

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

CRIMINAL WRIT PETITION NO. 1267 OF 2024

Ajinkya Alias Sayya Aadhav
Ramchandra Shinde

..Petitioner

Versus

The Commissioner of Police, Pune & Ors.

..Respondents

Mr. Tejas S. Pawar for Petitioner.
Mr. S. V. Gavand, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 24 JANUARY 2025

ORAL JUDGMENT : (*Per Sarang V. Kotwal, J.*)

1. The Petitioner challenges the detention order dated 28.12.2023 passed by the Respondent No.1 and confirmed by the Government of Maharashtra. By a separate committal order he was directed to be detained in Nagpur Central Prison, Nagpur.

2. The grounds of detention were served on him on 28.12.2023 while he was still in Jail. The grounds of detention included his history which is mentioned in paragraph-3.1 and 3.2

of the grounds of detention. The history refers to three registered offences at Faraskhana police station, Pune, two preventive actions taken in the past U/s.110 and 107 of the Cr.p.c. and one more offence registered in the year 2023 under the Arms Act in Faraskhana police station. However, all this history was referred only to show his past criminal activities.

3. Paragraph-3 of the grounds of detention clearly mentions that the detention order was not based on the preventive actions. Paragraph-4 of the grounds of detention mentions that the Respondent No.1 was relying heavily on one offence mentioned in paragraph-5.1, and two 'in-camera' statements mentioned in paragraph-6.1 and 6.2 to issue detention order. The registered offence referred to was the C.R.No.240 of 2023 at Faraskhana police station under sections 3(25), 4(25) of the Arms Act and under sections 37(1)135 and 142 of the Maharashtra Police Act. It was registered on 06.12.2023. He was arrested on the same date. The offence pertains to the incident dated 05.12.2023. When police confronted him at about 6:40p.m. on 05.12.2023, he was found carrying an iron sickle. There was a reference to a pistol and

the live cartridge which the petitioner had given to one Aakash Khairmode. Even Aakash Khairmode was confronted subsequently and that pistol and the live cartridges were recovered from him. Paragraph-5.1 mentions that the petitioner was arrested on 06.12.2023 and was produced before the Additional Chief Judicial Magistrate, Pune. He was remanded to police custody till 08.12.2023. Subsequently, he was remanded to Magisterial custody till 21.12.2023. It is further mentioned that the petitioner had applied for bail on 09.12.2023. The bail application was pending before the Court and at the time of passing of the detention order, the case was under investigation. Paragraph-6 refers to two 'in-camera' statements given by witness 'A' and witness 'B' in respect of the incidents dated 26.11.2023 and 29.11.2023.

4. The only and the main ground urged before us in this petition by learned counsel for the petitioner was that, though, on the date of proposal and also on the date of passing of the detention order, the applicant was already granted bail, this fact was not brought to the notice of the detaining authority i.e. the

Respondent No.1 by the sponsoring authority. The bail order passed in favour of the applicant was not placed before him and since the detaining authority was not made aware of this important position, his subjective satisfaction was vitiated.

5. In that context, the previous bench had directed the Respondents to file additional affidavit. Accordingly, the additional affidavit was filed by the Director General of Police and Commandant General, Home Guards, M.S., Mumbai & then Commissioner of Police, Pune city i.e. the Respondent No.1.

6. Learned APP could not dispute the factual position and could not defend the detention order, which, according to the learned counsel for the petitioner, was vitiated.

7. We have considered these submissions and we have perused the record, as well as, the additional affidavit annexed to this petition. The first affidavit of the Respondent No.1 mentions that the Senior Police Inspector, Faraskhana police station, Pune had submitted a proposal for detention of the petitioner on 18.12.2023. The Respondent No.1's Additional affidavit shows that

the bail order in connection with C.R.No.240 of 2023 of Faraskhana police station was passed on 12.12.2023. That means, on the date of proposal the petitioner was already granted bail, but there was no reference to this fact in the proposal. The Respondent No.1 has further categorically stated that the bail order passed on 12.12.2023 in the said registered offence was not placed before him by the sponsoring authority till the date of passing detention order till 28.12.2023, and as such, he was not aware of the fact that bail had been granted to the petitioner in that particular registered offence. The Respondent No.1 has further added that on 28.12.2023 the petitioner was in jail.

8. All these important facts were not brought to the notice of the Respondent No.1 before he passed the detention order. Thus, his subjective satisfaction was based on incomplete facts. Vital facts were not brought to his notice and, therefore, his subjective satisfaction in passing the detention order was vitiated.

9. Learned counsel for the petitioner relied on the Judgment of a Division Bench of this Court in Hrishi @ Sarjerao

Baban Takele Vs. The District Magistrate, Sangli & Ors.¹. The said judgment, in turn, relied on the judgment of the Hon'ble Supreme Court in the case of Rushikesh Tanaji Bhoite v. State of Maharashtra & Ors.². In the judgment passed by the Hon'ble Supreme Court, there was an observation that, in that case there was nothing to show that the detaining authority was aware of the order of bail and bail order was not placed before the detaining authority. In that context, the detention order was set aside on the ground of not placing and non consideration of the material as vital as the bail order. That had vitiated the subjective satisfaction of the detaining authority.

These observations of the Hon'ble Supreme Court and the Division Bench of this Court are squarely applicable to the present case.

10. In this view of the matter, this detention order cannot stand and will have to be set aside.

11. Hence, the following order:

1 2018 ALL MR (Cri) 516

2 2012 Cri.L.J. 1334 : [2012 ALL SCR 1373]

O R D E R

- i) Rule is made absolute in terms of prayer clause (I); which reads thus:

“I. This Hon’ble Court be pleased to issue writ in the nature of Certiorari or any other appropriate order or direction in the nature of writ, kindly quash and set aside the illegal order of detention dated 28.12.2023 passed by the Respondent No.1 against the Petitioner and consequently the Respondent No.3 may kindly be directed to release the Petitioner from the Nagpur Central Prison, Nagpur.”

- ii) The record shows that, previous division bench has already released the detinue on bail during pendency of this Appeal, therefore, as of today, he is not in jail. His bail bonds stand cancelled. He need not surrender in connection with this detention order.
- iii) This order operates only in connection with the present detention order.
- iv) The writ petition is disposed of.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)