

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

CRIMINAL WRIT PETITION NO. 1856 OF 2022

Namrata Avinash Kadu Wife of Pappu @
Avinash Vasant Kadu – Detenu ...Applicant
Versus
State of Maharashtra And Anr. ...Respondents

....

Mr. Shailesh Kharat, Advocate for the Petitioner.
Mrs. M.H. Mhatre, APP for Respondent - State.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**
RESERVED ON : 15th DECEMBER, 2022.
PRONOUNCED ON : 22nd DECEMBER, 2022.

JUDGMENT : (Per : PRAKASH D. NAIK, J.)

1. Petitioner is the wife of Detenu Pappu @ Avinash Vasant Kadu (hereinafter referred to as Detenu). The petitioner has challenged Order of Detention dated 11th February, 2022 issued by the Commissioner of Police, Pune City under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing Essential Commodities Act, 1981. (for short “M.P.D. Act”). The impugned Order of Detention and the grounds of detention were served upon the Detenu alongwith the documents.

2. The impugned Order of Detention is purportedly issued with a view to prevent the Detenu from acting in any manner prejudicial to

Digitally signed
by SUNNY
ANKUSHRAO
THOTE
Date:
2022.12.22
19:23:01 +0530

SUNNY
ANKUSHRAO
THOTE

the maintenance of public order.

3. The grounds of detention stipulates the offences considered for passing of Detention Order. The Detaining Authority has relied upon two crimes. C.R. No.162 of 2021 registered with Kothrud Police Station on 4th August, 2021 for offences under Sections 435, 504, 506 and 34 of Indian Penal Code (for short 'IPC') and Section 4(25) of the Arms Act. C.R. No.171 of 2021 was registered with Khothrud Police Station on 14th August, 2021 for offences under Sections 353, 225, 143, 506 and 34 of IPC. Apart from the aforesaid cases the Detaining Authority has also relied upon statements of two witnesses recorded in camera. The said witnesses are referred to as Witness -A and Witness-B. The Witness-A has referred to alleged incident dated 25th November, 2021 and Witness-B makes reference to statement dated 10th December, 2021. In Paragraph No.8 of the grounds of detention, it is stated that the Detaining Authority has relied upon the material mentioned in Paragraph No.5.1, 5.2, 6.1 and 6.2 of the ground of detention to arrive at his subjective satisfaction that Detenu is a dangerous person as defined in Paragraph No.2(b-1) of the M.P.D. Act and his criminal activities are prejudicial to the maintenance of public order.

4. Learned Advocate Mr. Shailesh Kharat appearing for the petitioner has submitted that the impugned Order of Detention has

been challenged on several grounds. The main grounds of challenge are as follows;

- i. The Detenu had preferred an application for anticipatory bail in connection with C.R. No.171 of 2021 registered with Kothrud Police Station, Pune City. The said application was allowed vide order dated 8th December, 2021. The order granting anticipatory bail was not placed before the Detaining Authority and not supplied to the Detenu. This has affected the subjective satisfaction of the Detaining Authority and Detenu's right to make effective representation under Article 22(5) of Constitution of India.
- ii. The Detenu has been supplied the documents alongwith order of grounds of detention. Some of the documents are illegible. Supply of illegible documents has affected right of Detenu to make effective representation under Article 22(5) of Constitution of India.
- iii. The Detaining Authority has referred to past antecedents and old cases registered against the Detenu. It was not necessary for Detaining Authority to rely upon old and stale cases.

5. In support of the first ground of challenge the learned Advocate Mr. Kharat has submitted that, the order granting

anticipatory bail to the Detenu was vital and important document. The said order was not placed before the Detaining Authority by the Sponsoring Authority. It was a detailed order and it contains conditions while allowing the application for anticipatory bail. Therefore, it was necessary for the Sponsoring Authority to place the said order before Detaining Authority. Neither the detailed Order dated 8th December, 2020 nor the operative part of the Order was placed before Detaining Authority. The Order is also not supplied to the Detenu. The Detaining Authority is not aware that the Detenu was granted anticipatory bail in C.R. No.171 of 2021 registered with Kothrud Police Station, Pune City. Hence in Paragraph No.5.2 the Detaining Authority has stated that the Detenu has been arrested and released on bail. It was made to appear to the authority that the Detenu was arrested and released on bail. Non-placement of the said document has affected subjective satisfaction of the Detaining Authority and non-supply of said order to Detenu has affected his right to make representation guaranteed under Article 22(5) of the Constitution of India. He has relied upon the following decisions;

- i. Rushikesh Tanaji Bhoite V/s. State of Maharashtra And Others, 2012 SCC Online SC 7.*
- ii. Abdul Sathar Ibrahim Manik V/s. Union of India And Others, (1992) 1 SCC 1.*

iii. Pandurang @ Panda Narayan Garud V/s. The District Magistrate, Pune decided by this Court in Criminal Writ Petition No.454 of 2022 dated 12th August, 2022.

6. Learned APP submitted that non-placement of the order of granting anticipatory bail to the Detenu in C.R. No. 171 of 2021 has not affected the subjective satisfaction of the Detaining Authority. In the grounds of detention the Detaining Authority has stated that the Detenu was arrested and released on bail as per order of Sessions Court, Shivaji Nagar, Pune. The Detaining Authority was aware that the Detenu is on bail. The Detenu had executed Bail Bond and the document relating to the execution of Bail Bond was placed before the Detaining Authority. Learned APP has relied upon Affidavit-in-reply filed by the Detaining Authority. In the reply it is stated that non-supply of bail order has not affected right of Detenu under Article 22(5) of Constitution of India. The Detaining Authority was aware that in both the offences the Detenu is on bail. In the additional affidavit dated 8th December, 2022 filed by the Detaining Authority it was denied that, the Order of Detention is bad in law for want of copy of anticipatory bail application and full text order of granting bail in C.R. No.171 of 2021. The bail application and the order granting bail in C.R. No.171 of 2021 was not placed before the Detaining Authority and the copies of the same are not furnished to

the Detenu except operative part of anticipatory bail order and the other documents in relation to grant of bail. The full text of anticipatory bail order was placed before this Court, which shows that no stringent condition was imposed while granting bail. In the said order, no vital material or information mentioned which would have influenced the mind of Detaining Authority while recording subjective satisfaction.

7. Learned APP submitted that the order granting anticipatory bail was in relation to C.R. No.171 of 2021 which was one of the case considered while issuing Order of Detention. Even if the contention of the Detenu is accepted, the ground relating to C.R.171 of 2021 may not survive. However, Order of Detention would still survive in view of Section 5-A of the M.P.D. Act on the basis of C.R. No.162 of 2021 and two in camera statements of Witnesses A and B, relied upon by Detaining Authority for issuing Order of Detention.

8. Learned APP has relied upon the following decisions;

i. K. Vardharaj V/s. State of T.N. And Another, (2002) 6 SCC 735.

ii. Vishal Aananda Mahabal V/s. The State of Maharashtra And Others decided by this Court on 4th December, 2021 in Writ Petition No.2702 of 2021.

9. Although the petitioner had urged several grounds as stated above, it is not necessary to deal with all the grounds since according to us the Order of Detention can be set aside on one ground of challenge i.e. non-placement of Order granting anticipatory bail before Detaining Authority and non-supply of said Order to Detenu.

10. In Paragraph No.5 of the Order of Detention, the particulars of offences considered for passing Detention Order are mentioned. C.R. No.171 of 2021 registered with Kothrud Police Station, Pune City is one of the case which is considered for issuing the Order of Detention. The FIR was registered with Kothrud Police Station, Pune City on 14th August, 2021 for offences under Section 353, 225, 143, 506 and 34 of IPC. After narrating the incident relating to C.R. No. 171 of 2021 in Paragraph No.5.2 of grounds of detention, it is stated that Detenu was arrested on 3rd February, 2022 and immediately released on bail as per the order of Sessions Court, Shivaji Nagar, Pune. Apparently, the Detaining Authority has relied upon the Bail Bond which is annexed at Page No.150 of the paper book indicating that the Detenu has executed surety bond in the sum of Rs.50,000/- in connection with C.R. No.171 of 2021. The said document or the averments in grounds of detention does not indicate that the Detaining Authority was aware that the Detenu was granted anticipatory bail. In fact in the Affidavit-in-reply filed by Detaining

Authority it is stated that application for anticipatory bail and Order granting anticipatory bail to Detenu in C.R. No.171 of 2021 is not placed before Detaining Authority and the said documents are not supplied to Detenu.

11. In the case of Rushikesh Tanaji Bhoite V/s. State of Maharashtra And Others (Supra), it was observed that in a case where the detenu is released on bail and is enjoying his freedom under the Order of the Court at the time of passing the Order of detention, then such order of bail, must be placed before Detaining Authority to enable him to reach at the proper satisfaction. Since the Order of bail 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 the Detention Order is rendered invalid.

12. In the case of Abdul Sathar Ibrahim Manik V/s. Union of India And Others (Supra), the Apex Court has observed that in a case where detenu is released on bail and is at liberty at the time of passing the Order of Detention, than the Detaining Authority has to necessarily rely upon them as that would be a vital ground for Ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before authority and the copies should also be supplied to the detenu.

13. In the case of Pandurang @ Panda Narayan Garud V/s. The District Magistrate, Pune (Supra), the Court has considered the submission that the bail application and the reasoned Order on the anticipatory bail in respect of C.R. No. 638 of 2021 were not placed before the Detaining Authority by the Sponsoring Authority, neither copies were given to the Detenu. Hence the subjective satisfaction of the Detaining Authority would be vitiated in law and non-supply of documents to the Detenu would affect the right to make representation under Article 22(5) of Constitution of India. This Court referred to decision in the cases of Abdul Sathar Ibrahim Manik V/s. Union of India And Others (Supra) and Paras V/s. State of Maharashtra and Another. It was observed that, it cannot be said that, the application for anticipatory bail and the order of bail were not germane for consideration of Detaining Authority. The reasons on which the Detenu applied for bail and was granted bail by the ordinary Court would reflect upon the need to pass the Order of Detention. The non-consideration of this vital documents vitiates the subjective satisfaction of the Detaining Authority.

14. In the case of K. Vardhraj V/s State of T.N. And Another (Supra), it was observed that, while making detention Order in respect of a person detained under a Detention Act, it is not always mandatory to the Detaining Authority to take into consideration, the

bail application filed by the Detenu and any Order passed thereon by the Criminal Court.

15. In the case of Vishal Aananda Mahabal V/s. The State of Maharashtra and Others (Supra), it was argued at the instance of petitioner/detenu that subjective satisfaction is based on three grounds i.e. first information report and statements of witnesses A and B and if the statement of witness-B is discarded than subjective satisfaction in its entirety will be vitiated. The subjective satisfaction is based on different grounds and if one ground is found to be invalid than subjective satisfaction would be vitiated. The aforesaid submission was rejected by this Court by considering Section 5-A introduced under the Act. It was held that, if a person detained on two more grounds and even if, one ground is improper, the same will not make the entire detention invalid. Even if the statement of witness-B is kept aside, the statement of witness-A and FIR can constitute a ground for Order of Detention. Learned APP has strongly relied upon the aforesaid decision to contend that for non-placement of Order granting anticipatory bail at the most, the ground relating to C.R. No.171 of 2021 would not survive, but the Detention Order can be sustained on the other grounds.

16. We are not agreement with the submission advanced by learned APP. The decision in the case of Vishal Aananda Mahabal

V/s. The State of Maharashtra and Others (Supra) cannot be applied to the present case. Section 5-A would not come to the rescue of the Detaining Authority.

17. Section 5-A reads as follow:-

“5-A. Where a person has been detained in pursuance of an Order of Detention under Section – which has been made on two or more grounds, such Order of Detention shall be deemed to have been made separately on each of such grounds and accordingly-

(a) Such order shall not be deemed to be invalid or inoperative merely because one or more of the grounds is or are-

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever; and it is not, therefore, possible to hold that the State Government or an officer mentioned in sub-section (2) of section 3 making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the Order of Detention;

(b) The State Government or such officer making the Order of Detention shall be deemed to have made the Order of Detention under the said section 3 after being satisfied as provided in that section with reference to the remaining ground or grounds.”

18. It is pertinent to note that, undisputably the bail application and the Order granting anticipatory bail were in C.R. No.171 of 2021 were not placed before Detaining Authority nor supplied to the Detenu. Non-placement of the application and the Order would certainly affect the subjective satisfaction of Detaining Authority. It cannot be accepted that application for anticipatory bail and the Order granting anticipatory bail were not vital and important documents. The petitioner has placed for consideration the Order dated 8th December, 2021 granting anticipatory bail. The Order indicates that, considering the statement in FIR it appears that *prima facie* case is made out against the detenu; he has antecedents; he was externed; however, the State has already filed a chargesheet against the detenu and others; investigation is over and the presence of the detenu for investigation is not needed. Probably that is why the Investigation Officer has already submitted chargesheet as is evident from the documents produced on record by the State. If the applicant is granted bail in anticipation of his arrest it is not going to hamper the investigation. Witnesses in this case are police personnel and there is no possibility of the applicant influencing them when the chargesheet is already filed. It was directed that in the event of arrest of detenu may be released on bail on furnishing P.B. of Rs.30,000/- with one or more surety in the like amount. He shall

cooperate with the Investigating Agency. He shall provide permanent residential address and contact number of himself and of his two close relatives with documentary proof to the Investigating Agency within seven days from the date of his release on bail. He shall not try to contact or influence the witness. From the tenor of the Order and the grounds and conditions on which bail has been granted to the detenu, it is difficult to accept that, the document was not vital and important and that it would not have affected subjective satisfaction of the Detaining Authority. The full text Order, or operative Order were not before Detaining Authority. What was placed is copy of bail bond executed after arrest of detenu. It ought to have placed before Detaining Authority and the copy should have been supplied to the Detenu. Non-supply of the document would affect the right guaranteed under Article 22(5) of Constitution of India.

19. As stated hereinabove, the non-placement of document before detaining Authority and non-supply of documents to the Detenu vitiate the subjective satisfaction of Detaining Authority and affects right of detenu under Article 22(5) of Constitution of India. Section 5-A of the Act would not be any assistance to respondents. It is not possible to accept that the Order would survive on the other grounds. The decision relied upon by learned APP was delivered in

the facts of the said case and would not be applicable in the instance case. The Order of Detention has to be set aside.

ORDER

i. The Order of Detention dated 11th February, 2022 passed by Respondent No.2 is quashed and set aside.

ii. The Detenu Pappu @ Avinash Vasant Kadu be released forthwith unless require in any other case.

20. Criminal Writ Petition No.1856 of 2022 is allowed and Rule made absolute in the above terms.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]