
(2018) 07 BOM CK 0052
In the Bombay High Court
Case No : Writ Petition No.2021 Of 2018

Ankush Vaman Pawar

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 06-07-2018

Acts Referred:

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981 — Section 3(2)
Indian Penal Code, 1860 — Section 34, 395, 397, 427, 452, 504, 506
Arms Act, 1959 — Section 4(25)
Maharashtra Police Act, 1951 — Section 37, 37(1), 135, 142
Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981 — Section 2(b1), 3, 3(2)
Constitution of India, 1950 — Article 22, 22(4), 22(5)

Citation : (2018) 07 BOM CK 0052

Hon'ble Judges : S.C. DHARMADHIKARI, J;BHARATI H.DANGRE, J

Bench : Division Bench

Advocate : Udaynath Tripathi, Jayshree Tripathi, M.M.Deshmukh

Final Decision : Dismissed

Judgement

BHARATI H. DANGRE, J

1. The short ground on which the petition assailing the order of detention passed by the detaining authority on 12th March 2018 liable to be set aside

is, non-application of mind on the part of the detaining authority in not considering the fact that when the order of detention was passed, the detenu

was in custody and the detaining authority has not disclosed any material to show the imminent possibility of his release of petitioner on bail and the

possibility of his involvement in prejudicial activities in the future.

The petitioner, a resident of Pune is detained at Yerawada Central Prison at Pune in pursuance of an order of detention passed on 12th March 2018

by the Commissioner of Police, Pune, in exercise of powers conferred by sub-Section (2) of Section 3 of the Maharashtra Prevention of

Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short "MPDA Act") with a view to

prevent him from acting, in any manner, prejudicial to the maintenance of public order. A copy of order of detention along with the grounds on which

the order of detention is based have been communicated to the petitioner on 12th March 2018. The grounds of detention communicated to the detenu

disclose and enumerates the material on which the detaining authority has based its subjective satisfaction.

2 Learned counsel Shri Udaynath Tripathi appearing for the petitioner would submit that the detention is vitiated on account of total non-application of

mind on the part of the detaining authority and he would place heavy reliance on ground (c) as raised in the petition which reads under :

(c) The petitioner says and submits that on 12.03.2018, when the order of detention was passed the Petitioner was already in judicial custody having

not been granted bail in C.R.No.430 of 2017, under Section 395, 397, 452, 427, 504, 506, 34 of the IPC r/w 4(25) of Arms Act r/w Section 37, 135 of

Maharashtra Police Act, 1951. The petitioner's bail application was rejected by Ld. Sessions Court, Pune on 20.02.2018 and thereafter, he has never

applied for bail in any higher Court and continuing in custody till 12.03.2018 i.e. the date of detention. The Petitioner says and submits that the

detaining authority has not disclosed any material to show imminent possibility of release of Petitioner on bail. This shows total non-application of

mind of the detaining authority. This is one of the essential guidelines out of three guidelines laid down in Kamrunissa's case and thereafter, in several

Apex Court's Judgments. This shows total non-application of mind. The order of detention is illegal and bad in law for detaining a person under

preventive detention law while he was already in judicial custody, there is no necessity to detain. The order of detention is illegal and bad in law, liable

to be quashed and set aside. Shri Tripathi would submit that this sole ground is sufficient to reflect the non-application of mind on the part of the

detaining authority and if the Court is not convinced on the said ground, then, he would press into service the other grounds raised by him in the

petition.

3 We have heard learned counsel for the petitioner on the ground (c) raised by him and we have also called upon the learned APP Mrs.M.M.

Deshmukh for the State to deal with the said ground.

Perusal of the grounds of detention communicated to the petitioner on 12th March 2018 would reveal that the detaining authority has referred to para

5.1, 6.1 and 6.2 as the basis on which the detention order has been passed under subsection (2) of section 3 of the Act. The detaining authority has

also supplied the copies of documents placed before her, on which a reliance was placed to form a subjective satisfaction, except the names and

identities of the particular witnesses in connection with ground as mentioned in para 6.1 and 6.2, has not been furnished to the detenu in public interest

in respect of which privilege is claimed by the Detaining authority. The Detaining authority has passed an order of detention on the basis of a crime

registered at Swargate Police Station vide C.R.No.430 of 2017 registered against the petitioner under Section 395, 397, 452, 504, 506 IPC r/w Section

4(25) of the Arms Act, 1959 read with section 37(1)/135/142 of the Maharashtra Police Act, 1951.

Particulars of the said offence are reflected in para 5.1 of the grounds of detention. The complainant who is a housewife and resident of Kennel

Zopadpatti, Gul Tekdi, Pune has alleged in her complaint made to the Swargate Police Station, that on 26th December 2017 at around 20.00 to 21.00

hours, when the complainant and her sister and her brother's wife were chatting with each other outside the house, at that time, the detenu along with

his accomplice arrived at the spot and hurled abuses. It is alleged in the complaint that the detenu was armed with a sword and his other accomplices

were armed with wooden sticks and that they created an atmosphere of fear in the locality by damaging the household articles in the house of the

complainant and the detenu removed an amount of Rs.30,000/Â? kept in the drawer for the treatment of her husband. It is also alleged in the complaint

that the complainant was hit with sword and she sustained injuries on her left hand. The said complaint was registered on 27th December 2017 at

Swargate Police Station, Pune city. The grounds of detention further state that in relation to the said offence, the detenu was arrested on 9th January

2018 and was produced before the Judicial Magistrate First Class, Court No.8, Pune on 10th January 2018 and was remanded to police custody till

15th January 2018. He was again produced in the Court on 15th January 2018 and remanded to MCR, Magisterial custody till 29th January 2018,

when he applied for bail before the Sessions Court, Pune and the Bail Application came to be rejected on 20th February 2018 by the Court at Pune.

The grounds of detention further record that at present, the detenu was housed in Yerawada Jail, Pune in Magisterial custody and the offence is under

investigation. The detaining authority further relies upon two in-camera statement of witness A and B who are residents of dias plot, Canal Road

where the detenu is indulging himself into prejudicial activities.

We have noted the relevant portion in the grounds of detention, to which our attention was invited by Mr.Tripathi as set out in paragraph 8 of the

grounds of detention where the detaining authority has set out as follows :Â?

â??I have carefully gone through the material placed before me and I am subjectively satisfied that you are acting in a manner prejudicial to the

maintenance of public order. Presently, you are in Yerwada jail, Pune in the offence registered at Swargate Police Station, Pune vide C.R.No.

430/2017 u/s. 395, 397, 452, 427, 504, 506, 34 of the IPC r/w sec.4(25) of the Arms Act r/w 37(1)(135 Maharashtra Police Act. I am aware that you

have applied for the bail in the said offence but your bail application has been rejected by the Hon'ble Sessions Court, Pune on 20/02/2018. This shows

your strong intention to secure bail and get free. Moreover, you may in future be granted bail under the ordinary law of the land as the said offence is

not compulsorily punishable with death sentence. In view of your tendencies and inclinations reflected in the offences committed by you as stated

above as well as the incidents recorded in the 'in-camera' statements, I am further satisfied that after availing bail facility and becoming a free person,

you are again likely to revert to similar activities which are prejudicial to the maintenance of public order and it is necessary to detain you under the

said Act to prevent you from acting in such prejudicial manner in future.

4 Referring to the said grounds set out by the detaining authority, Shri Tripathi would canvass that the detaining authority is aware of the fact that the

Bail Application filed by the detenu has been rejected but it further records a finding that there is a strong intention on part of detenu to secure bail and

get free. However, on what basis the said conclusion has been derived by the detaining authority, has not been set out in the grounds of detention, is

the submission of Advocate Tripathi. He would urge that there is no material to form an opinion that in future, if bail is granted to the detenu, he is

likely to misuse the said bail and his freedom so secured. Shri Tripathi would thus submit that there is no material disclosed in the grounds, bringing out

the imminent possibility of release on bail by the detenu and this reflects total nonapplication of mind, which would vitiate the subjective satisfaction

reached by the detaining authority.

5 Mrs.Deshmukh, the learned APP would refer to the affidavit filed by the detaining authority and would specifically invite our attention to paragraph

10 of the said affidavit which deals with ground 5(c) as raised by the petitioner. After specifically denying the said ground, the affidavit proceeds to

state as under :

â??It is submitted that I was aware that the detenu was in judicial custody in C.R.No.430 of 2017 u/s.395, 397, 452, 504, 506 34 of the IPC r/w

Sec.4/25 of the Arms Act; r/w sec.7 of the Criminal Law Amendment Act; r/w sec.37(1)/(135, 142 of the Maharashtra Police Act, on 12.03.2018,

when the order of detention was issued against him and this awareness is reflected at para 8 in the grounds of detention. However, I being the

Detaining Authority had reason to believe that the detenu may be released on bail under the ordinary law of land and get free. I was aware that the

detenu applied for bail in the said offence and his bail application has been rejected by the Learned Sessions Court, Pune on 20.02.2018. I believe that

the detenu in future be granted bail as the offence is not compulsorily punishable with death punishment. It is stated that the detenu while in custody

had preferred an application for bail hence the possibility of his being released on bail could not be ruled out. In view of the tendencies and inclinations

reflected in the offences committed by the detenu as well as the incidents recorded in inÂcamera statements, I being the detaining authority was

further satisfied that after the detenu has availed of the bail facility and in the event that he is a free person the detenu was likely to revert to similar

activities prejudicial to the maintenance of Public Order and it is necessary to detain detenu under the said Act to prevent detenu from acting in such a

prejudicial manner in future. The gravity of the prejudicial activities in which the detenu was involved, the imminent possibility of his release on bail and

the further imminent possibility of the detenu indulging in similar prejudicial

activities upon his release on bail were the pressing and compelling reasons which prompted me being the Detaining Authority to issue the Detention Order, though the detenu was in custody. These were the cogent and compelling reasons on the basis of which I being the Detaining Authority concluded that the detenu would be granted bail under the normal law of the land. In the facts and circumstances of this case, I being the Detaining Authority was subjectively satisfied that there was an imminent possibility of the detenu release on bail??.

6 Mrs.Deshmukh, learned APP would submit that the detaining authority had sufficient reason to believe that the detenu may be released on bail under the ordinary law of the land, since the offence in which he was arrested is not punishable with death penalty and the detaining authority was aware of the fact that the detenu had preferred an application for bail and the possibility of his release could not be ruled out. Mrs.Deshmukh has placed reliance on the judgment of this Hon'ble Court in Aarif @ Yasir Ahmed Sattar Ahmed Vs. D. Sivanandan 2006(1) Bom.C.R.558.

7 On a careful consideration of the arguments advanced by the counsel for the rival parties and on perusal of the material placed before us, we are of the opinion that the petition deserves consideration on ground (c). The grounds of detention reflect that the detenu was arrested in relation to C.R.No.

430/2017 registered with Swargate Police Station on 27th December 2017, on 9th January 2018. On arrest, the detenu was produced before the

JMFC, Pune on 10th January 2018 and was remanded to Police custody on 15th January 2018. On 15th January 2018, he was remanded to the

magisterial custody, consequent to which he moved an application seeking bail before the Sessions Court at Pune, which rejected the application on

20th February 2018. The grounds of detention clearly reflect that the detaining authority was aware of the position that the application of bail

preferably detenu seeking release is rejected on 20th February 2018. The order of detention is passed on 12th March 2018 and the detaining authority

while communicating the grounds of detention on 12th March 2018, was aware of the position of the detenu i.e. that he was housed in Yerwada Jail,

Pune on magisterial custody, pending investigation of C.R.No.430 of 2017. The detaining authority has described the said action of the detenu

preferring an application for bail as his strong intention to set himself free, by

securing bail. The detaining authority is apprehensive that at future point of time, the detenu may be granted bail under the ordinary law of the land as the offence with which the detenu is charged is not punishable with death sentence and with this observation, the order of detention is sought to be justified.

8 The purport of the order passed by the detaining authority is to preventively detain a dangerous person from engaging in any of his activities, in such capacity which would affect adversely or are likely to affect adversely the maintenance of public order. The power which has been exercised by the detaining authority is conferred by section 3 of the Act of 1981 by the State Government with a view to prevent a dangerous person from acting, in any manner, prejudicial to the maintenance of public order. The said power is permitted to be exercised by District Magistrate or Commissioner of Police, on a satisfaction being reached to the effect that it is necessary to detain such a person having regard to the circumstances prevailing or likely to prevail in any area within his jurisdiction. Such an order of detention would specify the period during which such person would be detained. Thus, the exercise of powers by the detaining authority is to preventively detain any person with a view to prevent him from indulging into an activity which is, in any manner, prejudicial to the maintenance of public order. The exercise of such power of preventively detaining a person flows from Article 22 of the Constitution and it has been considered to be an exception to a normal punitive regime mechanism by which a person is detained in custody on account of he committing any offence. Prevention and punishment though have common ultimate aims, yet their immediate objectives and modes of action are distinct. The preventive detention laws authorize detention of a person preventively and the exercise of such power has been circumscribed by clause 4 of Article 22 of the Constitution as well as sub-clause (5) of Article 22. The MPDA Act, which is one such enactment permitting preventive detention of a person who is a dangerous person as contemplated under Section 2(b)(1) of the said Act.

9 By now, it is settled position of law that an order of detention can be validly passed against a person in custody and for the purpose, it is necessary the grounds of detention must show that (i) detaining authority was aware of the fact that the detenu is already in detention and (ii) there were

compelling reasons justifying such detention despite the fact that the detenu is already in detention. It is to be noted that the recording of satisfaction

about the likelihood of person concerned indulging in prejudicial activities as a condition precedent in exercise of the powers conferred on the detaining

authority for making an order of detention under Section 3 of the MPAD Act, 1981. The consideration as to whether though it is necessary to detain

a person preventively, in order to prevent him from continuing his prejudicial activities in future, is distinct from the exercise of power by the detaining

authority for detaining a detenu, with a knowledge that he is already in judicial custody. The exercise of power under Section 3 enables the detaining

authority to take into consideration the material and arrive at a subjective satisfaction that the conduct of the detenu was such that it warranted

preventive detention of the detenu so as to prevent him from indulging in such activities, whereas when the detenu is in custody, the satisfaction of the

detaining authority to be recorded is whether at this juncture or point of time, it is necessary to exercise the power of preventive detention. The law

on the said point is settled that if the authority reflects its awareness in the grounds of detention, that it was aware that the person concerned was in

judicial custody at that point of time, still the authority deems it fit to make an order of preventive detention, then, it is incumbent on the part of the

authority to substantiate the satisfaction recorded by it in the grounds of detention by placing the material before the Court and justify its subjective

satisfaction. Though the Court may not sit in an Appeal over the said satisfaction arrived by the detaining authority, it would surely examine whether

the existence of the material facts justified such a satisfaction. The Hon'ble Apex Court in the case of *Vijay Kumar Vs. Union of India* & ors¹ 1988

(2) SCC 57, has categorically held that when a detenu was in jail for an offence at the time of his preventive detention, two facts must appear from the

grounds of detention i.e. (i) awareness of the detaining authority of the fact that the detenu was already in detention and (b) compelling reasons

justifying such detention despite the fact that the detenu was already in custody. These compelling reasons should surface themselves from the

grounds of detention and must not be apart from the said grounds. The satisfaction of the detaining authority cannot be reached on extraneous

matter. If the grounds are germane and justify the apprehension expressed by the detaining authority to detain the detenu inspite of he being in

Judicial/Magisterial custody, it would be a perfectly legitimate exercise of power to make an order of detention.

10 The expression "compelling reasons" in the context of making an order of detention of a person in custody necessarily contemplates existence

of cogent material placed before the detaining authority on the basis of which the detenu is satisfied that (a) the detenu is likely to be released from

custody in near future and (b) taking into consideration the antecedent activities of the detenu, it is likely that after his release from the custody, he

would indulge himself in prejudicial activities and therefore, it is necessary to detain him from engaging in such activities. Reliance placed by the

learned counsel for the petitioner in *Kamarunissa Vs. Union of India* (1991) 1 SCC 128, is perfectly justified and the Hon'ble Apex Court in

paragraph no.13 has declared the proposition of law in the following words "13

From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be

passed (1) if the authority passing the order is aware of the fact that he is actually in custody (2) if he has reason to believe on the basis of reliable

material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability

indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his

satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail

is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in the case of *Ramesh Yadav* was that

ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in

nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and

circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed

above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore,

find it difficult to accept the contention of the counsel for the Petitioners that there was no valid and compelling reason for passing the impugned

orders of detention because the detenus were in custodyâ??.

11 This proposition of law has subsequently been followed in a series of judgments by the Hon'ble Apex Court as well as this Court in its judgments

dealing with the said contingency, when the detention order was passed while the detenu was not a free person and was in custody. Though there is

no embargo on the detaining authority taking recourse to the preventive detention enactment, there is a requirement that the detaining authority is

satisfied on the basis of the material placed before him that such a detenu is likely to secure freedom at a future point of time and that he would

indulge himself in prejudicial activities, which he has been indulging in the past. Thus, what is imperative is the subjective satisfaction of the detaining

authority to form an opinion about the possibility of the detenu indulging into prejudicial activities on he being released on bail and that there is a

possibility of he being released on bail, even though on earlier occasions, the bail application has been rejected. A mere apprehension or a guess work

without any supporting material will not justify the invocation of powers of detention by the detaining authority specifically when the detenu is in

custody and his bail applications have already been rejected. A three Judge Bench of the Hon'ble Apex Court in case of *Rekha Versus State of*

Tamil Nadu, dealing with a similar situation observed to the following effect :

24 Mr. Altaf Ahmed, learned senior counsel, further submitted that the impugned detention order was passed on 08.04.2010, and the bail application of

the detenu was also dismissed on the same date. Hence, he submitted that it cannot be said that no bail application was pending when the detention

order in question was passed.

25 In this connection, it may be noted that there is nothing on the record to indicate whether the detaining authority was aware of the fact that the bail

application of the accused was pending on the date when the detention order was passed on 08.04.2010. On the other hand, in para 4 of the grounds

of detention it is mentioned that ""Thiru. Ramakrishnan is in remand in crime No. 132/2010 and he has not moved any bail application so far"". Thus, the

detaining authority was not even aware whether a bail application of the accused was pending when he passed the detention order, rather the

detaining authority passed the detention order under the impression that no bail application of the accused was pending but in similar cases bail had

been granted by the courts. We have already stated above that no details of the alleged similar cases has been given. Hence, the detention order in question cannot be sustained.

26 It was held in *Union of India Vs. Paul Manickam and another*, (2003) 8 SCC 342, that if the detaining authority is aware of the fact that the detenu

is in custody and the detaining authority is reasonably satisfied with cogent material that there is likelihood of his release and in view of his antecedent

activities he must be detained to prevent him from indulging in such prejudicial activities, the detention order can validly be made.

27 In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is

pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence

the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same

footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on

bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar

cases must be given, otherwise the bald statement of the authority cannot be believed.

12 A perusal of the facts in our case would reveal that the detaining authority is aware that the detenu is presently in jail and he has applied for bail

and which has been rejected. What the detaining authority has observed in the grounds of detention is that the detenu has a strong intention to secure

bail and get himself free. The detaining authority has also expressed an apprehension that the detenu may, in future, be granted bail under the ordinary

law of the land as the said offence with which he is charged is not compulsorily punishable with death sentence. The said apprehension expressed by

the Detaining Authority in the grounds of detention has been sought to be further explained by the detaining authority by way of an affidavit tendered

before this Court in response to the petition. In the affidavit, the detaining authority proceeds to state that she had a 'reason to believe' that the detenu

may be released on bail under the ordinary law of land and get free. She reiterates in the affidavit that she was aware that the detenu had applied

for bail in the said offence and his bail application has been rejected by the Sessions Court on 20th February 2018. Based on this assertion of facts,

the Detaining Authority has formed an opinion that since he had moved an application seeking bail, was indicative of his intention to secure bail and

there was a possibility that in future, detenu may again avail the remedy of seeking bail, though on earlier occasion, the said application came to be

rejected. The satisfaction that the detenu may be granted bail is only based on one stipulation that the ordinary law of the land would permit grant of

bail, since the offence with which the detenu is charged, is not compulsorily punishable with death sentence.

A mere sweeping statement made in the grounds of detention that in future, the detenu may be granted bail since the offence with which the detenu is

charged, is not punishable with death sentence, and the satisfaction reached by the detaining authority to that effect is vague and not supported by any

cogent material. The aforesaid apprehension expressed by the detaining authority only expresses an imminent possibility of securing bail. However,

on what basis the said possibility is expressed is completely absent. The detaining authority presupposing that once a Bail Application has been

rejected, another bail application would be entertained and there is a possibility of detenu being released on bail since the offence is not punishable with

death, appears to be highly illogical and an unsound reasoning. The mere possibility as expressed by the detenu being released if he moves an

application of bail, is not borne of any germane ground indicating that such release was likely or that it was imminent. No material is indicative of the

release of the detenu with certainty. No doubt, the awareness of the detenu being in custody was present in the mind of detaining authority, but there

is no material which would have indicated a reasonable belief that he is likely to be released and to support the imminent possibility of such a

release. Further, as regards the third component, as indicated by the Hon'ble Apex Court that on availing the facility of bail and on becoming a free

person, the detenu is again likely to revert to similar activities prejudicial to the maintenance of public order is also not supported by any cogent

reason. While passing the order of detention, the detaining authority has recorded that the detenu is a habitual and dangerous criminal involved in

serious and violent crimes. The detaining authority has relied on C.R.No.430/17 registered against the detenu at Swargate Police Station based on an

incident dated 26th December 2017 and it is in this offence that the application for bail preferred by the detenu came to be rejected on 20th February

2018. The incamera statement on which the detention order is based refers to two incidents, Witness A referring to an incident dated 18th December

2017 and Witness B referring to an incident dated 21st December 2017, depicting the criminal tendency and an impulsive violent attitude of the detenu,

resulting into disturbance of public order. It is not the ground of detention that on earlier occasion, when the detenu was released on bail or was a free

person, he has misused such freedom to indulge into activities prejudicial to the maintenance of public order and the said satisfaction reached by the

detaining authority and as formulated in ground no.(8) is also based on no material.

13 Reliance placed by the learned APP Mrs.Deshmukh in case of Veermani Vs. State of Tamil Nadu 1994 2 SCC 337, is clearly distinguishable on

the facts where the Hon'ble Apex Court was satisfied that the activities of the detenu was prejudicial to the maintenance of the public order. In that

case, after making reference to the case registered against the detenu, the police party had proceeded to apprehend him and his associates. The

grounds of detention gave the details of the crime and after referring to the incident where the detenu and his associates were apprehended, the

conclusion arrived was that the activities of the detenu are prejudicial to the maintenance of public order. However, the Hon'ble Apex Court in the

said matter was posed with a challenge to the detention order since the detaining authority was not aware that the detenu was in custody, and

therefore, the Hon'ble Apex court had observed that there was complete non-application of mind as far as this aspect was concerned. Further, the

dictum of a Division Bench of this Court in Aarif @ Yasir Ahmed Sattar Ahmed Vs. D. Sivanandan & ors, (supra) is also not applicable to the facts

involved in the present case. In the said matter, the order of detention was passed under sub-section (1) of Section 3 of the MPDA Act, 1981 which

was founded on three C.Rs. The order of detention was passed in the backdrop that the detaining authority was aware of the fact that the detenu was

already in custody in the three C.Rs. However, it was the specific stand of the detaining authority that the role played by the detenu, who was

assigned with a job of keeping the vehicle in a ready position so as to enable the associates of the detenu to flee after collecting the booty and there

was no recovery at the instance of the detenu nor he was identified by any of the witnesses. Reliance was placed by learned counsel for the petitioner

detenu on the decision of the Apex Court in case of Dharmendra S. Chelawat Vs. Union of India(1990)1 SCC 746 and while distinguishing the said

judgment, the Division Bench of this Court had observed that in that case, the detenu was in custody and this fact was within the knowledge of the

detaining authority. However, in Dharmendra's case (supra), the detenu was involved in a case of NDPS Act, which contains very stringent

provisions for grant of bail whereas in the case with which the Court was dealing, the detenu was involved in case under IPC only and he had not

preferred an application for bail till the time when the detention was passed.

In this backdrop, the Division Bench had observed that it would be reasonable to presume that the detenu would prefer an application for bail in the

near future specially looking to the role of the petitioner in three cases mentioned in the ground of detention and the Division Bench arrived at a

conclusion that the case of detenu in case of Dharmendra Vs. Union of India (supra) cannot be equated with that of the present detenu. The Court

also noted that the role of the detenu was comparatively minor in nature i.e. he had not actually taken part in entering the premises and committing

dacoity but his role was only as a driver for keeping the car in a running position and in such a case, the apprehension that was expressed by the

detaining authority that the detenu would be released on bail in future was held to be a reasonable apprehension. Thus, the said case is distinguishable

on facts, in the backdrop of which the proposition of law was laid down.

14 The satisfaction reached by the detaining authority as reflected in paragraph no.8 of the grounds of detention being not based on any reliable

material and is merely a bald statement, the resorting of the detaining authority to the law of preventive detention by invoking the powers under the

MPDA Act, 1981, is completely unjustified. The detaining authority do not figure out valid and compelling reason to pass the impugned order of

detention, since the detenu was already in custody. The detaining authority has not met the requirement as laid down in case of Kamrunissa (supra)

which ought to be satisfied while detaining a detenu who is already in custody.

15 In such circumstances, the Writ Petition succeeds.

16 Rule is made absolute. The order of detention dated 12th March 2018

detaining the petitioner is quashed and set aside. The detenu is directed to be released forthwith, if not required in any other case.

17 In view of our conclusions on ground (c) page 6 of the petition and that being sufficient to set aside the detention order, we have not allowed

Mr.Tripathi to raise other grounds though he would urge that they have equal force.