



Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Person Video Pirates, Sand Smugglers and persons engaged in Black-marketing of Essential Commodities Act, 1981 (for short "***the said Act***").

2. The learned Counsel appearing for the Petitioner has drawn our attention to ground "C" of the Petition, which appears to be the main challenge in the Petition to the detention order dated 2nd December 2016. It is mentioned that in the grounds of detention, there are seven registered cases from the year 2010 to the year 2016 mentioned. Except for two cases being C.R. i.e. C.R. Nos. 557 of 2016 and 543 of 2016, no details of the other five cases are disclosed in the ground of detention. The Petitioner has stated that the grounds of detention have not disclosed the basic facts and materials resulting into deprivation of the Petitioner from making effective representation in accordance with clause 5 of Article 22 of the Constitution of India. There is no reply filed to the present Petition.

3. The learned APP has supported the detention order and has stated that all material facts had been set out and that no prejudice has been caused to the Petitioner-Detenu from making effective representation under Article 22(5) of the Constitution of India.

4. We have considered the submissions of the parties. We are of the view that the detention order dated 2nd December 2016 is supported by cogent grounds of detention served upon the Petitioner-Detenu. Paragraph 1 of the grounds of detention clearly provides that the detention order is made under Sub-Section 2 of Section 3 of the said Act and grounds of detention are more appropriately set out in paragraph No. 5. The offences forming the basis of the detention order are set out in the paragraph No. 5 which relate to C.R.No. 557 of 2016 and 543 of 2016. We find that the particulars have been given of the said offences committed by the Petitioner. The gist of the “in-camera” statements of two witnesses have also been set out in paragraph 7 of the grounds of detention and after which the

satisfaction of detaining authorities has been recorded, which reads thus:-

*“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.”*

It is further set out in the said paragraph that:

*“Taking into consideration opinion of law officer and provision mentioned under section 439 of Cr.P.C., in future there is imminent possibility of your bail, in connection with C.R. as mentioned in above Para 5(a-1) and 5(a-2), in future if you get bail, you will become a free person and taking into consideration your propensity towards criminality, there is a imminent possibility that you will likely to revert to the similar activities prejudicial to the maintenance of*

*public order in future.”*

5. We are of the view that the grounds of detention which are required to be set out in support of a detention order have been clearly been set out in the present case. In the judgment of the Supreme Court in ***Kamarunissa Vs. Union of India & Anr.***<sup>1</sup>. Paragraph 13 reads thus:-

*“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*

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<sup>1</sup> (1991)1 SCC 128

*detain him to prevent him from so doing.”*

6. It is clear that the grounds of detention in support of the detention order meet the requirement laid down by the Supreme Court in the above judgment.

7. The details of the two cases i.e. C.R. No. 557 of 2016 and 543 of 2016 have been provided and communicated to the Petitioner on the basis of which detention order has been issued. The other five offences do not form the grounds which is clear from the first paragraph of the grounds of detention. The narration of the two relevant incidents which led to the registration of the offences have been set out in detail and we are satisfied that the grounds of detention are sufficient and have been taken into consideration by the detaining authority in making the order of detention. We refer to the judgment of the Supreme Court in the case of *Khudiram Das Vs. The State Of West Bengal & Ors.*<sup>2</sup>. Paragraph 6 reads thus:-

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<sup>2</sup> (1975)2 SCC 81

*“If this be the true reason for providing that the grounds on which the order of detention is made should be communicated to the detenu, 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.”*

8. We are of the view that the detention authority has clearly set out the grounds viz. the two offences by which he was influenced in making the detention order.

9. We are of the considered view that in the present case there is sufficient compliance with the safeguard providing under Article 22 (5) of the Constitution of India and the relevant ground of detention has been communicated. The Detaining Authority has expressly mentioned his subjective satisfaction that the Petitioner-Detenu was acting in a manner

prejudicial to public interest. The Petitioner has been provided with the available opportunity of making an effective representation against the detention order.

10. In the above circumstances, the Writ Petition is dismissed.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]