

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

CRIMINAL WRIT PETITION NO. 1238 OF 2016

Vishal S/o Shahaji Kasabe
Age : 20 years, residing at Kalakhadak,
Near Balaji College, Wakad,
Pune – 411 057;
presently detained at Central Prison,
Aurangabad.

..PETITIONER

VERSUS

1. The Commissioner of Police,
Pune City, Dist. Pune.
2. The State of Maharashtra
(Through Addl. Chief Secretary,
Home Department (Special),
Mantralaya, Mumbai – 32.
3. The Superintendent
Central Prison, Aurangabad,
Dist. Aurangabad.

..RESPONDENTS.

....
Advocate for petitioner : Mr. R.D. Sanap a/w Mr. U.N. Tripathi
APP for Respondents : Mr. S.Y. Mahajan
....

**CORAM: S.S. SHINDE &
K.K. SONAWANE, JJ.
DATE : 6th January, 2017.**

JUDGMENT : (Per S.S.SHINDE, J)

By this Petition, under Article 226 of the Constitution of

India, the petitioner takes exception to the detention order bearing No.1439/PCB/DET/2016 dated 13.04.2016 issued under Section 3(2) of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981 by Respondent No.1. Though the petitioner has raised several grounds for seeking quashment of the detention order, however, during the course of hearing, the learned counsel appearing for the petitioner restricted his arguments to ground nos.II and III in the Petition. The Ground nos. II and III read thus :-

“II. The petitioner says and submits that, he was already in judicial custody w.e.f. 24.10.2015 in C.R. No. 511 of 2015 under Section 307, 143, 144, 147, 148, 149 of I.P.C. r.w. Section 37(1), 135 of Bombay Police Act r.w. Section 4, 25 of Arms Act, registered at Wakad Police Station, Pune till 13.04.2016 the date of detention. The petitioner says and submits that the detenu applied for bail to Ld. Sessions Court at Pune on 02.11.2015 and his bail application came to be rejected on 07.01.2016 by the Ld. Sessions Court, Pune. Thereafter, the detenu has not approached for bail to any higher Court and continuing in judicial custody till today. The petitioner says and submits that there is no material before the detaining authority to come to the conclusion that there is imminent possibility of his release on bail shortly based on material. The petitioner submits that there is no compelling necessity to detain the detenu under preventive detention while he was already in custody. Hence, the detention of the detenu

is unwarranted and unjustified. This shows total non-application of mind of the detaining authority. The order of detention is illegal and bad in law, liable to be quashed and set aside.

III. The petitioner says and submits that, he applied for bail in C.R. No.511 of 2015 to Ld. Sessions Court at Pune on 02.11.2015, which came to be rejected on 07.01.2016 by the said Court, whereas on 13.04.2016, the detaining authority states in para 4.2 of the grounds of detention that the Applicant applied for bail in C.R. No. 511 of 2015 in Ld. Sessions Court at Pune and the same is pending. This clearly shows that the detaining authority is totally unaware about bail position of the detenu while passing order of detention against the detenu. This shows total non application of mind of the said authority. The order of detention is illegal and bad in law, liable to be quashed and set aside.”

2. In response to ground nos.II and III, Respondent no.1 in affidavit in reply, in paras 13 to 15, stated thus :-

“13. With reference to para 6 (II) of the petition, the respondent denied all the contents therein.

The respondent kindly submitted that in para 4.2 of the Grounds of detention, the detaining Authority has specifically mentioned that on 02/11/2015 the Detenu has filed application for grant of bail before the Ld. Sessions Court in Wakad police Station C.R. No.511/23015 u/s 307, 143, 144, 147, 148, 149 of

IPC. In para 8 of the Grounds of detention, the Detaining Authority has specifically stated his satisfaction that as the Detenue has applied for bail, this shows the intention of the Detenue to secure bail and get free. The Detaining Authority further satisfied that the Detenue may be granted bail under the ordinary law of land as the said offence is not punishable with death sentence. In view of the tendencies and inclinations reflected in the offences committed by the Detenue, the Detaining Authority further satisfied that after availing bail facility and becoming a free person, again the Detenue is likely to revert to similar activities which are prejudicial to the maintenance of public order in future and it is necessary to detain the Detenue under the said act to prevent the Detenue from acting in such prejudicial manner in future. Hence the Detaining Authority after subjectively satisfied has passed the order of detention. As such said order is legal, just and proper, hence deserves to be confirmed.

14. With reference to para 6 (III) of the petitioner, the respondent denied all the contents therein.

The respondent kindly submitted that the Detaining Authority has gone through whatever documents placed before him by Sponsoring Authority. In the said documents the bail application dated 02/11/2015 of the Detenue is placed at page 329 to 338 and the same is served to the Detenue. The said bail application was filed by the Detenue and his other two accomplices for grant of bail in Wakad C.R. No.511/2015. In the said application the name of the Detenue is at serial no.1.

15. The respondent further submitted that on 07/01/2016 the Ld. Sessions Court has passed the order on the above mentioned application. In the said order, it was mentioned that the bail application of applicant namely Krushna Tulsiram Raut was rejected. As such the Detaining Authority has mentioned in the grounds of detention in para 4.2 that the bail application filed by the Detenue is pending. It is further submitted that the Detenue has applied for grant of bail on 02/11/2016 which shows the intention of Detenue to avail bail facility and becoming a free person. As such considering all the material on record and after subjectively satisfied the Detaining Authority has duly applied his mind then only passed the order of detention. It is further submitted that the contention of the Detenue in the said para that the bail application of the Detenue came to be rejected on 07/01/2016 is totally false and misleading. It is submitted that the Detenue has himself 'Not Pressed' the said bail application. Hence the order passed by the Detaining Authority is legal, just and proper and as per the provisions of law. Hence deserves to be confirmed.”

3. The learned counsel appearing for the petitioner submitted that, the petitioner is already in judicial custody since he is an accused in C.R. No. 495 of 2015 under Sections 392, 34 of the IPC, C.R. No. 15 of 2016 registered with Wakad Police Station under Sections 392 and 34 of I.P.C. and also in C.R. No.511 of 2015 registered with Wakad Police Station under Sections 307, 143, 144, 147, 148, 149 of IPC r/w Sections 4 and 25 of the Arms Act, 1959 r/w

Sections 37(1) and 135 of the Maharashtra Police Act, 1951. Though the Court has granted bail in the said offences, the petitioner could not avail the bail since was unable to provide sureties. It is further submitted that, since the petitioner was already in judicial custody and his application for bail in Crime No. 511 of 2015 registered at Wakad Police Station was already rejected by the concerned Court in the month of January, 2016, there was no compelling reasons to pass the order of detention, in as much as, there is no cogent material before the detaining authority to come to the conclusion that, there is imminent possibility of petitioner's release on bail in near future. He further submits that, there was total non-application of mind on the part of the said authority, in as much as, though the bail application filed by the petitioner in C.R. No.511 of 2015 registered with Wakad Police Station under Sections 307, 143, 144, 147, 148, 149 of IPC r/w Sections 4 and 25 of the Arms Act, 1959 r/w Sections 37(1) and 135 of the Maharashtra Police Act, 1951 was rejected since not pressed on 7th January, 2016, in para 8 of the grounds of detention, Respondent No.1 has observed that the bail application filed by the petitioner in C.R. No.511 of 2015 registered with Wakad Police Station is pending. As a matter of fact, the said application was not pending on the said date or the petitioner did not prefer the application for bail before the Higher Court in the said crime. It is submitted that, it is not

stated/discussed in grounds of detention that there were compelling reasons to pass the order of detention since there is imminent possibility of petitioner's release on bail in near future. In support of the contention that the order of detention is to be passed against a person in custody, in that case it is necessary that, the grounds of detention must show that the detaining authority was aware of the fact that the detenu is already in detention, and there were compelling reasons justifying such detention despite the fact that the detenu is already in detention and further the detenu is likely to be released from custody in the near future and taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities, the learned counsel appearing for the petitioner placed reliance on the exposition of law in the case of **Dharmendra Suganchand Chelawad and another V/s Union of India and others**¹, and in particular para 19 thereof. He also placed reliance on the unreported judgment of this Court in the case of **Fazal S/o Sikandar Patel V/s The State of Maharashtra and others** in **Criminal Writ Petition No. 56 of 2014** decided on 24th July, 2014 and in the case of **Shri Baba @ Ramjan Rukmoddin Shaikh V/s**

1 AIR 1990 SC 1196

The Commissioner of Police and ors in Criminal Writ Petition No.3941/2012 decided on **6th February, 2013**. Therefore, the learned counsel appearing for the petitioner submits that the Petition deserves to be allowed.

4. *Per contra*, the learned A.P.P. appearing for the Respondent/State, relying upon the grounds in the detention order, the original record and affidavit in reply filed on behalf of Respondent No.1, submits that, the detaining authority was satisfied that, the petitioner's application for bail in C.R. No. 511/2015 registered with Wakad Police Station is pending before the Court and he is likely to get bail under the normal law of land in due course, and therefore, the detention order came to be passed so as to prevent the petitioner from reverting to similar activities prejudicial to the maintenance of public order in future, and therefore, it was necessary to detain the petitioner.

5. We have carefully considered the submissions of the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor for the State, also perused the entire material placed on record and in particular grounds of detention and also the original record, which was made available by the learned A.P.P. for perusal.

6. Ground no.8 in the grounds of detention in the order issued by Respondent no.1 on 13.04.2016 reads thus :-

“8. 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. On 01/02/2016, you were granted bail by the Hon'ble JMFC, Court No.7, Pune in (1) C.R. No. 495/15 u/s 392, 34 of IPC, (2) C.R. No.15/16 u/s 392, 34 of IPC registered at Wakad police Station. Also, you applied for bail in C.R. no.511/15 u/s 307, 143, 144, 147, 148, 149 of I.P.C., r/w sec. 4/25 of Arms Act, 1959, r/w sec. 37(1)/135 of Maharashtra Police Act, 1951 registered at Wakad Police Station on 02/11/2015 and the same is pending before the Sessions Court at Pune. Though you were granted bail in C.R. No.495/15 and C.R. No.15/16 but till date, you could not secure release on bail as the terms of the bail order were not fulfilled and hence, you are in Magisterial custody at Yerwada jail in Pune. You applied for bail in C.R. No.511/15 registered at Wakad Police Station on 02/11/2015 and this shows your intention to secure bail and get free. However, you may be granted bail under the ordinary law of the land as the said offence is not punishable with death sentence. 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, again you are likely to revert to similar activities which are prejudicial to the maintenance of public order in future and it is

necessary to detain you under the said Act to prevent you from acting in such prejudicial manner in future.” (Underlines supplied)

7. The petitioner has placed on record the order passed by the Additional Sessions Judge, Pune in Criminal Application no.3986/2015 rejecting the bail application in C.R. No.511 of 2015. The copy of the bail application is also placed on record. It appears that along with the petitioner other two persons applied for bail. During the course of hearing of the bail application, the application on behalf of Vishal Shahaji Kasabe i.e. the petitioner and Sharukh Yunus Khan was not pressed and consequently the same was rejected. In case of Krushna Tulshiram Raut, it appears that, the application was argued on merits and the same came to be rejected. Therefore, it is clearly emerges on record that, on 7th January, 2016, the application for bail filed by the petitioner was rejected since not pressed. The contention of the learned counsel appearing for the petitioner that, he did not prefer further application for bail before the Higher Court is not disputed by the Respondents in their reply. Therefore, it appears that, on the date of passing the impugned order, the bail application of the petitioner was not pending either before the Sessions Court, Pune or Higher Court. Therefore, it clearly shows that though the

application for bail was not pending, Respondent No.1 in the grounds of detention mentioned that, the application for bail in Crime No.511/2015 is pending on the date of passing that order i.e. 13th April, 2016, and it indicates non-application of mind, and therefore, the subjective detention satisfaction arrived at by the authority and detention orders passed on the basis of said satisfaction stands vitiated.

8. Therefore, not only in the ground no.8 of the detention order, it is mentioned that the application for bail is pending but even in reply, the authority has reiterated the contention that on the date of passing the order of detention, the application for bail in Crime No.511/2015 was pending and it shows intention of the petitioner to get bail and get free.

9. In the light of discussion hereinabove and upon careful perusal of the material placed on record, the original record made available for perusal by the learned A.P.P. and also grounds of detention, it clearly emerges that, except observations that the authorities have reason to believe that, the petitioner is likely to get bail in C.R. No. 511 of 2015 registered with Wakad Police Station under Sections 307, 143, 144, 147, 148, 149 of IPC r/w Sections 4

and 25 of the Arms Act, 1959 r/w Sections 37(1) and 135 of the Maharashtra Police Act under the normal law of land in due course, there is no material on record on which the detaining authority could conclude that, the petitioner may be released on bail in the said C.R. As a matter of fact, on the date of passing the detention order, the application of the petitioner for bail was not pending and nothing is brought on record to show that, his application seeking bail was pending before the Higher Court on the date of passing the order of detention. The Bombay High Court at Principal Seat in the case of **Nasir Abdul Farid Khan V/s D.N. Jadhav Commissioner of Police and others²**, after taking into consideration the various pronouncements of the Supreme Court, in the facts of that case held that, need for detention order was not there as there was no likelihood of his (petitioner therein) coming out on bail. It was further observed that, there was no material on record on which the detaining authority could conclude that, the petitioner may be released on bail and there has to be cogent material to show that, he should be released on bail.

In that view of the matter and in view of the authoritative pronouncement of the Bombay High Court at Principal Seat in case of **Nasir Abdul Farid Khan (supra)**, the Petition

² 2008(2) Bom.C.R.(Cri.) 312

succeeds on ground nos.II and III. The view which we have taken also gets support from the exposition of law by the Supreme Court in the case of **Dharmendra Suganchand Chelawat (supra)**, and in particular para 21 thereof. We do not feel it necessary to go to any other grounds, - as the law relating to preventive detention is visited with serious consequences, it is imperative that there should be strict compliance of the same.

10. In the light of above, the Petition succeeds. The order of detention passed by the Respondent No.1 being No.1439/PCB/DET/2016, dated 13.04.2016 under Section 3(2) of M.P.D.A. Act, 1981 is quashed and set aside. The Respondent authority to release the petitioner forthwith, if not required in any other case.

11. It is, however, clarified that, in case the petitioner is released from custody in aforesaid criminal proceedings arising out of C.R. No. 495 of 2015 under Sections 392, 34 of the IPC, C.R. No. 15 of 2016 registered with Wakad Police Station under Sections 392 and 34 of I.P.C. and also C.R. No.511 of 2015 registered with Wakad Police Station under Sections 307, 143, 144, 147, 148, 149 of IPC r/w Sections 4 and 25 of the Arms Act, 1959 r/w Sections 37(1) and 135

of the Maharashtra Police Act, 1951, the question of his preventive detention under the Act on the available material may, be reconsidered by the appropriate authority in accordance with law and this decision shall not be construed as an impediment for that purpose.

12. Rule made absolute to the above extent.

13. Criminal Writ Petition is disposed of in the above terms.

Sd/-

(**K.K. SONAWANE, J.**)

Sd/-

(**S.S. SHINDE, J.**)

sga/-