

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 193 OF 2017

Shri Sandeep @ Shankar Vasant Khalase
age 26 yrs, residing at Aaudumbar Niwas,
Bapuji Buwa Nagar, Thergaon, Pune.
Presently detained at Aurangabad.

...Petitioner/Detenue....

VERSUS

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

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Advocate for Petitioners : Mr U N Tripathi h/f R D Sanap
APP for Respondents: Mr D R Kale

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CORAM : S.S. SHINDE & V.K. JADHAV, JJ.

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Reserved on : March 16, 2017
Pronounced on : March 29, 2017
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ORAL JUDGMENT :- (Per V.K.Jadhav, J.)

1. Rule. Rule made returnable forthwith. Heard finally with consent at admission stage.

2. By this petition, the petitioner is challenging the legal and Constitutional validity of the order of detention bearing D.O. No.PCB/DET/3239/2016 came to be passed 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 (Mah. Act No.L.V. Of 1981) (Amendment-1996) (Amendment-2009) (Amendment-2015) (hereinafter referred to as M.P.D.A.Act, 1981) by respondent no.1.

3. The learned counsel for the petitioner submits that detaining authority has referred to and relied on a single solitary incident i.e. Crime No.320/2016 under sections 307, 336, 427, 143, 144, 146, 147, 148, 149 of IPC r/w 4/25 of Arms Act 1959; read with section 37 (1)/135 of the Maharashtra Police Act and five in-camera statements of the witnesses 'A', 'B', 'C', 'D' and 'E' respectively. The detaining authority has not recorded his/its satisfaction on the grounds of detention to the effect that the authority has gone through the contents

of in-camera statements and verified them. The Detaining Authority has not seen the in-camera statement copies nor endorsed on said statements as "seen". The detaining authority has not discussed with the Assistant Commissioner of Police regarding truthfulness of the incident revealed from those in-camera statements. The order of detention is illegal and bad in law for non-recording satisfaction by the detaining authority with regard to those in-camera statements.

4. The learned counsel for the petitioner submits that, the petitioner is in custody in connection with crime No.320/2016. The petitioner preferred Bail Application before the learned Sessions Judge, Pune, which came to be rejected on 7.9.2016. The detaining authority on the very next day i.e. on 8.9.2016 passed the order of detention. There was no cogent material before the detaining authority to arrive at a conclusion that there is imminent possibility of the petitioner's release on bail. On this backdrop there was no compelling necessity to detain the petitioner. The order

of detention is illegal, without application of mind and thus liable to be quashed and set aside.

5. The learned counsel for the petitioner submits that, on the basis of the material placed before the detaining authority, the petitioner cannot be called as a 'dangerous person' as defined in section 2 of M.P.D.A. Act, 1981. It appears from the impugned order that detaining authority has taken into consideration crime No.320/2016 alone alongwith five in-camera statements. The petitioner cannot be held to be a 'dangerous person' for a single solitary incident. A person who habitually commits the offence is to be designated as a dangerous person' in view of the provisions of section 2 of M.P.D.A. Act, 1981.

6. The learned counsel for the petitioner by inviting our attention to paragraph no.3 of the grounds of detention served upon the petitioner wherein the detaining authority has mentioned numbers of crimes, names of the police stations at which said crimes have been registered, the date and time of the registration of

such crimes, date and time of arrest and status in a tabular form and submits that the subjective satisfaction of the detaining authority appears to have been influenced by the offence which have been set out in the said paragraph no.3 in the tabular form. The learned counsel for the petitioner thus submits that the detaining authority has not set out relevant facts constituting the said offences and as a result the petitioner was prevented from making an effective representation in accordance with clause 5 of Article 22 of the Constitution of India.

7. The learned counsel for the petitioner in order to substantiate his contentions placed his reliance on following cases :-

1. Khudiram Das Vs. The State of West Bengal and others reported in (1975) 2 SCC page 81.
2. Ravi Suresh Shinde Vs. The District Magistrate, Kolhapur in Writ Petition No.1294/2013 Decided at Principal Seat of this Court on 26.6.2013 (Coram A S Oka and G.S. Patel, JJ.)
3. Sau Chandabai W/o Dadarao Kale Vs. State of Maharashtra and others reported in 2016 ALL MR (Cri) 4797.
4. Vishal s/o Shahaji Kasabe Vs. The Commissioner of Police, Pune and others reported in 2017 ALL MR (Cri) 816.

5. Jay @ Nunya Rajesh Bhosale Vs. The Commissioner of Police, Pune and others reported in 2015 ALL MR (Cri) 4437.
 6. Shahajahan w/o Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra and another reported in 2016 ALL MR (Cri) 4233.
 7. Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others reported in 2012 Cri.L.J. 1334
8. The learned Commissioner of Police, Pune has filed the affidavit of reply in the matter. The learned APP submits that, the detaining authority is satisfied to detain the petitioner with a view to prevent him from acting in any manner prejudicial to the maintenance of public order within the meaning of section 3 of M.P.D.A. Act, 1981. The Detaining Authority has carefully gone through the material placed before it and after arriving at a subjective satisfaction reached to the conclusion that the petitioner is acting in a manner prejudicial to the maintenance of public order and accordingly passed the detention order.
9. The learned APP submits that, the detaining authority has given list of offences and Preventive Action taken against the petitioner-Detenu. There are in all seven offences registered against the petitioner at

Hinjewadi, Sangavi and Wakad Police Station, in Pune City, and out of those seven offences, Detaining Authority has mainly relied upon recent offence registered at Wakad Police Station, Pune vide crime No.320/2016. So far as remaining six offences as mentioned at Serial No. 1 to 6 in paragraph no.3 in the tabular form of the grounds of detention are concerned, the detaining authority has arrived at a subjective satisfaction that the petitioner is a habitual criminal, and he is habitually committing the offences under Chapter XVI and XVII of the IPC as well as Chapter V of the Arms Act, 1959 and thus, the Detaining Authority further satisfied that the petitioner is a 'dangerous person' as defined in section 2(b-1) of M.P.D.A. Act, 1981. The learned APP submits that, so far as crime No.320/2016 is concerned, the petitioner has committed the said offence when the externment order No.22/2014, dated 21.10.2014, passed by the Deputy Commissioner of Police, Pune was in force. The learned APP submits that, even one prejudicial Act can be treated as sufficient for forming the requisite satisfaction.

10. The learned APP submits that, so far as reference to in-camera statements in the grounds of detention is concerned, in view of the government Circular issued by the Home Department on 29.9.2002, in-camera statements are required to be placed before the Assistant Commissioner of Police/Dy. Commissioner of Police for verification purposes. In the instant case, the Assistant Commissioner of Police has verified those in-camera statements and made endorsement to that effect. The verification report as well as verification remarks written by the Assistant Commissioner of Police on the said in-camera statement of the witnesses 'A,B,C,D, and 'E' respectively indicates that verifying authority has ascertained the truthfulness and genuineness of the incident as narrated in the said in-camera statements. Furthermore, the detaining authority in paragraph no. 5.1-A to 5.5-E of the grounds of detention order reproduced the gist of the in camera statements. Further in paragraph no.9 of the order, the Detaining Authority on perusal of those in-camera statements alongwith the report submitted by the ACP, Pune about verification of truthfulness and genuineness

of those in-camera statements, recorded his satisfaction about the facts narrated in the said in-camera statements and apprehension expressed by the witnesses therein, as true and reasonable.

11. The learned APP further submits that in paragraph no.8 of the grounds of detention, it has been specifically mentioned about rejection of the Bail Application filed by the petitioner before the Sessions Court, Pune. The Detaining Authority was aware of rejection of bail. The Detaining Authority has further observed that though bail of the petitioner came to be rejected by the Sessions Court, Pune, bail was granted to one of the petitioner's accomplice namely Ishwar Kisan Gaikwad. The detaining authority has also observed that, the offence alleged to have been committed by the petitioner vide Crime No.320/2016 are not punishable with death sentence and possibility of the petitioner being released on bail in future cannot be ruled out altogether. In the backdrop of the same the detaining authority has further observed that there is an imminent possibility of the petitioner reverting to

similar illegal activities which are prejudicial to the maintenance of public order in future.

12. The learned APP further submits that the petitioner alleged to have been committed the offences under Chapter XVI and/or XVII of the IPC as well as Chapter V of the Arms Act. There is no requirement of exact numbers of crimes registered against the petitioner for branding him as a 'dangerous person'. There is sufficient material on record to conclude that the petitioner is a 'dangerous person' as defined under Section 2(b-1) of M.P.D.A. Act, 1981. Thus, the order of detention is legal, proper and passed after application of mind by the Detaining Authority. Grounds raised by the petitioner are without any merit and requires no consideration.

13. Learned APP in order to substantiate his contentions placed his reliance on following cases :-

1. *Abdul Sathar Ibrahim Manik Vs Union of India reported in (1992) 1 Supreme Court Cases 1.*
2. *Firoz Hyder Shaikh @ Kalya Firoz Vs. Commissioner of Police and others reported in 2012 (4) Bom.C.R. (Cri.)677.*

3. *Ravi Hanumant Thorat Vs. The State of Maharashtra reported in 2014 ALL MR (Cri) 2168.*
4. *Santosh s/o Bhagwan Patil Vs. The State of Maharashtra reported in 2014 ALL MR(Cri) 53.*
5. *Shri Nasir Ismail Mujavar Vs. Commissioner of Police, Mumbai and others reported in 2014 ALL MR (Cri) 639.*

14. So far as in-camera statements are concerned, the learned counsel for the petitioner submits that the Detaining Authority has not recorded his satisfaction in the grounds of detention to the effect that he has gone through the contents of the camera statements and verified the same. Even the Detaining Authority has not seen the in-camera statements nor endorsed nor discussed with the Assistant Commissioner of Police regarding the truthfulness of the incident. Thus, the camera statements are not authentic and cannot be used for passing an order of detention.

15. On careful perusal of the grounds of detention order, we noticed that in paragraph no.5 the detaining authority has observed that senior P.I. of Wakod police Station, Pune conducted a confidential inquiry of the criminal activities of the petitioner and his associates. The inquiry revealed that the petitioner has terrorized

the residents staying in his area as well as in the adjoining areas. However, since he is a 'dangerous person' nobody dares to complaint against him openly due to fear of retaliation. The residents of the area were taken into confidence and assured that their names would not be disclosed and also that they would not be summoned to give evidence against petitioner in any court or any open forum. After giving them such an assurance, some residents of the area disclosed criminal activities of the petitioner. In the light of these observations, Detaining Authority has further mentioned gist of the in-camera statements in paragraph nos.5.1 to 5.5. In paragraph no. 7 the Detaining Authority has recorded that the petitioner have unleashed a reign of terror and have become a perpetual danger to the society at large in the area of Wakad, Hinjewadi and Sangvi Police Stations in the Pune City. The people there are experiencing a sense of insecurity and are living under shadow of constant fear, whereby even day to day business and activities of citizens are under threat. The petitioner showed no respect to law of the land and to the citizens of the

society where he lives. The petitioner is perpetually an impulsively violent man who wants to spread terror in the society by his violent criminal activities, in connivance with other criminal associates.

16. On perusal of the record and proceeding we have come across with the Ferist of the documents supplied to the petitioner. It appears that each and every in-camera statement bears endorsement of verification by the Assistant Commissioner of Police, Pune City. We have noticed the Ferist (list of the documents) being supplied to the petitioner, wherein, reference has been given that copies of those in-camera statements alongwith endorsement made thereon have been supplied to the petitioner. It appears from the record and proceeding that Assistant Commissioner of Police has submitted a report about the aforesaid verification of the in-camera statements and the ascertainment of the facts of those in-camera statements to the Commissioner of Police.

17. As per the said endorsement, the Assistant

Commissioner of Police has called those persons whose in-camera statements were recorded in the office, read over the said statements to them separately and accordingly verified those statements with the remark that incident as quoted in those in-camera statements are authentic. It further appear from the said endorsements that the Assistant Commissioner of Police has not only ascertained the truthfulness of those in-camera statements, but also visited the spot of the incident as narrated in those in-camera statements and found that the incident as quoted in the in-camera statements are authentic, genuine and apprehension expressed by those persons appears to be well founded.

18. In a case of **Shahajahan w/o Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra & another reported in 2016 ALL MR (Cri) 4233** (supra) relied upon by the learned counsel for the petitioner, the Division Bench of this Court in the facts of the said case observed that, the impugned order is silent with regard to in-camera statements, either seen or facts stated therein being ascertained by the Commissioner of

police. The Division Bench of this Court has also observed that, on perusal of two in-camera statements the same do not indicate that said statements were duly seen and thereafter initialled by the Commissioner of Police. In the backdrop of these facts, the Division Bench has observed that in absence of the aforesaid compliances, subjective satisfaction of the detaining authority has been affected.

19. In a case **Sou. Chandabai w/o Dadarao Kale Vs State of Maharashtra and others** (Supra) relied upon by the learned counsel for the petitioner, the Division Bench of this Court has noticed that the ACP of police has made endorsement on in-camera statements to the effect that he has personally verified the same and satisfied about the position and statement appears to be true. However, in paragraph no.13 of the judgment, the Division Bench has observed that there is *no remark or endorsement by the Commissioner of Police anywhere on these statements to show that he has seen the same*. In this case, the Division Bench has also observed that, the ACP has not placed any date below said

endorsements and endorsements are almost identical. The date on which in camera statements were verified by calling the witnesses is not apparent.

In the instant case, on careful perusal of those in camera statements, we do not find that the learned Commissioner made any endorsement or pass any remark on those in-camera statements to the effect that he has seen the same. It also appears from the endorsement made by the Assistant Commissioner of Police on those in camera statements that on 24.8.2016 the deponents of those in-camera statements were called in the office and the learned A.C.P. has verified the statements of those persons in between 16.00 hours to 16.35 hours. It further appears that on the same day, the A.C.P. has submitted her report about ascertainment of truthfulness of those in-camera statements to the Commissioner of Police. We doubt that, the Assistant Commissioner of Police, in fact questioned those persons and truth of assertions verified by her. On the same day, that is on 24.8.2016 if the report is submitted by the Assistant Commissioner of Police to the Commissioner of Police, then, it is

doubtful that as to when Assistant Commissioner of Police has visited the spot of incident as narrated in the in-camera statements and further made verification. The persons of those in-camera statements are residing in different areas of Pune City and the place of incident as narrated by those persons are different. We do not find any substance in the submissions made by the learned APP that since the gist of the in-camera statements mentioned in the ground of detention, inference could be drawn that the Detaining Authority has subjectively satisfied about truthfulness of allegations made in the in-camera statements and apprehension expressed by those persons in their respective statements.

The learned counsel for the petitioner has vehemently submitted that the Detaining Authority has not discussed truthfulness of those in-camera statements with the Assistant Commissioner of Police. The Detaining Authority has not controverted the same in the affidavit-in-reply. Thus, the above cited case relied upon by the learned counsel for the petitioner squarely applies to the fact and circumstances of the

present case. We are of the considered opinion that lacuna noticed above is enough to demonstrate non application of mind by the Detaining Authority.

20. In the instant case, in paragraph no.3 of the grounds of detention, the Detaining Authority has set out crime numbers, offences under which crime came to be registered against the petitioner and names of police stations, alongwith the date of registration of crimes and date and time of the arrest of the petitioner in connection with the said crimes. The Detaining Authority has also mentioned one case of preventive action and also mentioned the same in the identical manner in the tabular form. The said information is given in paragraph no.3 of the grounds of detention in tabular form. In the same paragraph Detaining Authority has stated that above mentioned offences have been registered against the petitioner from time to time for his criminal acts, however, the same have had no effect on him. On the contrary, the petitioner's illegal and dangerous criminal activities are showing an ascending trend. It is thus clear that the subjective

satisfaction of the Detaining Authority is influenced by said registration of crime as set out in paragraph no.3 in the tabular form. The learned counsel for the petitioner vehemently submitted that Detaining Authority has not set out relevant facts constituting the said offences as mentioned in paragraph no.3 in the tabular form.

21. In a case of **Ravi Suresh Shinde Vs. District Magistrate, Kolhapur** (supra) relied upon by the learned counsel for the petitioner, by referring the decision of the Apex Court in a case of **Khudiram Das Vs. The State of West Bengal and others [(1975) 2 SCC 81]**, the Division Bench of this Court, in paragraph no.5 of the judgment made following observations :-

5. Below the paragraph 12, there are subparagraph (1), (2) and (3) which contain three lists comprising of nine First Information Reports and five non-cognizable offences registered against the Petitioner. The Sections under which the offences are allegedly punishable, the dates of incidents and the names of the police stations have been incorporated therein in a tabular format. However, there is no narration of the incidents which lead to registration of the said offences. Even the gist of the facts set out in the First Information Reports has not been incorporated therein. At this stage, we make a reference to the well known decision of the Apex Court in the case of Khudiram Das V/s. The State of West Bengal and others, : [(1975) 2 SCC 81] : 1975 (2) SCC 1. In paragraph 6, the Apex Court held thus:

"If this be the true reason for providing that the grounds of which the order of detention is made should be communicated to the Detenue, it is obvious that the 'grounds' mean all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the order of detention is based."(underlines added)

After referring to its earlier decisions in the case of Golam alias Golam Mallick V/s. State of West Bengal : 1975 (2) SCC 4 as well as in the case of Ram Krishan Bhardwaj V/s. State of Delhi : AIR 1953 SC 318, the Apex court held thus:

"It is, therefore, clear that nothing less than all the basic facts and materials which influenced the detaining authority in making the order of detention must be communicated to the detenu. That is that plain requirement of the first safeguard in Article 22(5). The second safeguard in Article 22(5) requires that the detenu shall be afforded the earliest opportunity of making a representation against the order of detention. No avoidable delay, no shortfall in the materials communicated shall stand in the way of the detenu in making any early, yet comprehensive and effective, representation in regard to all basic facts and materials which may have influenced the detaining authority in making the order of detention depriving him of his freedom. These are the legal bulwarks enacted by the Constitution makers against arbitrary or improper exercise of the vast powers of preventive detention which may be vested in the executive by a law of preventive detention such as Maintenance of Internal Security Act, 1971."
(underlines added)

6. As we have noted earlier, paragraph 12 is described as a ground of detention by the detaining authority. As held by the Apex Court, a ground means all basic facts and materials which have been taken into account by the detaining authority in making the order of detention and on which the order of detention is based. A ground is not merely a fact that a particular offence has been registered against the Detenu. A ground is a factual constituent on which the subjective satisfaction of the detaining authority is based.

22. The learned Commissioner of Police in paragraph no.8 of her affidavit-in-reply has stated that the Detaining Authority has mentioned the list of offences and preventive action taken against the petitioner and out of seven offences registered against the petitioner as shown in paragraph no.3 in the tabular form in the grounds of detention, the Detaining Authority has mainly relied on the recent offence registered at Wakad Police Station vide crime no.320/2016. It has also been

stated in the same paragraph of affidavit in reply that from the remaining six offences as mentioned at serial no. 1 to 6 in the chart of offences in paragraph no.3, the Detaining Authority has arrived at his subjective satisfaction that the petitioner is habitual criminal and a dangerous person as defined in section 2 (b-1) of M.P.D.A.Act, 1981. Thus, the Detaining Authority has admitted that the incident and other details of the aforesaid crime as set out in paragraph no.3 of the Tabular Form of the grounds of detention have not been narrated in the grounds of detention. In a case of Khudiram Das Vs. The State of West of Bengal and others (supra) the Apex Court has held that 'grounds' mean all the basic facts and materials which have been taking into account by the Detaining Authority in making out grounds of detention. Thus, merely mentioning of crime numbers, penal sections, names of police stations, and the date of arrest and registration of crime is not sufficient compliance with the constitutional safeguard of communicating the grounds of detention. In the instant case, there is violation of safeguard as provided under Article 22 (5) of the

Constitution of India. It is apparent that basic facts and material in relation to the said crimes which have influenced subjective satisfaction of the Detaining Authority have not been incorporated in the grounds served upon the petitioner. Thus, the impugned order questioning of detention is also vitiated on this ground.

23. Apart from the incident as alleged in the in-camera statements and formal information about registration of six crimes registered in between the year 2008 to 2014, the detaining authority has mainly relied upon registration of crime no. 320/2016. There is a gap of near about 2 years in between the crime registered earlier and recent crime as shown to have been registered in the year 2016 under crime no.320/2016. In view of the provisions of sub-section (1) of Section 3 of the M.P.D.A. Act, 1981, an order of detention can be passed with a view to prevent a detainee from acting in any manner prejudicial to the maintenance of the public order. Clause (a) of section 2 of the Act, defines the term acting in any manner prejudicial to the maintenance of the public order. In the instant case, the

case of the petitioner is governed by clause (iv) which applies to a 'dangerous person'. The term 'dangerous person' is also defined in section 2(b-1). Section 2(a) clause (iv), section 2 (b-1) dangerous person, section 3 (1) relevant for present discussion which reads as under :-

2.(a) “acting in any manner prejudicial to the maintenance of the public order” means -

- (i).....
- (ii).....
- (iii).....

(iv) *[In the case of dangerous person, when he is engaged, or is making preparation for engaging in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.]*

2(b-1) “dangerous person” means a person, who either by himself or as a member or leader of gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.

“3(1). The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.”

24. In the instant case, the Detaining Authority has concluded that the petitioner is a 'dangerous person' as defined in the Act and his activities as revealed from the history of the registration of the crime against him

prejudicial to the maintenance of the public order. If those in-camera statements and the information about the registration of the crime till the year 2014 if it is kept out of consideration for want of furnishing all basic facts and material, the Detaining Authority has recorded his subjective satisfaction only on the basis of one recent case bearing crime no.320/2016. It is impossible to accept that on the basis of this crime alone, the Detaining Authority has correctly recorded its subjective satisfaction that the petitioner is a 'dangerous person' as defined in the act and his activities are prejudicial to the maintenance of the public order.

24. The learned APP has vehemently submitted that, even on the basis of recent case bearing crime no.320/2016, the Detaining Authority has correctly recorded his subjective satisfaction. The learned A.P.P. has also submitted that subjective satisfaction arrived at by their authority on proper application of mind on the question of compelling necessity is not open to judicial review. The learned APP has also submitted that there are severable other grounds if invites

criticism it would not vitiate entire detention.

25. In a case **Ravi Hanumant Thorat Vs. The State of Maharashtra and others** reported in **2014 ALL MR (Cri) 2168**, (supra) relied upon by the learned APP, the Division Bench of this Court has referred **Vinod K Chawla Vs. Union of India and ors (2006) 7 SCC 337** wherein the Supreme Court in paragraph no.8 of the judgment has made following observations :-

"8.We would like to clarify here that the law does not require that every document or material in possession of sponsoring authority must necessarily be placed by him before the detaining authority and in every case where any such document or material is not placed by the sponsoring authority before the detaining authority, 29/32 Cr.wp.3920.2012.doc the formation of opinion and the subjective satisfaction of the detaining authority would get vitiated."

26. The Division Bench has also referred case **Anuradha Vs Jt. Secretary and another reported in (2006) 5 SCC 142**, wherein the Supreme Court has made following observations.

Vague nature of one of the ground would not vitiate the entire detention order if there are severable grounds. Detention order as a whole is not invalid as it stands on other ground as held in Anuradha V/s. Joint Secretary & Anr. (2006) 5 SCC 142 as under :-

"It is true that this Court in series of decisions has held that if there is any serious delay in disposal of the representation, the detention order is liable to be set aside.

Nevertheless, it may be noticed that if the delay is reasonably explained and that by itself is not sufficient to hold that the detenu was bad and illegal."

27. The Division Bench of this Court in the above cited case after referring the observations made by the Supreme Court in the above cited case, in the facts of the case before it, observed that, the Detaining Authority has passed exceptionally a detailed and reasoned order, listing the criminal acts of the detainee with reference to the details of the statements of witnesses and the Detaining Authority has also considered in-camera statements made by the four witnesses.

28. In the instant case, however, the Detaining Authority has not verified those statements personally and verification of the statement made by the Assistant Commissioner of Police also appears to be under clouds. In the instant case, the Detaining Authority though considered the recent case against the petitioner, appears to have been influenced by his history of which no details of the same has been supplied to the petitioner.

29. In a case **Santosh s/o Bhagwan Patil Vs. The**

State of Maharashtra reported in 2014 ALL MR(Cri)

53 relied upon by the learned APP, in the facts of the said case, the Division Bench of this court has observed that, the sponsoring authority has made endorsement on in camera statements and in view of that the sponsoring authority was satisfied in respect of the truthfulness of the incident narrated by the witnesses and fear expressed by them. The Division Bench of this court has also observed that, if the in-camera statement discloses verification about truthfulness of such statement and the identity of the person concerned to the satisfaction of the officer verifying the statement, no challenge could be entertained on the ground that the verification was defective.

In the instant case, Detaining Authority has not verified truthfulness of such statement and identity of the persons concerned and as such said lacuna goes to the root of the case.

30. In a case **Shri Nasir Ismail Mujavar Vs. Commissioner of Police, Mumbai and others reported in 2014 ALL MR (Cri) 639**, (supra) relied

upon by the learned APP, the Division Bench of this Court has dealt with issue of delay in considering the detenue's representation. The same is not relevant for the grounds raised in the present writ petition.

31. We do not find any substance in the ground raised by the petitioner regarding rejection of the bail of the petitioner by the Sessions Court in connection with the said crime no.320/2016. The Detaining Authority in paragraph no.8 of the grounds of detention has observed that, though the application for getting release on bail submitted by the petitioner in connection with crime no.320/2016 came to be rejected by the Additional Sessions Judge, Pune, his accomplice namely Ishwar Gaikwad has been granted bail and since the offence alleged to have been committed by the petitioner is not punishable with death sentence, he may be released on bail. The detaining authority has further observed that after availing bail facility and become free person the petitioner may likely to revert to similar activities.

32. In a case of **Rushikesh Tanaji Bhoite Vs. State of Maharashtra and others reported in 2012 Cri.L.J.**

1334 (supra) relied upon by the learned counsel for the petitioner, the Supreme Court has observed that, order of detention or grounds not indicating that detaining authority was aware of bail order, granted in favour of the detenu in last of offences registered against him and as such non placing and non consideration of material vitiated subjective decision of the detaining authority. The Supreme Court has also observed that other offences referred to in order of detention also suffers from remoteness and want of proximity.

In the instant case, the rejection of the bail application was brought to the notice of the detaining authority and considering the fact that accomplice of the petitioner has been released on bail and also the fact that offence alleged to have been committed by the petitioner is not punishable with death, the Detaining Authority has considered his release on bail at a subsequent stage.

33. In a case **Abdul Sathar Ibrahim Manik Vs. Union of India and others reported in (1992) 1 Supreme Court Cases 1 (supra)** relied upon by the learned APP, the Supreme Court has held that, the detaining authority's awareness of the fact and existence of compelling necessity for detention despite the custody of detenu essential and possibility of detenu's release on bail and is indulging in prejudicial activity after release is such a compelling necessity if considered, subjective satisfaction arrived at by the detaining authority on proper application of mind on the question of compelling necessity not open for the judicial review. Similar view is also expressed by the Division Bench of this Court in a case **Firoz Hyder Shaikh @ Kalya Firoz (supra)** relied upon by the learned APP for the state reported in 2012 (4) Bom CR (Cri) 677.

34. In view of above discussion in foregoing paragraphs, the impugned order of detention is vitiated and deserves to be quashed and set aside. Hence, following order.

O R D E R

- I. Writ Petition is hereby allowed.
- II. Rule is made absolute in terms of prayer clause "B" which reads thus :-

"B. The order of detention bearing No.PCB/DET/3239/2016 dated 8.9.2016 issued under Section 3 of the M.P.D.A., Act, 1981 by respondent No.1 against the petitioner, be quashed and set aside and on quashing the said order of detention, the petitioner be released forthwith."

- III. Writ Petition accordingly disposed of.

- IV. Original file be returned to the learned APP.

Sd/-
(**V.K. JADHAV, J.**)

sd/-
(**S.S. SHINDE, J.**)

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aaa/-