

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1327 OF 2024

Rishi @ Rishiraj @ Rishikesh Satish .. Petitioner
Babar

Versus

The District Magistrate Solapur and .. Respondents
ors

...

Mr.Tushar Sonawane with Pooja Satpute for the petitioner.
Mr.S.V. Gavand, APP for the State.

CORAM:BHARATI DANGRE &
MANJUSHA DESHPANDE,JJ.
DATED : 30th JULY, 2024

P.C:-

1 The detention order dated 24/1/2024 passed by the District Magistrate, Solapur is challenged by the detenu on various grounds set out in the petition, but the learned counsel representing the petitioner would press into service ground no. (v) which reads to the following effect:-

“(v) That the respondent no.1 has failed to consider that the petitioner was arrested on 07/07/2023 and is inside, kept in custody in Yerwada Prison at Pune in connection with Crime No.568 of 2023. Therefore, admittedly, the application for bail in the said crime was rejected by the Sessions Court on 25/08/2023 and the bail application was/is pending before the Hon’ble High Court bearing BA No.3957/2023. Therefore, when there is no imminent possibility of the petitioner being released, the power of preventive

detention should not have been exercised. Moreover, there was no cogent material before detaining authority on the basis of which the detaining authority was satisfied that the detenue was likely to be released on bail. The detaining authority failed to record any satisfaction that there was reliable material before the authority on the basis of which there was reason to believe that the detenu is likely to be released on bail. Therefore, the impugned order of detention cannot be sustained and deserves to be quashed and set aside. Hence, the order impugned is bad in law.”

2 Mr. Sonawane would submit that perusal of the grounds of detention would reveal that the Detaining Authority while passing the order of detention, was subjectively satisfied that the petitioner is a dangerous person, in the wake of his involvement in criminal activities in the past, which had affected the tempo of public life of the people living in Sonand Taluka, Sangola locality, and who were living in a fearful condition on account of his attitude and inclination towards commission of crime.

C.R.No. 568/2023 registered with Sangola Police Station invoked Section 363, 366, 376(2)(n) of IPC and Sections 6, 8, 12, 42 of POCSO Act, and it was registered on 3/7/2023. Petitioner was arrested in the said C.R on 7/7/2023 and this offence along with the three in-camera statements of witness (A), (B) and (C) formed the basis on which the Detaining Authority to arrive at a conclusion, that he had become persistent and probable danger to the public order, as he had created terror within the jurisdiction of Moiye Sonand and surrounding locality.

On account of his rash attitude, criminal behaviour and terrifying activities which were proven to be obstructive for maintenance of public order in the area, the Detaining Authority concluded that he was a habitual criminal with no respect for law.

Further, in specific, the grounds of detention in paragraph no.6, read to the following effect:-

“Even though you are currently in judicial custody, that after getting bail there is a great possibility and certainty of obstructing the public order in the said area by committing horrifying activities”

3 According to Mr. Sonawane, the learned counsel for the petitioner, it was only on 8/7/2024, the petitioner came to be released on bail in connection with C.R.No. 568/2023.

The apprehension expressed by the Detaining Authority that if the detenu is released on bail, he may indulge in activities, was therefore, totally unfounded, as on the date of passing of the detaining order based on which the subjective satisfaction reached by the Detaining Authority, the petitioner continued to be in custody of the police in connection with the subject C.R and it is exactly after one year of his arrest, he was released on bail.

4 We find substance in the arguments advanced on behalf of the petitioner and we must observe that the order of detention suffer from complete non-application of mind on part of the Detaining Authority, as he has failed to take into

consideration an important facet of the case, being that the petitioner continued to be in custody of the police and was not a free man when the order of detention was passed, and in fact, he was released on bail only on 8/7/2024 by this Court in Bail Application No. 3957/2023.

5 In the wake of the above, since the detention order dated 24/1/2024 cannot be sustained since it suffer from complete non-application of mind, and hence the same is quashed and set aside.

Writ Petition is made absolute by directing the release of the petitioner/detenu forthwith.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)