

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

CRIMINAL WRIT PETITION NO. 4943 OF 2017

Vishnu @ Bablu Vasant Gawali
Age 43 years, r/at 744, Bhavani Peth,
Fakir Mohammed Chawl, Pune.

... Petitioner.
(Detenu)

V/s.

1. The Commissioner of Police, Pune
2. The State of Maharashtra (through Addl.
Chief Secretary, Home Dept., Mantralaya,
Mumbai.
3. The Superintendent, Nashik Rd., Central
Prison, Nashik.
4. The Secretary, Hon'ble Advisory Board,
Constituted u/s.9 of MPDA Act, 1981,
Mantralaya, Mumbai-400 032.

... Respondents.

Mr. Udaynath N. Tripathi, Advocate for the Petitioner.
Mr. J. P. Yagnik, APP for the State.

**CORAM : S. C. DHARMADHIKARI AND
SMT.BHARATI H. DANGRE, JJ.
DATE : 18th JANUARY, 2018**

**[Order Reserved on : 12.01.2018]
[Order Pronounced on : 18.01.2018]**

JUDGMENT : (Per Smt.Bharati H. Dangre, J.)

1 The present Petition is filed by the Petitioner, who
is a detenu, detained at Nashik Road Central Prison, Nashik
and he is aggrieved by the impugned order of his detention

passed by the Commissioner of Police, Pune City, Pune on 31.12.2016, thereby directing the petitioner to be detained from the date of service of the said order under the provisions 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 (hereinafter, for short, referred to as the MPDA Act, 1981), with a view to prevent him from acting in any manner prejudicial to the maintenance of the public order.

Pursuant to the said impugned order of detention, the petitioner is detained and presently, he is undergoing detention and he prays that the order of detention is liable to be quashed and set aside on several grounds which he has raised in the writ petition.

2 Respondent No.1, the Detaining Authority i.e. the Commissioner of Police, Pune City, Pune has passed the order dated 31.12.2016 in exercise of powers conferred under sub-

section 2 of Section 3 of the MPDA Act, 1981, thereby directing the detention of the petitioner under the provisions of the said Act. The main ground on which the petitioner has assailed the impugned order of detention, is narrated in the petition in paragraph - 'c' of the grounds of detention, which is reproduced below :

“c. The Petitioner says and submits that even though the order of detention is passed on 31.12.2016, the said order of detention alongwith grounds of detention is executed and served upon the detenu on 19.01.2017 while he was in custody i.e. beyond five days. The requirement of law is that the grounds should be served upon the detenu within 5 days from the date of detention. In this case, the detenu was already in custody on the day of detention. The executing authority is called upon to explain the delay in execution of the order of detention to the satisfaction of this Hon'ble Court by producing relevant record, failing which the order of detention will be held illegal and bad in law. The order of detention is illegal for delay in execution of the order of detention. The order of detention is illegal and bad in law, liable to be quashed and set aside.”

The petitioner has raised further a ground in the petition that the detaining authority has failed to record his

subjective satisfaction since it did not take note of the fact that the order of detention was passed on 31.12.2016 while the detenu was already in judicial custody at Yerwada Central Prison, Pune after been arrested in CR No. 158 of 2016 on 29.09.2016. The petitioner has also stated in the petition that the detaining authority has passed the order of detention in a very casual and cavalier manner without applying its judicious mind and there is complete non-application of mind on the part of the detaining authority.

On the aforesaid grounds, the petitioner prays that the impugned order of detention is illegal, bad in law and is liable to be quashed and set aside.

3. Another ground on which the petitioner assails his detention is raised in paragraph -'b' of the petition, which reads as follows :

“b. The Petitioner says and submits that neither the detaining authority in the grounds of detention nor the Secretary, Advisory Board in its intimation letter has apprised/ informed to the detenu one of the valuable rights i.e. to lead oral evidence in rebuttal against the allegations made against him

by producing and examining witnesses before the Hon'ble Advisory Board and to keep witnesses ready on the day of interview. The Petitioner says and submits that the above-said right of the detenu to produce and examine witnesses before the Hon'ble Advisory Board, is a constitutional safeguard and recognized by Hon'ble Supreme Court. The Petitioner says and submits that as a result of non-appraisal of his one of the valuable rights, the detenu could not make any arrangement to produce and examine witnesses before the Hon'ble Advisory Board, as such his right to defend his case effectively before the Hon'ble Advisory Board, is violated. The Petitioner says and submits that what is informed to the detenu in paragraph 14 of the grounds of detention is that 'as well as other rights prescribed in the Act', which is absolutely vague and how a detenu is expected to know what are the other rights under which Acts of preventive detention unless specified by the authority. It is therefore, clear that since the detenu's right to lead oral evidence in rebuttal by producing and examining witnesses before the Hon'ble Advisory Board is not apprised, he is deprived of exercising before the Hon'ble Advisory Board. The procedure adopted by Hon'ble Advisory Board is not just, fair and reasonable. The whole Board proceeding vitiates. The report submitted to State Government is erroneous and illegal. Further the confirmation order issued on the basis of Advisory Board's report is also illegal and bas in law. The order of detention is illegal and bad in law, liable to be quashed and set aside."

4. The detaining authority in response to the grounds of detention raised in the petition, has filed an affidavit

through the Commissioner of Police Pune City, Pune. In the affidavit the detaining authority has referred to the material on the basis of which the subjective satisfaction was reached. According to the said affidavit, the proposal for detention of the petitioner was forwarded to the authority, which was based on four offences. One of the offences was within the period of six months and reliance was also placed on two in-camera statements, which were duly verified by the Assistant Commissioner of Police, Lashkar Division, Pune City. The affidavit states that the detenu was found to be engaging in prejudicial activities, which were affecting maintenance of public order and on perusal of the material, the detaining authority was satisfied that the activities of the detenu were prejudicial to the maintenance of public order in the area of Lashkar of Pune City and the detenu was a dangerous desperado of violent character, indulging in terrorizing activities and had created a reign of terror in the society. It is further stated in the affidavit that the detenu had become perpetual danger to the lives and properties of the

people residing and carrying out their daily activities and vocation in the jurisdiction of Lashkar Police Station of Pune city and the detenu and his accomplices, armed with deadly weapons such as pistol, koyata, axe and wooden shaft had committed various offences including the offence of attempts to commit murder, grievous hurt and robbery. It is also stated that the detenu has habitually been committing offences under Chapter XVI and XVII of the Indian Penal Code as well as under Chapter V of the Arms Act and he was thus a dangerous person, as defined in section 2(b-1) of the MPDA Act.

In regard to ground number 'c', the detaining authority stated as follows in para 10 :

“10. With reference to para 5(c) of the petition, it is kindly submitted that the former portion of the said para that the detention order was passed on 31.12.2016 and the same has been served upon Detenu on 19.01.2017 is true and correct but the rest of the contents are not true and correct hence, denied by me.

It is kindly submitted that the Detenu was in Yerawada Jail on the offence registered with Lashkar Police Station Vide C.R. No.158/2016 u/s. 307, 143, 147, 148, 149 of IPC u/s. 3/25 of the Arms Act, r/w. Section 37 (1) 135 of the Maharashtra Police Act, 1951. As such the said order of detention was served upon the detenu on 19.01.2017. Further the detention order came into force only after the service of the detention order to the Detenu. As such there is no such delay as alleged by the Detenu and in-between period between 01.01.2017 to 19.01.2017 is explained by Police Inspector, P.C.B. by in their separate affidavit.”

On record, we also find the Affidavit sworn by Satish Dattatray Mane, Police Inspector, Preventive Crime Branch, Pune city, Pune, who has attempted to explain the period consumed for serving the order of detention on the detenu in para 2 of the affidavit which reads as under :

“2. I state that, the Senior Police Inspector of Lashkar Police Station received Detention Order vide no. 4277/ 2016 dtd. 31.12.2016 issued by detaining authority on the same day. There was holiday (Sunday) on 01.01.2017 so he visited Yerwada

Central Jail to serve the said order on detenu on 02.01.2017 as Detenu was already in Yerwada Jail, Pune in magisterial custody in Lashkar Police Station, Pune, C.R.No.158/2016 u/s. 307, 143, 147, 148, 149 of the IPC r/w. Sec. 3/25 of the Arms Act r/w. Sec. 37(1)/135 of the Maharashtra Police Act. As the said detenu was already in magisterial custody, the Jail Officer of the Yerwada Central Prison, Pune asked for N.O.C. of concerned Court for executing the said detention order. Thereafter, the report was submitted to the Hon'ble Sessions Court, Shivajinagar, Pune for obtaining permission to serve the detention order to the Detenu and lodging him at Nashik Central Prison, Nashik on 02.01.2017. The copy of the said report attached herewith at Annexure 'A'. But concerned Hon'ble Court, Pune did not give permission still 19.01.2017. So concerned police office met Hon'ble Court, Pune and requested for obtaining sanction order to concerned Hon'ble Court, Pune. The said court gave oral instructions to serve the detention order on detenu on 19.01.2017. So on 19.01.2017 Police Inspector, Crime of Lashkar Police Station, Pune has served detention order and all relevant documents to the Detenu. Thereafter, permission was granted by the concerned Hon'ble

Court to transferred the Detenu on 21.01.2017 and on 23.01.2017 Detenu was transferred to Nashik Central Prison. Copy of the above said order dated 21.01.2017 is annexed herewith for kind reference as Annexure 'B'."

5 As regards the ground raised in the petition about the detention of the detenu, as raised in paragraph number - 'b' of the petition, the affidavit filed by the Secretary of Advisory Board, MPDA & VP Act, 1981, Home Department (Special), State of Maharashtra, filed on 6th January, 2018 deals with the said ground. In response to the said ground, the affidavit states that the order of detention which was passed on 31.12.2016 and the case report about the detention was sent by the Commissioner of Police, Pune to the Home Department on 07.01.2017 and it was received by the Advisory Board on 11.01.2017. It is further stated that the intimation letter dated 03.02.2017 was issued to the detenu through the Superintendent, Nasik Road Central Prison, Nasik by the Secretary, Advisory Board on 03.02.2017 and the detenu was informed that the hearing before the Advisory

Board is fixed on 10.02.2017 at 3.00 pm in the High Court Mumbai and if he wishes to make a representation against his detention, he may do so and address the same to the Chairman, Advisory Board immediately. It was also intimated to the detenu that he can take assistance of his friend and examine witnesses, if any, and keep him/them present at the time of interview before the Advisory Board. Alongwith the affidavit, the copies of the said communications are also placed on record. The communication addressed to the detenu bears the date of 03rd February, 2017. The affidavit also further states that the detenu was given sufficient opportunity to make representation to the Advisory Board and on the date of the hearing before the Advisory Board on 10.02.2017, the detenu was present and he was heard alongwith his Advocate Mrs. Ansari.

After hearing the detenu-in-person as well as his Advocate, the Advisory Board forwarded its opinion to the State Government on 14.02.2017.

6 We have heard the learned counsel Shri Udaynath Tripathi, appearing for the petitioner and Mr. J. P. Yagnik, APP for the State at length. With the assistance of the learned counsels, we have perused the entire record including the writ petition and its annexures and the affidavit filed on record in support of the order of detention of the detenu.

 The learned counsel for the petitioner was sternly critical about the manner in which the order of detention was executed on the detenu and the learned counsel for the petitioner would argue that though the detention order was passed on 31.12.2016, the order of detention alongwith the grounds of detention, was executed on 19.01.2017 while the detenu was in custody. He would argue that the detaining authority should have amply justified the delay in executing the order of detention by producing relevant record, failing which the order of detention is liable to be quash and set aside.

 We have considered the submissions advanced on the said aspect. The detaining authority has admitted that the detention order was issued on 31.12.2016 and it is

submitted that the detenu was in Yerwada Central Prison in an offence registered with the Lashkar Police Station and he was served with the detention order on 19.01.2017.

6 The learned APP appearing on behalf of the detaining authority would argue that the detention order came into force only after its service and as such there is no prejudice since the order is valid for one year from the date of its' service and as such there is no delay and even if it is so, it does not prejudicially affect the detenu.

 We have also perused the affidavit filed by Satish Dattatray Mane, Police Inspector, Preventive Crime Branch, Pune, who has executed the order of detention and the detaining authority in its affidavit has stated that the period after passing of the detention order till its service on the detenu is explained by the Police Inspector in a separate affidavit. The Police Inspector, Preventive Crime Branch, Pune City, has justified the said time lapse, by stating that the Senior Police Inspector of Lashkar Police Station, received the

detention order dated 31.12.2016 on the same day from the detaining authority. However, on the next date i.e. 01.01.2017, it was holiday, being Sunday, and therefore, he proceeded to Yerwada Central Jail to serve the order of detention on the detenu on 02.01.2017 as the detenu was already housed in a Yerwada Jail, being in Magisterial custody in Lashkar Police Station, Pune in relation to the CR No.158 of 2016. It is stated by him that since the detenu was in Magisterial custody, the Jail Officer of the Yerwada Central Prison, asked for the NOC of the concerned court for executing the detention order and thereupon an application was submitted to the Hon'ble Sessions Court, Shivajinagar Pune, for obtaining permission to serve the detention order on the detenu and lodging him at Nashik Central Prison, Nashik on 02.01.2017. A report has also been placed on record alongwith the affidavit. It is then argued that the Hon'ble Court, Pune did not grant permission till 19.01.2017. However, the Police Inspector, Crime, Lashkar Police Station, made a request to the Hon'ble Court for obtaining permission

to serve the detention order. The Hon'ble Court had issued oral instructions to serve the detention order and therefore, the detention order was served on 19.01.2017. It is also argued that the permission was also granted by the concerned court to transfer the detenu on 21.01.2017 to the Nashik Central Prison and accordingly the detenu was transferred to Nashik Central Prison.

7 We are amazed by the approach adopted by the detaining authority. True it is that the detenu was already in Magisterial custody in relation to the CR No. 158 of 2016, which was registered at Lashkar Police Station. The detention order was passed on 31.12.2016 and the committal order was passed by the detaining authority, directing the detention of the detenu in Nashik Central Prison, Nashik. It is not in dispute that as per section 5 of the MPID Act, 1981, a person in respect of whom the detention order has been made is to be detained in such a place and under special conditions, as the State Government may by general or special order specify. The

detaining authority has, therefore, issued a committal order and directed the detention of the petitioner in Nashik Central Prison. Surprisingly, the executing authority who visited the Yerwada Central Prison was asked to obtain NOC from the court for executing the order of detention. Thereupon the executing authority approached the Sessions Court, seeking such a permission and application was kept pending from 02.01.2017 till it was disposed of by the learned Additional Sessions Judge, Pune on 21.01.2017. Perusal of the application dated 02.01.2017 made to the learned Sessions Judge, Lashkar Court, Pune is based on a mis-conceived notion that even for serving the order of detention, permission of the court is required; whereas the permission ought to have been required only for transferring the petitioner who was in magisterial custody and housed in Yerwada Central Prison and for being transferred to Nasik Central Prison, which was to be his place of abode during the period of detention under the impugned order of detention. However, in a mis-conceived notion, an application was made to the Sessions Court even

seeking permission to serve the order of detention. The learned Sessions Judge, Pune on 21.01.2017 has rightly passed an order and noted that it is for the jail authority to lodge the accused in particular jail for which the court had no concern and the concern of the court was only to ensure the presence of the accused, at the time of the hearing before the court. Before this un-productive exercise culminated, it is stated that the court had granted oral permission to serve the order of detention on 19.01.2017 and accordingly, it was served on the detenu on the same day. In fact this exercise could have been taken earlier as soon as the detention order was received since there was no legal impediment in serving the order of detention on the detenu, though already detained and placed behind the bar in the Yerwada Central Prison and as regards the shifting of the detenu to comply with the impugned order of detention and detaining him in Nashik Central Prison, an appropriate permission ought to have been sought. Since there was no legal impediment in serving the order of detention in Yerwada Central Prison, we expressed that the

executing authority has failed to apply its mind and unnecessarily indulged itself by seeking permission from the Sessions Court and ultimately, it was only on the oral instructions from the Sessions Court, the order came to be served on 19.1.2017. This exercise could have been avoided if the executing authority could have applied its mind and would have realized that the purpose of detention is to detain dangerous person and since the petitioner/detenu was already in custody, the order could have been served upon him and then the order could have been effective from the date on which it was served. In any case we are of the opinion that it is a procedural irregularity which the executing authority has committed. We do not feel that this procedural irregularity would benefit the detenu to canvass the submission that the detention order itself is vitiated on the said count. We are unable to accept the submission of Shri Tripathi that the detention order itself is liable to be quashed on account of delay in its execution. We fail to understand as to how a subjective satisfaction recorded by the detaining authority, as

reflected in the ground of detention, based on which the detaining authority has arrived at a conclusion that it is necessary to detain the petitioner under the provisions of MPDA Act, 1981 is vitiated on the account of delay in serving the order of detention.

We are, therefore, not inclined to accede to the request of the learned counsel for the petitioner, to hold that the order of detention becomes illegal on account of delay in its execution and is liable to be quashed and set aside on the said ground.

8 The learned counsel for the petitioner also pressed into service ground no. (b) raised in the petition. His submission is that neither the detaining authority in the grounds of detention nor the Secretary, Advisory Board, in its intimation letter has apprised the detenu of his right to lead oral evidence in rebuttal by producing and examining witnesses before the Advisory Board and to keep witnesses ready on the day of interview. According to Shri Tripathi, a

right to produce and examine witnesses is a constitutional safeguard and it is so recognized by the Apex Court and this Court. According to Shri Tripathi failure to apprise him of such a valuable right, resulted in violation of his right to defend his case effectively before the Advisory Board.

We have perused the response contained in the affidavit, while dealing with the said ground argued by the learned counsel for the petitioner. The detaining authority in the grounds of detention which are communicated to the petitioner on 31.12.2016 in paragraph no. 14 have apprised the petitioner of his right of hearing in-person by the Advisory Board and also for his right to seek assistance of his friend during the course of hearing before the Advisory Board. The grounds of detention contain the following paragraphs which have apprised the petitioner/ detenu of his right before the Advisory Board.

“14. You are also further informed that you shall be heard in person by the Advisory Board in due course if the board considers it essential to do so or if you

so desire. If you desire to be heard in person by the Advisory Board, you may intimate your desire to the Advisory Board or to the Government of Maharashtra, through the Superintendent of the Jail, where you are detained, so that the Advisory Board may be intimated about it and necessary arrangements may be made to produce you before the Advisory Board on the date fixed by it for the purpose. You have also a right to seek an assistance of any friend who is not a legal practitioner during the course of hearing of the Advisory Board as well as other rights as prescribed in the Act.”

9 The Secretary, Advisory Board, MPDA & VP Act, 198, Home Department (Special) State of Maharashtra in his affidavit filed on 06.01.2018 has denied the said ground raised by the detenu. Alongwith the said affidavit, the communication from the Secretary, Advisory Board, MPDA & VP Act, 1981 addressed to the detenu dated 03.02.2017 has been placed on record. From the said communication it is apparent that it was received by the detenu on 06.02.2017 and the contents of the said communication were explained to the detenu in the

language which he understood. The said communication reads as follows :

“I am directed to state that your case has been referred to the Advisory Board by Government in the Home Department (Special), for review and the date of hearing before the Advisory Board is fixed on 10th February, 2017 at 03.00 p.m. in Room No. 65, Third floor, High Court Building, Mumbai. In the meantime, if you wish to make a representation against your detention order the MPDA & VP Act, 1981, you may please to do so and address it to the Chairman of the Advisory Board immediately. Such representation may please be forwarded to quadruplicate to the Secretary, Advisory Board on his address mentioned above and should be submitted through the Superintendent of the Jail where you have been detained. If you wish, you can also take the assistance of your friend and examine witness if any and keep him/them present at the time of your interview before the Advisory Board.”

Perusal of the aforesaid communication reveals that the detenu was informed that he can examine the

witnesses, if any, and the witnesses are to be kept present at the time of the interviews scheduled before the Advisory Board i.e. on 10.02.2017. In the said affidavit filed by the Secretary of the Advisory Board, it is stated on oath that the case of the detenu was put up before the Advisory Board on 10.02.2017 and the hearing was attended by the detenu alongwith his Advocate Mrs. Ansari. It is also stated that the detenu was heard in-person by the Advisory Board and so also his Advocate was heard on the same day. We are in agreement with the argument of Shri Tripathi that the detenu has a right to be apprised and made aware about the constitutional right which he enjoys under the draconian law like MPDA Act 1981 which flows from Article 22 of the Constitution of India. The detenu has a right to be apprised that he is entitled to produce witness before the Advisory Board. We are cognizant of the fact that this right has been recognized by the Hon'ble Apex Court in the case of **A.K. Roy v/s. Union of India**, reported in 1982 Criminal Law Journal - 340 and various other decisions following it. However, in the

present case, we are not convinced that there is any violation of the said right and, in fact, the communication addressed by the Advisory Board to the Petitioner, which has been placed on record alongwith the affidavit filed by the Secretary, Advisory Board, MPDA & VP Act, 1981, clearly reveals that the petitioner/detenu was clearly made aware of such a right and it was open for him to avail such a right during the course of the proceedings before the Advisory Board and he has chosen not to bring any witness on the date when the hearing was conducted before the Advisory Board and he has chosen to be represented through Advocate. We, therefore, are not convinced with the ground no. 'b' raised by the counsel for the petitioner in the writ petition.

10 This takes us to the last ground of the petitioner raised in the petition, namely, that the detaining authority has passed the detention order in a very casual and cavalier manner without applying its judicious mind and that the authority has taken into consideration four criminal cases

registered against the detenu; whereas the details of one of the case vide CR No. 158 of 2016 has been furnished to the detenu alongwith the communication of the grounds of detention.

Perusal of the ground of detention reveals that the detaining authority has given list of offences and preventive action initiated against the detenu and it refers to several CRs namely, CR No.431 of 1999 registered at Deccan Police Station, Pune, CR No. 157 of 2014 registered at Lashkar Police Station and CR No. 171 of 2014 registered at Wanwadi Police Station. The said chart also includes the CR No. 158 of 2016 registered at Lashkar Police Station. The detaining authority then mentions in para 3 that :

... .. "In the past, on 26.09.2000, you have been convicted in CR No. 431/1999 u/s. 353, 323 of IPC registered at Deccan Police Station, Pune. In the said offence, the Hon'ble J.M.F.C., A.C. Court, Pune sentenced you to suffer S.I. for six months on each counts and also fined you Rs.100/- (one hundred) on each counts and, in default of payment of fine, to suffer S.I. For three days on each counts. Even after

serving the sentence of imprisonment in the said offence, you again committed serious offences such as attempt to commit murder, grievous hurt, riot, robbery etc.. in the jurisdiction of Wanawadi and Lashkar Police Stations, Pune. These offences are shown at serial no. 02,03 and 04 of the chart of offences”.

In paragraph no. 4 of the grounds of detention, the detaining authority observes as follows :

4. “In the recent past, your involvement is noticed in the following offences which are of serious nature and are suggestive of your tendencies and inclinations to perpetuate your criminal activities which are prejudicial to the maintenance of public order.”

11 Thus the detaining authority has taken into consideration three CRs mentioned at serial nos. 1 to 3 as past offences and relied upon CR No.158 of 2016 for passing the order of detention alongwith the two in-camera statements. The detaining authority has specifically dealt with the said

grounds and has responded to the same vide affidavit dated 10.01.2018 in para 12, by stating as under :

“It is kindly submitted that I have considered only one offence i.e. Lashkar Police Station C.R. No.158/2016 which was committed by the Detenu in recent past and within six months prior to the date of proposal and rest of the three offences at S. No. 1 to 3 in the chart were mentioned only to show the past criminal history of the Detenu. As such the I have never considered the above said three cases and hence the details of the said offences has not mentioned in the grounds of detention.”

We, therefore, do not find the said ground raised by the counsel for the petitioner is of any substance and worth consideration.

12 In the light of the aforesaid discussion, we are of the view that the detenu being a habitual criminal and he has been indulging in dangerous and criminal activities, posing

threat to the life and property of the public, has been detained by the detaining authority by passing the impugned order, after taking into consideration his past activities and by relying upon his recent activity of indulging into by committing offences punishable under sections 307, 143, 147, 148, 149 of the IPC read with section 3/25 of the Arms Act alongwith in camera statements. On the basis of the said material, the detaining authority was subjectively satisfied that the activities of the detenu are prejudicial to the maintenance of the public order and in order to prevent him from indulging into said activities, it was necessary to detain him. The detaining authority has also taken cognizance of the fact that the detenu is detained in Yerwada Central Jail for CR No. 158 of 2016 and has filed in application seeking bail in the said offence and after availing bail facility, the detenu is likely to resort to the same activities which are prejudicial to the maintenance of public order, in future and has, therefore, passed the order of detention.

The detaining authority has also apprised the detenu of the constitutional safeguards available to him and for permitting him to avail the rights made available to him under those safeguards since the preventive detention is an enactment which results into curtailment of liberty of a person and it has to be strictly ensured that a person is deprived of the same, only following due process of law.

13 We do not find any lacuna in the impugned order of detention passed by the detaining authority. We find no merit and substance in the contentions raised by the learned counsel for the petitioner in support of seeking release of the detenu. In the result the order of detention dated 31.12.2016 is upheld and the Writ Petition is dismissed. Rule is discharged.

(SMT.BHARATI H.DANGRE,J.) (S.C.DHARMADHIKARI,J.)

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