

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

CRIMINAL WRIT PETITION NO. 1001 OF 2022

Shri Manmoorat R. Pandey
(Father of the detenu) Aged 56 years,
R/o. 5/502, Ballaleshwar Apts., Digha,
New Mumbai, Dist. Thane. ... Petitioner.

V/s.

1. The Commissioner of Police, Thane.
2. The State of Maharashtra (Through
Addl. Chief Secretary to Government
of Maharashtra, Mantralaya, Home
Department, Mantralaya, Mumbai)
3. The Superintendent,
Yerwada Cenral Prison, Pune. ... Respondents.

Ms.Jayshree Tripathi with Mr.U.N.Tripathi for the Petitioner.
Mr.J.P.Yagnik, A.P.P. for the Respondent – State.

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CORAM : **NITIN JAMDAR AND
N.R. BORKAR, JJ.**

DATE: **4 August 2022.**

JUDGMENT : (Per Nitin Jamdar, J.)

Heard learned counsel for the parties. Rule has already been issued. The petition is taken up for disposal.

2. By this petition, the Petitioner (the father of the Detenu- Ashish @ Sonu Manmurad Pande) is seeking to quash the order of detention dated 23 December 2021 issued under section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (MPDA Act) and is praying to be released from custody.

3. The order of detention dated 23 December 2021, along with the Committal Order and Reasons for Detention of the same date, were served on the Detenu. The detention order was based on three criminal cases filed against the Detenu and two in-camera statements of witnesses, Witness-A and Witness-B. The Detaining Authority, in the grounds of detention, noted that the Detenu was moving around with dangerous weapons and was engaged in criminal activities of terrorizing because of which none was coming forward to give evidence. It was stated that from 2017 to 2021, the Detenu was involved in five offences, i.e. C.R.Nos. I-199/2017 under section 326, 34 of Indian Penal Code; I-70/2018 under

sections 326, 324, 354, 323, 506, 34 of IPC; I-243/2019 under sections 394, 34 of IPC read with section 142 of the Maharashtra Police Act; 213/2021 under sections 324, 323, 504 of IPC, 387/2021 under section 326, 323, 504 of IPC; and 392/2021 under sections 326, 323, 504, 506(2) of IPC read with sections 4, 25 of the Arms Act read with sections 37(1), 135 of the Maharashtra Police Act all registered at Kalwa Police Station. As regards C.R.No.392/2021 dated 4 November 2021, the Detenu was transferred and arrested in Kalwa Police Station in C.R.No.I-387/2021 dated 8 January 2021 and C.R.No.I-213/2021 dated 12 November 2021. The Detaining Authority also referred to preventive action taken against the Detenu of externment and a chapter case and that this preventive action did not deter the Detenu from committing further activities prejudicial to the public order. The Detaining Authority relied upon three offences registered on 5 July 2021, 1 November 2021 and 4 November 2021 at Kalwa Police Station. The witnesses whose statements were recorded in-camera also stated that they were threatened, and the Detenu committed activities which are prejudicial to the public order. The Detenu was arrested in respect of C.R.No.392/2021. The Detenu had made an application for bail, which was pending. Considering the material on record, the Detaining Authority arrived at subjective satisfaction that the activities of the Detenu were prejudicial to the public order and could not have been detained under the ordinary law of the land, and it was necessary to pass the order of detention. Accordingly, the

impugned order came to be passed. The Detenu made a representation which was rejected. The Petitioner is, thus, before us challenging the order of detention.

4. The learned counsel for the Petitioner submitted that though it is correct that the order of detention can be passed when a person is in custody, there are certain parameters laid down for exercise, such as that the detaining authority must be aware that the person is actually in custody; there must be reasonable material before the detaining authority that the person is likely to be released on bail; and that after release he would probably indulge in prejudicial activities. The learned counsel for the Petitioner submitted that the material on record would show that the Detaining Authority could not have concluded that the Detenu is likely to be released on bail. The learned counsel submitted that the detention order itself would show that the Detenu was arrested for three offences, i.e. C.R.Nos. 392/2021, 387/2021 and 213/2021. As stated in the detention order, all three offences would indicate that they were not minor offences. The reasons for detention also state that the Detenu had made an application for bail in C.R.No.387/2021, and the bail application is pending. The learned counsel, in furtherance of this submission, relied upon the decision of the Supreme Court in the case of *Kamarunnissa v. Union of India*¹. The learned APP, on the other hand, submitted that in the past, the Petitioner was released on bail and yet committed offences

¹ (1991) 1 SCC 128

and submitted that the Division Bench of this Court, Aurangabad Bench in the case of *Mujammil @ Murgya Sabbir Mokashi v. Commissioner of Police*², after referring to the decision of the Supreme Court in *Kamarunnissa* has observed that since an application for release on bail was made by the petitioner therein and that there was a likelihood of securing bail, the action of detention was upheld.

5. Whether there is cogent material before the Detaining Authority to conclude that there is a real possibility of being released on bail would depend upon the facts of each case. In the present case, the Detenu was arrested in respect of three offences, i.e. C.R.Nos. 392/2021, 387/2021 and 213/2021. From the grounds of order of detention, it is clear that the bail application was only for one offence that is C.R.No.387/2021. Therefore, even if this bail application had been granted, the Detenu would have continued in custody for the other two offences. The Detaining Authority was fully aware of three cases and bail application only for one offence. Therefore, in the facts of this case, the Detaining Authority could not have concluded that there was a real possibility of the Detenu being released on bail and set at liberty so that he might indulge in prejudicial activities. Though it is not strictly relevant for adjudication of this case, the Detenu's bail application was ultimately rejected (after the detention order) on 15 January 2022. In the light of this position, the contention of the learned counsel for the

2 2016 AllMR (Cri) 2185; 2016 2 BCR (Cri) 752

Petitioner that the Detenu could have been dealt with under the ordinary law of the land and placing him under detention was not necessary will have to be accepted. Accordingly, the writ petition deserves to be allowed.

6. The impugned order of detention dated 23 December 2021 is quashed and set aside. The Detenu be set at liberty if not required in any other case. Rule is made absolute in the above terms.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)