

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3177 OF 2024**

Ajay Raghunath Jadhav	]	..	Petitioner
s.			
Commissioner of Police and Anr.	]	..	Respondents

Ms.Jayshree Tripathi a/w Anjali Raut for the Petitioner.
Mr.J.P. Yagnik, APP for the State.

**CORAM : BHARATI DANGRE,
MANJUSHA DESHPANDE, JJ**

DATE : 18th SEPTEMBER, 2024.

ORAL JUDGMENT (PER BHARATI DANGRE, J) :-

1] While passing the Detention Order dated 02.05.2024, the Detaining Authority in the grounds of detention has heavily relied upon CR No.261/2024 which has invoked Section 307, 323, 324, 505, 506 read with 34 of the Indian Penal Code alongwith Section 4/25 of the Arms Act, 1959 read with Section 142, 37(1) (3), 135 of the Maharashtra Police Act, 1951 read with Section 7 of the Criminal Law Amendment Act, 1932.

The said offence came to be registered on 10.04.2024 and in connection with the same, the Petitioner came to be arrested on

11.04.2024. He was remanded to police custody and the investigation was carried out by the Investigating Officer.

On 15.04.2024, on his production, the CJM Solapur, put him in magisterial custody till 29.04.2024.

2] The impugned order of detention which has directed the detention of the Petitioner on the ground of he being a 'dangerous person' as he had indulged himself in the past in serious offences like gathering unlawful assembly, extortion, robbery, voluntarily causing hurt with dangerous weapons, attempt to commit murder, breach of externment order, criminal intimidation and threatening by use of deadly weapons like knife, sickle, iron pipe etc. It was alleged that his activities had caused alarm and the feeling of insecurity amongst the members of general public. The Petitioner is also accused of taking his life to criminality for the sake of easy money and indulging himself in serious offences.

Two offences registered in the year 2018 with Sadar Bazar Police Station and one offence registered in the year 2023 in the same Police Station is relied upon to demonstrate his criminal history. Reference is also made to the preventive actions that were initiated against him in the year 2021 and 2024.

3] However, while passing the order of detention reliance is placed upon CR No. 261/2024, in which the Petitioner is arrested on

11.04.2024. While expressing the potential of he being released on bail, the Detaining Authority, in the grounds of detention has formed the following opinion :-

“As you were released on bail in referred offence as mentioned above. There is a provision under section 439 of Cr.P.C. that the Hon’ble High Court or Session Court may grant conditional bail for accused. As the principle of Supreme Court states that “Bail is rule and Jail is Exception”. Also, punishment for the relied offence is not compulsorily death. So, in future, if you apply for bail in the relied offence i.e. CR No.261/24 u/s 307, 324, 323, 504, 506, 34 of IPC, r/w sec. 4/25 of The Arms Act, 1959, r/w sec.142, 37(1)(3), 135 of Maharashtra Police Act, 1951, r/w Sec 7 of Criminal Law Amendment Act, 1932 registered at Sadar Bazar Police Station as mentioned in Para No.5-1, there is ‘imminent possibility’ of your bail. In future if you get bail, there is every possibility that you will indulge in dangerous activities and taking into consideration your propensity towards criminality, there is an ‘imminent possibility’ that you will likely to revert to the similar activities which are prejudicial to the maintenance of public order in future.

From all these, it show your consistency in criminal activities. Thus, you have proved yourself as a ‘Dangerous Person’ within the meaning of section 2(b-1) of the M.P.D.A. Act, 1981. So, it has become necessary to detain you as early as possible, under the MPDA Act, 1981 to prevent you from acting in such a prejudicial manner to the maintenance of public order in future too.”

4] The aforesaid reasoning prompted the Detaining Authority to pass an Order of Detention, directing him to be detained to prevent him from acting in any manner prejudicial to the maintenance of public order in future despite the fact that from 11.04.2024 he was already incarcerated. The Detaining Authority has expressed an ‘imminent possibility’ of his release though Ms.Tripathi make a statement that in the said CR, the Petitioner had never preferred an Application for Bail and even till date he continue to be incarcerated.

5] The learned APP Mr.Yagnik has invited our attention to the Affidavit in Reply filed by the Detaining Authority which is nothing but reiteration of the above ground based on the principle of the Apex Court

to the effect that, “Bail is rule and Jail is exception”, being unmindful of the fact that the Petitioner did not even prefer an application for grant of bail and, therefore, the apprehension expressed that he may be released on bail, was completely unfounded at least on the date on which the order of detention was passed.

The Petitioner has not been released on bail in the said CR as he has never preferred an Application, and, therefore, we deem it appropriate to quash and set aside the order of detention, being based on non application of mind on the part of Detaining Authority, who has failed to consider that the detenu has never applied for bail in the subject CR and, therefore, the assumptive approach to the effect that if at all he make an application for bail there is ‘imminent possibility’ of he being released, only reflects non application of mind.

6] In the wake of above, the impugned order of detention is quashed and set aside. The Petitioner is directed to be set at liberty forthwith.

Rule is made absolute in the aforesaid terms.

[MANJUSHA DESHPANDE, J]

[BHARATI DANGRE, J]