

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.893 OF 2023

Akshay @ Bhaiyya Ramesh Wahul
Age 22 years,
R/o Ekta Colony, Satara Parisar,
Aurangabad

... PETITIONER

VERSUS

1. The Commissioner of Police,
Aurangabad
2. The State of Maharashtra
(Through the Secretary,
Home Department (Spl.),
Mantralaya, Mumbai
3. The Superintendent,
Aurangabad Central Prison,
Aurangabad

... RESPONDENTS

.....
Ms Jayshree Tripathi, Advocate with
Mr. R.A. Jaiswal, Advocate for petitioner
Mr. N.T. Bhagat, A.P.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : 11th AUGUST, 2023

ORAL JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith and taken up for
final disposal with the consent of learned counsel for the parties.

2. Heard. This petition under Article 226 of the

Constitution of India takes an exception to the order dated 8.4.2023, passed by the respondent No.1, detaining the petitioner under 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. The grounds of challenge are although manifold, only two of them have been placed into service. First one is Ground (d) that the detaining authority has not been subjectively satisfied as to the material on the basis of which the petitioner was likely to be granted bail. The reasons of the subjective satisfaction have also not been reflected in paragraph 10 of the order.

3. Another ground is, non-supply of photographs of the crime scene panchanama to the petitioner, although the same were available and put up before the detaining authority.

4. The learned A.P.P. opposes the petition. He first took us through the affidavit-in-reply and then read out paragraphs 8, 10, 11 and 12 of the order of detention. According to him, the sponsoring authority had placed two papers along with other documents before the detaining authority. One of the said document was, there is a reason to believe that since the petitioner has moved application for bail, he was likely to get the same in view

of the ordinary law of land, and the fact that the petitioner had preferred an application for bail.

5. The learned counsel for the petitioner has relied on the judgment of the Apex Court in case of **Ramesh Yadav Vs. District Magistrate, Etah & ors. [(1985) 4 SCC 232]**, wherein it has been observed in paragraph no.6 as under :

“6. . . . Merely on the ground that an accused in detention as an undertrial prisoner was likely to get bail an order of detention under the National Security Act should not ordinarily be passed. We are inclined to agree with counsel for the petitioner that the order of detention in the circumstances is not sustainable and is contrary to the well settled principles indicated by this Court in a series of cases relating to preventive detention. The impugned order, therefore, has to be quashed.”

Then the learned counsel relies on another judgment of the Apex Court in case of **A. Shanti (Smt.) Vs. Govt. of T.N. & ors. [(2006) 9 SCC 711]**, wherein in paragraph No.4 thereof, it has been observed thus :

“4. In similar circumstances, this Court in T.V. Saravanan Vs. State (2006) 2 SCC 664, directed release of the detenu. Counsel for the State is unable to distinguish that judgment. This Court in T.V. Saravanan has held that the “imminent possibility” of the appellant coming out on bail is merely the ipse dixit of the detaining authority

unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the authority could be satisfied that the detenue was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention."

6. On the other hand, the learned A.P.P. brought to our notice judgment of the Apex Court in case of **Ashim Kumar Ray Vs. State of W.B. [AIR 1972 SC 2561]**. He read out paragraph No.5 of the judgment, wherein it has been observed :

"5. . . . Where, however, the concerned person is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it would be possible to contend that there could be no satisfaction on the part the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise either the security of the State or the public order. But such is not the position in the present case."

7. The learned A.P.P. meant to say that, even the detention order is silent to give reason of the detaining authority's subjective satisfaction as to the grounds of the detenu getting bail if there is material put up before him by the sponsoring authority indicating those being the reason for grant of bail, the order must sustain.

8. We have considered the rival submissions and perused the order of detention and affidavit-in-reply. In paragraph No.10 of the detention order, the detaining authority has observed that, he has reason to believe that the petitioner was likely to get bail in the case, being C.R. No.38/2023, in view of the normal law of land in that regard.

9. Admittedly, it was a crime of attempt to commit murder, punishable under Section 307 of the Indian Penal Code. The petitioner was arrested in the said crime on 13/3/2023. While the order of detention was passed even one month's period of his arrest was not over. Although he had preferred an application for bail. Needless to mention that, even the charge sheet was not filed in the said crime, the offence was triable by Sessions Judge. The material that the petitioner had made an application for bail and opinion of the sponsoring authority that he is likely to get bail had, therefore, no basis of any material of he was likely to be granted bail by Court of Judicial Magistrate, First Class. To avoid grant of bail by Court of Judicial Magistrate, First Class, the investigating officer is supposed to file charge sheet within ninety days of arrest of the accused. Here, more than two months period was with him. Normally, Court of Judicial Magistrate, First Class does not grant bail on merits when the case is exclusively tirable by the Court of

Session. In the impugned order, the observations that the detenu is likely to be released on bail, in view of law of the land is unsupported by any convincing reasons. In our view, therefore, the material on the basis of which the detaining authority claim to have had reason to believe the petitioner likely to get bail was not sound and on such material, no subjective satisfaction could have been arrived at. On this sole ground, the order is liable to be set aside. Hence the order :

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause (B).
- (ii) The petitioner be set at liberty forthwith if not required in any other case.

Rule made absolute in above terms.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-