

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO.866 OF 2017

Praveen @ Bhavdya Hiranman Kharat. .. Petitioner/
Detenu

Versus

The Commissioner of Police, Pune and Others. .. Respondents

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Shri Udaynath Tripathi for the Petitioner.

Ms.M.H. Mhatre, application for the Respondents - State.

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CORAM : A.S. OKA & RIYAZ I. CHAGLA, JJ

DATED : 7TH AUGUST 2017

ORAL JUDGMENT : (PER A.S. OKA, J)

1. Called out for final hearing. Heard learned counsel appearing for the Petitioner and the learned APP for the Respondents.

2. By this Writ Petition under Article 226 of the Constitution of India, the challenge by the Petitioner is to the order of preventive detention passed against him under Sub-section (2) of 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.

3. When the impugned order of detention was passed on 30th December 2016, the Petitioner was in custody in connection with the two offences registered at Wakad Police Station, Pune vide C.R.No.319 of 2016 under Sections 307, 143, 149, 336, 427 of the Indian Penal Code and C.R.No.3163 of 2016 under Section 4 read with Section 25 of the Arms Act, 1959 read with Section 37(1) and Section 135 of the Maharashtra Police Act, 1951.

4. The first ground of challenge pressed into service by the learned counsel appearing for the Petitioner is on the basis of the well known decision of the Apex Court in the case of *Kamarunnissa v. Union of India*¹. He submitted that the detaining authority has not recorded satisfaction that he had reason to believe on the basis of reliable material placed before him that there was a real possibility of the Petitioner being released on bail. He relied upon a decision of the Apex Court in the case of *Champion R. Sangma v. State of Meghalaya & Another*². He also placed reliance on the judgment and order passed by a Division Bench of this Court in the case of *Alpana Mohan Mhaske v. The State of Maharashtra*³. Lastly, he relied upon another decision of a Division Bench of this Court in the case of *Shri Baba @ Ramjan*

1 (1991)1 SCC 128

2 2015 ALL MR (Cri) 3673 (S.C.)

3 In Cr.WP No.1461 of 2016 decided on 20th July 2016

Rukmoddin Shaikh v. The Commissioner of Police and Others⁴. He submitted that on the failure of the detaining authority to record satisfaction as aforesaid, the impugned order is vitiated.

5. The learned APP submitted that even assuming that the subjective satisfaction as required by the Apex Court in the case of ***Kamarunnissa v. Union of India*** is not recorded in the grounds of detention, the satisfaction could be recorded by the detaining authority in the affidavit-in-reply filed by the detaining authority. Accordingly, our attention is invited to Paragraph 11 of the affidavit of the detaining authority. The said affidavit has been affirmed on 17th April 2017. She also relied upon a decision of the Division Bench of this Court in the case of ***Mohammed Asif @ Mental Abdul Sattar Shaikh @ Mohd.Asif @ Mental Abdul Sattar Khan v. The Commissioner of Police and Others***⁵. She submitted that the requirements laid down in the case of ***Kamarunnissa v. Union of India*** could be made even by filing an affidavit-in-reply.

6. We have given careful consideration to the submissions. The Paragraph 13 of the decision of the Apex Court in the case of ***Kamarunnissa v. Union of India*** reads thus:-

4 In Cr. WP No.3941 of 2012 decided on 6th February 2013

5 In Cr.WP No.1099 of 2016 decided on 12th July 2016

“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.”

(emphasis added)

7. We have carefully perused the grounds of detention. In Paragraph 8 of the ground of detention, subjective satisfaction is purportedly recorded by the detaining authority by referring to two First Information Reports registered against the Petitioner. Relevant part of Ground No.8 of the ground of detention reads thus:-

“..As you have applied for bail in the said offences on 28/12/2016 and 18/11/2016 respectively, this shows your intention to secure bail and get free. **Moreover, you may in future be granted bail under the ordinary law of the land as the said offences are not compulsorily punishable with death sentence.** In view of your tendencies and inclinations reflected in the offences committed by you as stated above as well as the incidents recorded in the 'in-camera' statements, I am further satisfied that after availing bail facility and becoming a free person, you again are likely to revert to similar activities. These 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.”

(emphasis added)

8. As quoted above, the detaining authority has merely stated that as the Petitioner had applied for bail in connection with the said offences on 28th December 2016 and 18th November 2016 respectively, it shows the intention of the Petitioner to secure bail and get free. There is no satisfaction recorded on the basis of the consideration of material placed before the detaining authority that there is a real possibility of the Petitioner being released on bail or there is a real likelihood of the Petitioner being released on bail. There is no dispute that the law laid down by the Apex Court in *Kamarunnissa v. Union of India* continues to hold the field even till today.

9. Now we turn to the affidavit-in-reply of the detaining authority. The ground of detention based on the decision of the Apex Court in the case of *Kamarunnissa v. Union of India* is incorporated in Clause (c) of Paragraph 5 of the Petition. Paragraph 11 of the affidavit-in-reply of the detaining authority deals with the said ground. In Paragraph 11, the detaining authority has stated as under:-

“It is submitted that, I being Detaining Authority was aware that the petitioner was in judicial custody in C.R. No.319 of 2016 and in C.R. No. 3163 of 2016 registered at Wakad Police Station. The petitioner has

applied for bail in the said offences on 28.12.2016 and 18.11.2016 respectively. I have recorded the subjective satisfaction to that effect in para 8 of the grounds of detention.

I have gone through the said Bail Applications and the charge-sheet filed in C.R. No.319 of 2016. I have further gone through the investigation carried out in C.R. No.3163 of 2016 and considering the overall nature of allegations made in the said offences against the detenu and the punishment provided under the provisions of law which was not compulsorily punishable with death sentence or life imprisonment, I was subjectively satisfied that the petitioner would be granted bail under the normal law of land in above offences. It is submitted that in view of the tendencies and inclinations reflected in the offences committed by the detenu which were prejudicial to the maintenance of public order, I was further satisfied that after availing bail facility and becoming a free person, he would likely to revert to similar activities in future.”

10. Even in the affidavit-in-reply, the detaining authority has not stated that on the basis of the reliable material placed by the sponsoring authority, there was a real possibility of the Petitioner being released on bail. The detaining authority has merely stated that the Petitioner would be granted bail under the normal law of land in case of offences alleged against him.

11. As held in the case of *Kamarunnissa v. Union of India*, a mere statement that the detenu would be granted bail under the normal law of land is not sufficient. A satisfaction of a higher degree is required to be recorded that the detaining authority has reason to

believe on the basis of reliable material placed before him that there is a real possibility of the detenu being released on bail. Even in the decision of this Court dated 12th July 2016 in Criminal Writ Petition No.1099 of 2016 relied upon by the learned APP, the Division Bench in Paragraph 19 found that the detaining authority had recorded a satisfaction that the detenu is likely to be granted bail in the said case. What is stated in Paragraph 11 of the affidavit-in-reply in the present case by the detaining authority is that the Petitioner would be granted bail under the normal law of land. There is no satisfaction recorded that there is a real possibility of the Petitioner being released on bail or that there is a real likelihood of the Petitioner being released on bail. Even assuming that the subjective satisfaction in terms of the decision of the Apex Court in the case of **Kamarunnissa v. Union of India** can be recorded in the affidavit-in-reply filed by the detaining authority, we find that the detaining authority has failed to record the satisfaction in terms of what is held in Paragraph 13 in the case of **Kamarunnissa v. Union of India** that *there is a real possibility of the Petitioner being released on bail*.

12. Therefore, in our view, the subjective satisfaction of the detaining authority has been vitiated and, therefore, the impugned order cannot be sustained.

13. Accordingly, we pass the following order:-

ORDER :

(a) Rule is made absolute in terms of prayer clause (b), which reads thus:

“That the order of detention bearing No.4266/PCB/DET/2016 dated 30.12.2016 under Section 3 of MPD.A. Act 1981 by the Respondent No.1 against the Petitioner, be quashed and set aside and on quashing the said order of detention, the Petitioner be released forthwith.”

(b) All concerned to act upon an authenticated copy of this order.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)