

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL WRIT PETITION NO. 1475 OF 2024**

Vishal Shahaji Kasbe .. Petitioner  
**Versus**  
State Of Maharashtra And Ors. .. Respondents

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Mr. Shailesh Kharat, for the Petitioner.  
Mr. S. V. Gavand, A.P.P. for the State/Respondent.  
Mr. Pawar, API, Wakad Police Station, is present.

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**CORAM : BHARATI DANGRE &**  
**MANJUSHA DESHPANDE, JJ.**  
**DATED : 29<sup>th</sup> JULY, 2024**

**P.C:-**

1. There is a challenge to the Detention Order dated 30.12.2023, passed by the Respondent No.2.

On 23.04.2024 Rule was issued and on completion of pleadings, we have heard learned counsel for the Petitioner and learned A.P.P. for the State.

The counsel for the Petitioner has pressed into service two grounds, though the Detention Order is assailed on several grounds set out in the Petition. We will refer to the grounds one by one. The learned Counsel Mr. Kharat has assailed the Detention Order on ground No.(c) as set out in the

Petition, which read thus :

*“c. The petitioner states and submits that the Sponsoring Authority while forwarding the proposal did not place before the Detaining Authority the detailed order dated 25/08/2023 passed by the Additional Sessions Judge-22, Pune granting bail in C.R.No.746/2023 but forwarded only the operative part. The said detailed order 25/08/2023 was not even supplied to the Petitioner. The detailed order passed by the Additional Sessions Judge-22, Pune while releasing the detenu was a vital piece of evidence and the same ought to have been forwarded to the Detaining Authority and the Detaining Authority ought to have called for it and perused the same.”*

He would place reliance upon the Bail Order passed by the Additional Sessions Judge, Pune, in connection with C.R. No. 746 of 2023, which was registered with the Wakad Police Station, invoking Sections 308, 385, 387, 504, 506 of the Indian Penal Code, Sections 3 and 7 of the Criminal Law Amendment Act, Section 4(25) of the Arms Act and Section 37(1)(3)/135 of the Maharashtra Police Act. According to him, in para No.4 of the said order, the learned Judge has recorded the reason with justifying his release on bail but this bail order in its entirety was not placed before the Detaining Authority nor was supplied to the Petitioner and according to him this has vitiated the subjective satisfaction reached by the Detaining Authority.

2. The learned counsel has placed reliance upon the

decision of Division Bench of this Court in case of **Alakshit S/o Rajesh Ambade V/s. The State of Maharashtra And Anr., (Criminal Writ Petition No.626 of 2022) dated 20.12.2022,** when Division Bench has released a detenu on the ground of non-supply of the bail order, which were reflective of what was observed by the Court in para No.13.

The bail order specifically expressed an opinion that no purpose would be served by keeping the Petitioner behind the bar and the judicial opinion thus leaned in favour of the Petitioner, in so far as it concerned the aspect of the necessity of the Petitioner being free and at large, and the Division Bench inferred that if this is the judicial opinion expressed by the concerned Court, the Detaining Authority is obliged to pay reference to it. But since this was not done, the subjective satisfaction reached by the Detaining Authority stood vitiated.

In para No.13 of the same order, the Division bench has considered various situations, where the grounds of bail did impact the decision of the Authority, one way or the other, and the following illustrations were cited :-

*“ We would illustrate the point by giving a few examples. In a given case, a person may be granted bail on a ground, inter alia, that he is not likely to tamper with the prosecution’s evidence or witnesses. This would be a ground which may strengthen the case of that person and it may possibly restrain the Authority from passing any detention order. In another case, a proposed detenu is granted bail, not on merits of the matter but, upon a default ground under Section 167 of the Code of Criminal Procedure.*

*There may be another case where the person is granted temporary bail for fulfilling some urgent purpose. In both of these examples, the grounds of bail may not perhaps help the proposed detenu and the Authority may possibly find them to be all the more reason for ordering preventive detention of such a person, provided the other criteria is fulfilled. Such is the importance of the grounds of bail and therefore, they are required to be considered by the Detaining Authority while passing the order of detention. This is the law laid down by the Apex Court in the case of Abdul Sathar Ibrahim Manik Vs. Union Of India [1991 AIR 2261], which has been followed by this Court in several of its judgments including the judgment delivered in the case of Ratnamala Mukund Balkhande Vs. State of Maharashtra [2022 All M.R. (Cri) 3106].”*

3. There can be no second thought about the importance of the reasoning in the bail order to be considered by the Detaining Authority, as it would be an important facet, which would prevail upon the Detaining Authority when he forms a subjective satisfaction, as regards the necessity of detaining a detenu under the MPDA Act. In light of the illustrations which the Division Bench has cited in para No.13, when we turned our attention to the order, we have noted para No.4, which has cited two reasons; the first being the investigation is almost complete; and the second being that on perusal of the record particularly the allegations in the FIR, it appears that there is no corresponding injury to the informant in the alleged assault and the incriminating article, such as

sickle and cash amount has already been seized during the investigation.

4. When the Grounds of Detention are carefully perused, it would clearly disclose that the Detaining Authority has specifically referred to the accusations faced by the detenu in C.R. No. 746 of 2023 and it disclose that the complaint was lodged, when the Petitioner went to the complainant's shop on 01.08.2023 and then demanded money and abused him and threatened him to kill. When the complainant refused to do so, he is alleged to have taken out a sickle from his waist, and threw it towards the complainant, but the complainant was safe because he missed the throw, by bending down. Thereafter, he is alleged to have flung the sickle in the air and created panic amongst the people gathered around.

We have categorically take a note of the lapse of time between the registration of the first and second CR and recording of in-camera statements. Even taking the case of the Detaining Authority, to the effect that in the CR registered on 02.08.2023 he was released on bail on 25.08.2023, para No.6 read with para No.6.1 and 6.2 presupposes that the activities of the detenu, continued to create a reign of terror in the minds of residents of the area and obviously we could have understood that these incidents were between June 2023 to August 2023. However, on 14.11.2023, the Police Inspector of Wakad Police Station is able to trace Witness A and B, who narrated the incidents of 19.09.2023 and 21.10.2023, which definitely are far away from the date when the two offences against detenu are registered.

5. Turning to the next ground as framed in the Petition, as ground No.(e), reads to the following effect :

*“ (e) The Petitioner says and submits that for the purpose of putting Detenu under the MPDA Act, the two in camera statements were recorded by the sponsoring authorities. The Petitioner says and submits that, the statement of witness A was recorded on 14-11-2023. The statement A speaks vaguely about incident that took place on 19-09-2023. The Petitioner states that the statement of the witness B was recorded on 14-11-2023. The statement B speaks vaguely about incident that took place on 21-10-2023. The detention order is passed after 70 days of the last incident. Therefore, these statements did not show any live link between the subjective satisfaction of the Detaining Authority and the alleged incident described by the said witness of the Detenu and his immediate detention.”*

6. We are satisfied with this ground, as we have noted that the two CRs are registered against the Petitioner on 07.06.2023 and 02.08.2023. As far as the second CR is concerned, the Petitioner was released on bail on 25.08.2023.

When we turned to the in-camera statements of witness A and B, both being recorded on 14.11.2023, the witnesses have made reference to the incident dated 19.09.2023 and 21.10.2023 respectively and in para No. 6 of the Grounds of Detention, the Detaining Authority has recorded that in the wake of registration of the two CRs to which he had reference being C.R. NO. 746 of 2023 and 548 of 2023, the Police Inspector of Wakad Police Station has

conducted a confidential inquiry about the criminal activity, which reveal that he was a weapon-wielding dangerous desperado and has become a dangerous person and posed a serious threat to 'public peace and order' at large and created reign of terror in the minds of the residents of the area.

It is further recorded that being a dangerous person, nobody dared to complaint against him because of fear of retaliation and when some of the residents were approached, they were assured that their names will not be disclosed and they will not be summoned for the evidence and it is in this background the in-camera statements are recorded.

7. The aforesaid act resulted invocation of an offence under Section 308, 385, 387, 504, 506 of the IPC and the relevant provisions of the Arms Act. It was never the case of the prosecution that the complainant sustained any injury as he was never actually assaulted but the sickle was thrown at him. Therefore, the observation of the Court granting him bail that the investigation is complete is the only aspect which persuaded the concerned Court to release him on bail. Therefore, in our considered opinion, merely because the bail order in its entirety was not placed before the Detaining Authority, resulting into his subjective satisfaction being interfered with is a ground, for setting aside the impugned order has failed to convince us.

8. We find no explanation offered in the affidavit-in-reply filed by the Detaining Authority to that effect and

therefore, we find that the live link which constrained the registration of two CRs is snapped, since the in-camera statements are recorded from 14.11.2023, almost after more than three months.

It is on this ground we are satisfied that the Detention Order passed by the Detaining Authority cannot be sustained and therefore we convinced that the Rule deserve to be made absolute by quashing and setting aside the Detention Order dated 30.12.2023.

Upon doing so, the Petitioner is directed to set at liberty forthwith.

**(MANJUSHA DESHPANDE,J.)**

**(BHARATI DANGRE, J.)**