered, yet a careful reading of the detention order, as also the affidavit filed by the detaining authority goes to show beyond any doubt whatsoever that the said material was in fact considered while passing the detention order”.

13 In the decision of **Mushtaque Ali**, a reference is made to the decision of the Supreme Court in the case of **Abdul Sattar Vs. Union of India**⁴ wherein it has been laid down that when the detaining authority has merely referred to certain incidents in narration of events and has not relied upon them,

³ 2004 ALL MR (Cri.) 1333

⁴ AIR 1991 SC 2261

the same will not cause any prejudice. However, in the present case, a careful reading of the grounds of detention clearly shows that the incident relating to C.R. No. 229 of 2015 has not been relied upon by the detaining authority to issue the order of detention. In fact, in **Mushtaque Ali's** case, it is further observed that whether in a given case the detaining authority has casually or passingly referred or relied on such incidents, would depend on the facts and grounds which are required to be examined by the Court.

14 In the present case, on perusal of the grounds of detention as well as the affidavit of the detaining authority, it is seen that the incident relating to C.R. No. 229 of 2015 has not at all been relied upon by the detaining authority to issue the order of detention but reference is made to this C.R. only to show the awareness of the detaining authority that the detenu was in custody and there was reliable material to show that the detenu may be granted bail in which case he would be free to again indulge in similar activities prejudicial to the maintenance of public public order. Looking to the grounds of detention, we have absolutely no doubt in our mind that the

incident relating to C.R. No. 229 of 2015 was not at all taken into consideration to issue the order of detention. Thus, it cannot be said that any extraneous material was taken into consideration by the detaining authority to issue the order of detention.

15 Reliance was also placed by Mr. Tripathi on a decision of the Supreme Court in the case of ***Smt. Pebam Ningol Mikoi Devi Vs. State of Manipur and others***⁵. Reliance was placed on paragraphs 20 to 22 of the said judgment. This decision is also relied upon to support the contention that if extraneous material is taken into consideration by the detaining authority, the detention order is liable to be quashed. We are at pains to say that in the present case no extraneous material has been relied upon by the detaining authority to issue the order of detention. Thus, this ground too fails.

16 In view of the above, we find no merit in the petition, hence, petition is dismissed. Rule is discharged.

[MRS. MRIDULA BHATKAR, J.]

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

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⁵ 2010 ALL MR (Cri.) 3704 (S.C.)