

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3336 OF 2017

Dhanaji Nivrutti Patil.	...	Petitioner
Versus		
District Magistrate, Sangli and others.	...	Respondents

Ms. Jayshree Tripathi, i/b. Mr. Udaynath Tripathi for the Petitioner.

Ms. M.H. Mhatre, APP for the Respondent – State.

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

DATED: 27th September 2017

ORAL JUDGMENT: (Per A.S.Oka, J.)

By this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of preventive detention dated 21st July 2017 passed by the District Magistrate at Sangli. The said order has been passed in exercise of powers under sub-section (1) 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 (for short “the said Act”).

2. The learned counsel appearing for the petitioner pointed out that in the grounds of detention, the detaining authority has relied upon the First Information Report (FIR) being C.R.No.63/2017 registered with Miraj Rural Police Station on 19th March 2017. The said FIR has been registered for the offences punishable under sections 307, 326, 325, 324, 323, 143, 144, 147, 148, 149 of Indian Penal Code and sections 5, 25 and 27 of the Arms Act read with sections 37(1)(3) and 135 of the Maharashtra Police Act, 1951. The learned counsel for the petitioner pointed out that the petitioner had filed bail application in connection with the said offences and by order dated 13th May 2017, bail was granted to him. The submission of the learned counsel is that considering the nature of the offences alleged and the conditions imposed while granting bail, a copy of the bail application and a copy of the order passed thereon were vital documents which ought to have been placed before the detaining authority and copies thereof ought to have been supplied to the petitioner- detenu for making effective representation against the order of detention. The submission is that the subjective satisfaction is vitiated as the said vital documents were not placed before the detaining authority.

3. The learned APP invited attention of the Court to the affidavit-in-reply filed by the detaining authority in which he has stated that the detenu was released on bail on 13th May 2017 and that he was made aware of the fact that the petitioner- detenu was released on bail. The submission of the learned counsel is that the detaining authority was aware of the bail position regarding the petitioner.

4. Another submission made by the learned counsel for the petitioner is that though the detaining authority has relied upon in-camera statements of two witnesses, true copies of the verified statements have not been furnished to the petitioner along with grounds of detention thereby preventing the petitioner from making effective representation. As regards this ground, the learned APP submitted that copies of in-camera statements have been furnished on the basis of which effective representation could have been made.

5. We have given careful consideration to the submissions. We have perused the grounds of detention. In the grounds of detention, the detaining authority has relied upon C.R.No.63/2017 registered against the petitioner. Reference of the said C.R. is found in paragraph- 4 of the grounds of detention. The grounds of detention show that the detaining authority has relied upon registration of the said offence. We have perused the order dated 13th May 2017 enlarging the petitioner on bail in connection with the FIR. We find that the following stringent conditions were imposed while granting bail:

“ ”

(iii) They shall not indulge in any criminal activity or commission of any crime after being released on bail.

(iv) Applicant No.1 Dhanaji Nivrutti Patil shall not enter in the village Rasulvadi, taluka Miraj, district Sangli and Applicant No.2 Nitin Shivaji Pawar shall

not enter in the disputed plot till filing of the chargesheet.

(v) On violation of any of the aforesaid conditions, prosecution would be at liberty to move for cancellation of bail.”

It is not the case of the detaining authority that a copy of the bail application and a copy of bail order passed thereon were placed before him. The detaining authority in paragraph- 9 of his affidavit, has stated that the sponsoring authority had orally made him aware of the bail position. A vital document is the one which could have affected the subjective satisfaction of the detaining authority one way or the other. Considering the seriousness of the allegations in the FIR and the nature of the conditions imposed while granting bail, it can certainly be said that a copy of the bail application and a copy of order passed thereon by the Sessions Court were vital documents which could have influenced the subjective satisfaction of the detaining authority one way or the other. The law on this aspect has been laid down by the Apex Court in the case of *Rushikesh Tanaji Bhoite v. State of Maharashtra and others*¹. In paragraph-10, the Apex Court held thus:

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

1 2012 Cri.L.J. 1334

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.

(underline added)

6. As in the present case, vital documents were not placed before the detaining authority, the subjective satisfaction of the detaining authority has been vitiated.

7. In paragraph-12 of the affidavit-in-reply, the detaining authority has asserted that the truthfulness and genuineness of the in-camera statements made by two witnesses has been verified by the Sub-Divisional Police Officer, Sangli. Perusal of the copies of the statements supplied to the petitioner along with grounds of detention show that the same do not contain verification signed by the said Police Officer. The detaining authority could not have relied upon in-camera statements unless the same were verified by the higher Police Officer.

8. As copies of verified statements were not furnished to the petitioner, he was not in a position to make effective representation against the order of detention. Even on this ground, the petition must succeed and, accordingly, we pass the following order:

ORDER

1. Rule is made absolute in terms of prayer clause (b)

which reads thus:-

“The order of Detention bearing D.O. Home – 1/Desk-6/MAG/SR/3/1005/17 dated 21st July 2017 issued under Section 3 of M.P.D.A. Act 1981 by the Respondent No.1 be quashed and set aside and on quashing the same the detenu be ordered for release forthwith.”

2. All concerned to act on an authenticated copy of the judgment and order.

3. There shall be no order as to costs.

(RIYAZ I. CHAGLA, J.)

(A.S. OKA, J)