

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.388 OF 2017

Hrishi @ Sarjerao Baban TakelePetitioner
V/s.
The District Magistrate, Sangli
& Ors.Respondents

Mr. Udaynath Tripathi, Advocate for Petitioner.
Ms. M.H.Mhatre , APP for Respondent-State.

**CORAM : SMT. V.K. TAHILRAMANI, &
SANDEEP K. SHINDE, JJ.**

DATE : 14th June, 2017.

ORAL JUDGMENT (Per Smt. V.K.Tahilramani, J.) :

Heard both sides.

2 The Petitioner/Detenu Hrishi @ Sarjerao Baban Takele has preferred this Petition questioning the preventive detention order passed against him on 27.12.2016 by the Respondent No.1-District Magistrate, Sangli. The said detention order has been passed under the the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drugoffenders, Dangerous persons

and Video Pirates act, 1981. (hereinafter referred to as '**MPDA Act**'). The said detention order has been issued as the Detenu is a Dangerous person whose activities are prejudicial to the maintenance of public order. The detention order is based on one C.R i.e. C.R.No.36 of 2016 of Bhilwadi Police Station, Sangli and two in-camera statements of Witnesses 'A' and 'B'.

3 Though a number of grounds have been raised in the present petition whereby the detention order has been assailed, however, the learned counsel appearing for the Petitioner/Detenu has pressed only two grounds before us, i.e. ground nos.5(d) and 5(i). In ground 5(d), it is stated that in C.R.No.36 of 2016, the Detenu was granted bail by the Court and he was free person, however, the bail application and the bail order, which are vital documents were not placed before the Detaining Authority nor copies thereof were furnished to the Detenu. In such a case, subjective satisfaction of the Detaining Authority is vitiated and the detenu is deprived of making an effective representation against the order of detention. Hence, the

detention order is liable to be quashed and set aside.

4 Ground 5(d) has been replied to by the Detaining Authority in paragraph 11 of his reply. On perusal thereof, it is seen that the Detaining Authority has not denied that the bail application was placed before him. The Detaining Authority has stated that copy of the order whereby application of the Detenu for anticipatory bail came to be granted was placed before him which is at Page 58 of the compilation furnished to the Detenu. On the basis thereof, he was aware that the Detenu was on bail.

5 Mr. Tripathi pointed out that Page 58 is only operative part of the order of the Sessions Court granting anticipatory bail to the Detenu. The entire order was not placed before the Detaining Authority. The order runs into six pages and it contains detailed reasons as to why anticipatory bail was granted to the Detenu. Admittedly, entire order running into six pages was not placed before the Detaining Authority and the copy thereof was not furnished to the Detenu.

6 Mr. Tripathi also raised ground (i) in relation to the detenu being in custody. In this ground, it is stated that the Detaining Authority has relied on C.R.No.36 of 2016 to issue the detention order, which is clear from the grounds of detention, however, no awareness is shown in the grounds of detention as to whether the Detenu was on bail or not in the said case. It was stated that the Detaining Authority should have shown its awareness in relation to whether the Detenu was in custody or not in the grounds of detention and not showing such awareness would vitiate the detention order.

7 In relation to ground (d) and (i) Mr. Tripathi is relying on the decision of the Supreme Court in the case of **Rushikesh Tanaji Bhoite v. State of Maharashtra & Ors.** reported in **2012 Cri.L.J.1334**. Mr. Tripathi placed reliance on paragraphs 8,9 and 10 of the said decision. Mr. Tripathi pointed out that in paragraph 8, it is observed as under:

“8.....However, the detention order or the grounds supplied to the Detenu do not show that the detaining authority was aware of the bail order granted in favour of the Detenu on August

15,2010.”

Mr. Tripathi pointed out that in the present case also, the detention order or grounds of detention do not show any awareness of the detaining authority whether the detenu was in custody or was released on bail.

8 Mr. Tripathi pointed out that in the case of **Rushikesh Bhoite (Supra)**, in paragraphs 9 and 10 of the said decision, it is observed as under:

“9 In a case where Detenu is released on bail and is enjoying his freedom under the order of the court at the time of passing the order of detention, **then such order of bail, in our opinion, must be placed before the detaining authority to enable him to reach at the proper satisfaction.**

10 In the present case, since the order of bail dated August 15, 2010 was neither placed before the detaining authority at the time of passing the order of detention nor the detaining authority was aware of the order of bail, in our view, the detention order is rendered invalid. We cannot attempt to assess in what manner and to what extent consideration of the order granting bail to the detenu would have effected the satisfaction of the detaining authority but suffice it to say that **non-placing and non-consideration of the**

material as vital as the bail order has vitiated the subjective decision of the detaining authority."

(Emphasis supplied)

9 Mr. Tripathi pointed out that after making above observations in paragraphs 8, 9 and 10 of the decision in the case of **Rushikesh Bhoite (Supra)**, the Supreme Court observed that the order of bail was neither placed before the Detaining Authority at the time of passing the detention order nor the Detaining Authority was aware of the order of bail. Hence, detention order is rendered invalid. It was further observed that non-placing and non-consideration of the material as vital as the bail order has vitiated the subjective satisfaction of the Detaining Authority. In the present case also, nowhere in the detention order or in the grounds of detention, the Detaining Authority has shown its awareness that bail was granted to the Detenu in C.R.No.36 of 2016. It is also an admitted fact that detailed order granting anticipatory bail to the Detenu running into six pages was not placed before the Detaining Authority nor a copy thereof was furnished to the Detenu.

10 In this view of the matter, the decision in the case of **Rushikesh Bhoite (Supra)** would squarely apply to the present case, hence, we have no option but to set aside the order of detention. Accordingly, the detention order is quashed and set aside. The Detenu be set at liberty, if not wanted in any other case. Rule is made absolute in the above terms.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)