Shahid Mohd. Yusuf Shaikh vs Shri M.N. Singh, Commissioner Of ... on 26 February, 2003

Equivalent citations: 2003BOMCR(CRI)~

Bench: S. Radhakrishnan, D.B. Bhosale

JUDGMENT

1. By this petition, the Petitioner is challenging the order of detention passed by the Commissioner of Police, Mumbai dated 22nd April, 2002 under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers. Drug Offenders and Dangerous Persons Act, 1981 (hereinafter mentioned as M.P.D.A. Act) with a view to prevent the Petitioner detenu from acting in any manner prejudicial to the maintenance of the public order. On the very same day, i.e. 22nd April, 2002 the Commissioner of Police being the Detaining Authority had also furnished in pursuance of Section 8 of the aforesaid M.P.D.A. Act, the grounds of detention to the detenu. While doing so, the identity and the particulars of certain witnesses were not disclosed in public interest and the Detaining Authority had claimed the privilege with regard the same.

2. A perusal of the grounds of detention indicate that as far as the Petitioner is concerned, three criminal cases have been registered against the Petitioner. In the first case there is an incident which took place on 15th November, 2001. The details of which (as set out in the grounds of detention) are as under:-

> "Investigation revealed that on 15.11.2001 at about 02.30 hours you and your associates Imran Mohmed Kazi, Sudhakar Baliram Yadav and Imtiyaz Mohiddin Shaikh engaged the M/taxi No. MH-01-X-2963 at Bhendi Bazar and asked taxi driver Shri. Babu Marianna @ Lokeshkumar to take taxi at Ferry Wharf. You occupied the front seat next to taxi driver and your associates Sudhakar, Imtiyaz and Imran sat on the rear seat. When taxi reached near Wadibunder junction you asked taxi driver Babu Marianna to stop the taxi and as soon as the taxi stopped, your associate Imran whipped out a knife and kept it on the neck of taxi driver Babu Marianna and threatened him by saying that ^^txg ls fgyuk ugha] ugh rks dkV Mkywaxk** Your associate sudhakar caught hold of both the hands of taxi driver Babu Marianna from behind and you started searching his person and removed cash from his pockets. You and your associates Imran, Sudhakar and Imtiyaz got down from the taxi and threatened taxi driver Babu Marianna not to move his taxi till you all leave the place or else he would be killed. At that time the taxi driver Babu Marianna also got down from taxi and caught hold of you. When your associate Sudhakar caught hold the taxi driver Babu Marianna from behind and you whipped out a knife and gave a blow of it on the neck of taxi driver Babu Marianna when he sustained fatal injury. Then you all ran away from the place. Injured taxi driver Babu Marianna chased you all for a while and came back to his taxi and collapsed there. Due to the incident, nearby people

gathered there. Some of the residents got scared and changed their sleeping places due to fear."

3. The second incident with regard to which the the criminal case has been registered against the detenu is an incident which took place on 19.12.2001. The details of which as set out in the grounds of detention are as under:-

"On 19.12.2001 at about 03.00 hours Shri. Laxman Bechan Saroj had parked his M/taxi No. MMO-1484 at Abhudaya Nagar, Kalachowky and was waiting for passengers. At that time, you and your associates, Imran, Sudhakar and Imtiyaz engaged his taxi and asked Shri Saroj to take you and your said associates to Mazgaon. You sat on the front seat next to taxi driver and your said associates sat on the rear seat. Shri Saroj started his M/taxi and reached near Chaita towers building, Shivdas Champsi Marg, Mazgaon, when you asked the taxi driver to stop the taxi and gave note of Rs. 50 as fare. While Shri Saroj was giving balance amount to you, your associate Imran whipped out a knife and kept it on the neck of Shri Saroj and your associate Sudhakar caught hold both of this hands from behind. Your forcibly removed Rs. 1100/- from the shirt pocket of Shri Saroj. Your associate Imtiyaz removed the key of the taxi. You threatened Shri Saroj by saying that ^^ge nwj tkusrd VSDlh pykuk ugha** and you all left the place. Shri Saroj did not report the matter to police due to fear."

4. With regard to the third incident, the Local Act Case has been filed against the Petitioner and his associates. The details of third incident as set out in the grounds of detention are as under:-

"On 22.12.2001 at about 03.30 hours Shri Laxman Bechan Saroj was waiting for passengers near Bhendi Bazar Signal. At that time you and your associates Imran and Sudhakar came there and sat in his taxi and asked the taxi driver to take you and your associates to Mazgaon. Shri Saroj immediately identified you and your associates Imran and Sudhakar as the same persons who robbed him in the night of 19.12.2001, but he kept mum and took you to Mazgaon near Hancock Bridge. You paid him taxi fare. After receiving taxi fare Shri Saroj went to Noor Baug Naka and apprised the facts to other taxi drivers who were waiting for passengers. Shri Saroj with other taxi drivers sat in his taxi and went for your search towards Mazgaon, Shri Saroj saw that you and your said associates were coming in other taxi towards Noor Baug Naka. Shri Saroj turned his taxi and started chasing your taxi. Shri Saroj overtook your taxi and stopped in front of your taxi at Sheriyar baug, Ramchandra Bhatt Marg, Dongri. At that time you and your associates Imran and Sudhakar got down from the taxi and started running. Meantime the staff of Dongri Police Station, who was on patrolling duty, chased you and your said associates and succeeded to nab your associates Imran and Sudhakar on the spot when they were found in possession of knives. The said weapons were seized under a panchanama and you managed to escape from the place. On the same day you were also arrested, and at the time of arrest you were found in possession of knife."

5. Apart from the above three incidents, the two in-camera statements were also recorded which were duly verified by the Senior Police Inspector and the Divisional Assistant Commissioner of Police. In both those cases, the detnu and his associates were involved in extorting money by threatening the traders with the held of knives. These two incidents had occurred on 24.2.2002 and 5.3.2002.

6. The Detaining Authority while issuing the detention order had taken into account various FIR's filed in the above cases as well as various statements given by various witnesses. In fact, it may be pertinent to note that with regard to the first incident, almost 14 witnesses had corroborated the relevant facts of the case. After taking into account all the above facts and circumstances of the case, the Detaining Authority has observed in paragraph 6 of the Detention Order as under:- Is 1 "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. I am aware that you have been granted bail in Dongri Police Station LAC No. 2106/2001 however you have not availed bail facility, you may avail it any time. You are still in judicial custody. I am also aware that you are in judicial custody as bail has not been granted to you in Byculla Police Station C.R. No. 351/2001 and 391/2001. However, I have reason to believe that you are likely to get bail under the normal law of land in due course. In view of your tendencies and inclination reflected in the offences committed by you as stated above, I am further satisfied that, after having availed bail facility and becoming a free person and in the event of remaining at large, you are likely to continue the similar activities prejudicial to the maintenance of public order in future and that it is necessary to detain you under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act 1981 (No. LV of 1981) (Amendment 1996) to prevent you from acting in such a prejudicial manner in future."

7. Mr. Tripathi, the learned counsel appearing for the Petitioner fairly stated that, though in the petition there are various grounds on which the detention is challenged, he is restricting the entire challenge with regard to the detention only on one ground viz. grounds B, which reads as under:-

> "The Petitioner says and submits that the detenue was already in Judicial custody in C.R. No. 351/01 and 391/01 since 1.1.2002 and while he was continuing in custody in abovesaid both the cases, an order of detention was passed against him on 22.4.2002. Thereby there was no necessity to detain a person preventively while he was already prevented to commit any prejudicial activities. Moreover, no compelling necessity is disclosed in the grounds of detention nor any cogent material before the detaining authority to come to the conclusion that the detenue will be granted bail under normal law of land shortly. This shows non-application of mind of the detaining authority.
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> The Petitioner says and submits that more particularly taking into consideration the nature of crime and the detenue's role no court of law will be inclined to grant of bail. The detenue has not applied for bail in C.R. No. 351/01 in any court of law and till today for about 4.1/2 months continuing in judicial custody. The order of detention suffers from the vice of non-application of mind of the detaining authority. The order

of detention is illegal and bad in law ought to be quashed and set aside".

To put in other words, the only limited ground on which the learned Counsel for the Petitioner has challenged the detention order in this case is that, as the Petitioner detenue was already in custody on the date when the detention order passed, and there was no likelihood of the Petitioner being released on bail in the near future, especially when he was involved in the case charged with the offence punishable under Section 302 of the Indian Penal Code with regard to the first incident. According to Mr. Tripathi, there was no necessity on the part of the Detaining Authority to issue the detention order as the Petitioner was in custody and there was no likelihood of his getting released on bail. Mr. Tripathi also contended that the Detaining Authority has not applied his mind properly to the facts and circumstances of the case and has totally ignored the fact that the petitioner has been charged with the offence punishable under Section 302 of the Indian Penal Code. The learned Counsel Mr. Tripathi has submitted that there was no likelihood of the Petitioner getting released on bail in the near future, however, the Detaining Authority without any cogent material or compelling reasons has passed the detention order. Mr. Tripathi also contended that the Detaining Authority (The Commissioner of Police) while passing the detention order did not have any cogent material before him and inspite of the same, has passed the detention order which is impermissible in law.

8. In support of his contention, Mr. Tripathi, the learned Counsel for the Petitioner strongly relied upon the well-known judgment of the Hon'ble Supreme Court in the case of Dharmendra Suganchand Chelawat v. Union of India . He laid great emphasis on paragraph 21 of the said judgment, which reads as under:-

> "The decision referred to above lead to the conclusion that an order for detention can be validly passed, against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenue is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenue is already in detention. The expression "compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from custody in the near future, and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities."

9. Mr. Tripathi has contended that in the instant case, the Detaining Authority was aware that the Detenu was in detention as has been reflected in the detention order. His main objection is that there was no compelling reason justifying such detention since the detenu was already in custody. According to Mr. Tripathi the Detaining Authority had no cogent reasons before him to satisfy himself that the detenu was likely to be released from custody in the near future.

10. Mr. Tripathi also referred to and relied upon another judgment of the Hon'ble Supreme Court in the case of Surya Prakash Sharma v. State of U.P. and Ors. 1994 Supp.(3) Supreme Court Cases 195

wherein, he laid emphasis on paragraph 5 of the said judgment wherein the Supreme Court has reiterated the principles laid down earlier in the well-known case of Rameshwar Shaw v. District Magistrate, Burdwan - , and also in the above mentioned case of Dharmendra Chelawat.

11. The learned Counsel Mr. Tripathi also referred to and relied upon the Division Bench Judgment of our High Court at Nagpur Bench in the case of Smt. Kamlabai Kalicharan Yadav v. State of Maharashtra and Anr. 2001 Cri.L.J.452. In the above judgment, the Division Bench came to the finding that there was no cogent material before the Detaining Authority that the detenu was likely to be released on bail. Especially in view of the reply filed to the petition, the Court was not satisfied that there was any possibility of grant of bail. In the facts and circumstances of that case, the Division Bench held that there was no cogent material justifying such detention.

12. Mr. Tripathi also referred to the unreported judgment of the Division Bench of our High Court in Criminal Writ Petition No. 1240 of 2001, Junaid Abdur Rashid Shaikh v. M.N. Singh and Ors., dated 3rd December, 2001. In the said judgment, in paragraph 8 the Division Bench has clearly observed that there was no cogent material before the Detaining Authority to enable him to get himself satisfied that the person who sought to be preventively detained was likely to be released from custody in the near future, and accordingly the detention order was quashed and set aside in the said case.

13. Mr. Tripathi also referred to and relied upon another unreported judgment of the Division Bench of this Court in the case of Mahadu Prabhakar Nair v. M.N. Singh and Ors. (Criminal Writ Petition No. 210 of 2002 alongwith another connected writ petition) dated 2nd May, 2002. In this judgment with regard to two detenus the Division Bench came to the finding that there was no cogent material before the Detaining Authority to form an opinion hat they were likely to be released on bail. With regard to one of the matters as the said detenu was the main accused in that case and was directly involved in the offence of murder, the Court came to the conclusion that there was no material before the Detaining Authority to come to the conclusion that the detenu was likely to be released on bail, as can be seen from paragraph 5 of the said judgment, and hence the detention order was quashed and set aside.

14. Mr. Tripathi also referred to and relied upon another judgment of the Division Bench of our High Court in the case of Shri. Basant Kumar Soni v. M.N. Singh and Ors. (Criminal Writ Petition No. 1469 of 2000) dated 27th February, 2001, wherein also the Division Bench quashed and set aside the detention order, as it was found that there was no cogent material before the Detailing Authority that the detenue was likely to be released on bail in the near future. The learned Counsel Mr. Tripathi also brought to our notice another judgment of the Division Bench of our High Court in the case of Shri. Sanjay Ganpat Sawant v. M.N. Singh and Ors. (Criminal Writ Petition No. 305 of 2002 and two other connected writ petitions) dated 6th June, 2002. In this case as far as one of the accused was concerned, the Court found material on record that there was no likelihood of the getting released on bail and there was no cogent material on record justifying that he was likely to be released on bail. Hence in the said matter also the detention order was quashed and set aside.

15. Mr. Tripathi also referred to another judgment of the Division Bench of our High Court in the case of Smt. Zubeda Khalid Khan v. M.N. Singh and Ors. (Criminal Writ Petition No. 1128 of 2001) dated 17th October, 2001. In this case also the Division Bench was of the view that there was no concern material before the Detaining Authority so as to conclude about the imminent likelihood of the detenue being released on bail in the near future. In this case it may be noted that the anticipatory bail application was made by the detenue and it was rejected. As there was no concrete material justifying that the detenu was likely to be released on bail in the near future, the Court quashed and set aside the detention order.

16. Thereafter, Mr. Tripathi referred to the judgment of Hon'ble Supreme Court in the case of N. Meera Rani v. Govt. of Tamil Nadu and Anr. - 1989 Cri.L.J. 2190. In this judgment, the Hon'ble Supreme Court reiterated the principles laid down in the case of Rameshwar Shaw v. District Magistrate, Burdwan wherein it was observed, in a very succinct manner that the Detaining Authority has to consider the antecedent history of the said person and to decide whether the detention of the said person would be necessary after he is released from jail and if the authority is bonafide satisfied that such detention is necessary he can make a valid order of detention a few days before the person is likely to be released. In the said judgment the Hon'ble Supreme Court has indicated that there must be the cogent material before the Detaining Authority to form an opinion that the detenu is likely to be released on bail in the near future, and if there is no such cogent material before the Detaining Authority, the Detaining Authority ought not to pass the mechanical order of detention without applying his mind to the case of the case involved.

17. Mr. Tripathi, the learned Counsel for the Petitioner therefore contended that in the instant case, in one of the incidents the Petitioner has been charged with serious offence punishable under Section 302 of the IPC, and therefore the Detaining Authority was fully aware that there was no likelihood of the detenu being released on bail in the near future. According to him the Petitioner being the person who inflicted the injury on the neck of the deceased and was charged with an offence punishable under Section 302 IPC, there was no likelihood of the getting released on bail in the near future. According to Mr. Tripathi, the Detaining Authority has mechanically passed the detention order without clearly disclosing the reasons justifying as to how the detenu is likely to be released even though he was charged with the offence punishable under Section 302 IPC. Mr. Tripathi therefore contended that the detention order cannot be sustained at all in law as per the principles laid down by the Hon'ble Supreme Court and this Court in the judgments referred to hereinabove. His main contention is that Detaining Authority has passed the detention order without applying his mind, in the sense, the detention order does not disclose any cogent material on the basis of which it could be indicated that the detenu was likely to be released on bail in the near future. Mr. Tripathi does not dispute that in a case where the detenu is already in custody, the preventive order of detention can be passed, but, according to him such a detention order can be passed only if there is likelihood of such detenu getting released on bail in the near future. Under the aforesaid facts and circumstances, Mr. Tripathi contends that this is a case wherein the Detaining Authority has totally failed to apply his mind in the facts and circumstances of the case, and has mechanically passed the order of detention under Section 3(1) of the M.P.D.A. Act, and that too without any cogent material to form an opinion that the detenu was likely to be released on bail in the near future. Hence, the learned Counsel for the Petitioner prays that the Detention Order be

quashed and set aside.

18. On the other hand, Mr. Pai, the learned APP for the Respondent took us through the grounds of detention as well as the reply filed by the Detailing Authority. She pointed out that as far as first incident which took place on 15th November, 2001 and with regard to which the Petitioner has been charged with the offence punishable under Section 302 IPC, the facts of the case would clearly indicate that the Petitioner and his associates were primarily interested in extorting money or at the most committing robbery. According to her, with regard to this incident the facts indicate that one of the associates viz. Imran whipped out a knife and kept it on the neck of the taxi driver and the another associate Sudhakar caught hold of both the hands of taxi driver from behind, and at that point of time, the petitioner started searching his person of taxi driver and removal cash from his pockets. After removal of cash from the pockets of the taxi driver, the Petitioner and his associates had got down from the taxi and threatened the taxi driver not to move the taxi till they all leave the place or otherwise he would be killed. At that time, the taxi driver also got down from the taxi and caught hold of the Petitioner. When one of the associate of the Petitioner viz. Sudhakar caught hold of the taxi driver from behind, the Petitioner whipped out a knife and gave a blow of it on the neck of taxi driver as a result of which the taxi driver sustained a fatal injury. When the petitioner and his associates ran away from the place the taxi driver chased them all for a while and then came back to the taxi and collapsed there. The learned APP pointed out that in the background of the case, the charge of an offence punishable under Section 302 IPC may be difficult to sustain. According to her, in fact the Detaining Authority has found that there was every likelihood of the petitioner being released on bail in the near future though being charged with the offence punishable under Section 302 IPC. She contended that the grounds of detention are set out in detail and the material which has been collected in the form of statements has also been set out, and it is not the case wherein the Detaining Authority has merely mentioned the case number & the charges under the different sections of the Indian Penal Code. She contends that from the grounds of detention which are given in detail and the punchanama and the FIRs before the Detaining Authority as well as the two in-camera statements, it is clear that the Petitioner detenu was repeatedly indulging in the armed extortion of money from the taxi drivers and the other traders in a particular area. According to Mrs. Pai, based on the above material, and taking into account all the facts and circumstances the Detaining Authority has come to the conclusion that with the aforesaid antecedents there was every likelihood of the detenu being released on bail in the near future. The learned APP stats that it is not the case where there was no cogent material before the Detaining Authority to come to the conclusion that the detenu was likely to be released on bail. From the narration as indicated in the grounds of detention, it is clear that with the material on record the Detaining Authority had applied his mind to the facts and circumstances fully and had come to the conclusion that the detenu was likely to be released on bail. The learned APP also brought to our notice the affidavit in reply filed by the Detaining Authority dated 19th August, 2002 wherein in page 13 and 14 the Detaining Authority has categorically mentioned as under:-

> "I say that the order of detention is based on the incidents viz. 2 CRs. and two incamera statements. I say that in para 6 of the grounds of detention, I have also further stated that since I have reason to believe that the detenu may be granted bail under the normal law of the land in due course, the order of detention was issued by

> me. It is submitted that though the detenu has not preferred bail application in C.R. No. 351 of 2001 and C.R. No. 391 of 2001 there is no impediment on the detenu to prefer bail application and in the event the bail application is preferred by the detenu there is every likelihood that the detenue would be granted bail under the normal law of the land. Hence, since there was cogent material before me on the basis of which it was concluded that the detenu was likely to be released from custody and revert back to his prejudicial activities which would affect the maintenance of public order, I issued the order of detention. It is submitted that the last incamera statement of witness B was recorded on 5.3.2002 and the Order of Detention was issued on 22.4.2002. Hence, the Order of Detention is issued without any delay. It is denied that there is non application of mind on my part as a Detaining Authority in issuing the Order of Detention."

From the above it is clear that the Detaining Authority formed the opinion based on the material made available to him that there was no impediment to the detenu from preferring the bail application and that there was every likelihood of detenu being granted bail under the normal law of land. There was cogent material before him on the basis of which it was concluded that the detenu was likely to be released from the custody and he would revert back to the prejudicial activities which would affect the maintenance of public order and hence he issued the order of detention.

19. Mrs. Pai, also brought to our notice the recent judgment of the Hon'ble Supreme Court in the case of Veeramani v. State of Tamil Nadu - 1995 Cri.L.J. 2644. It may be noted here that in this case, the detenue was squarely involved in the offence punishable under Section 302 IPC and the Petitioner in that case had not applied for bail. The Hon'ble Supreme court after referring to various judgments including the judgments referred to and relied upon by the learned Counsel for the Petitioner, in paragraph 6 of its judgment, has observed as under:-

> "From the catena of decisions of this Court it is clear that even in the case of a person in custody, a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of the reliable material that there is a possibility of his being released on bail and the on being so released, the detenu would in all probabilities indulge in prejudicial activities and if the authority passes an order after recording his satisfaction the same cannot be struck down."

20. It may be noted that in the above case, Veeramani v. State of Tamil Nadu, it was very strongly argued on behalf of the detenu that since the detenu was in actual custody in connection with the murder case, no reasonable person can arrive at the conclusion that he was likely to be released on bail, and that the statement of the detaining authority in the grounds that the detenu is likely to file a bail application and come out on bail and that he was aware that bail is usually granted by the courts in such cases, is illogical and unsound. In paragraph 8 of the said judgment, the Supreme Court quoted the observations of the High Court upholding the order of detention. The relevant portion of the High Court observations quoted by the Hon'ble Supreme Court in paragraph 8 of its judgment, reads as under:-

> "Of course, the detaining authority need not have stated that he was also aware that bail is usually granted by Courts in such cases and hence there is imminent possibility that he will come out on bail if it has to be held to be a sweeping statement, but on fats, it cannot be said that the statement is of a sweeping nature for, it is well known that in offences punishable under the sections listed above, bail orders are usually granted after some time and most certainly except in rarest of rare cases after the final report is laid."

After quoting the same, the Hon'ble Supreme Court observed that therefore it cannot be said that the Detaining Authority has not applied its ind to this aspect. The learned APP has pointed out that in the above case on similar circumstances, the detenu had not applied for bail and he was charged with the offence punishable under Section 302 IPC, still the order of detention passed by the Detaining Authority was upheld by the High Court and the Supreme Court on the ground that even in such a case, there was every likelihood of detenu being released on bail in the near future.

21. Mrs. Pai, thereafter referred to another judgment of the Hon'ble Supreme Court in Kamarunnissa v. Union of India and Anr. - 1991 Cr.L.J. 2058, wherein in paragraph 11, the Hon'ble Supreme Court after analysing various judgments, has observed that "the decisions of this Court to which our attention was drawn by the learned Counsel for the Petitioners lay down in no uncertain terms that detention orders can validly be passed against detenus who are in jail, provided the officer passing the order is alive to the fact of the detenues being in custody and there is material on record to justify his conclusion that they would indulge in similar activity if set at liberty." In the said judgment in paragraph 13 also the Hon'ble Supreme Court has held as under:-

> "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."

22. The learned APP brought to our notice another judgment of the Hon'ble Supreme Court in the case of Smt. K. Aruna Kumari v. Govt. of A.P. and Ors. - wherein the Hon'ble Supreme Court has held that the High Court while considering the writ application is not sitting in appeal over the detention order and it is not for the Court to go into and assess the probative value of the evidence available to the Detaining Authority. The Hon'ble Supreme Court has observed that the Detention order which is not supported by any evidence may be quashed. The learned APP pointed out that the Court exercising the power under Article 226 of the Constitution of India is not exercising the power of Court of appeal to reappreciate the material on record and to come on a different finding. The scope of interference of this Court is only in case the Detaining Authority has passed the order of detention based on no evidence and this Court cannot go into the issue of sufficiency of material as has been held by the Supreme Court in the above judgment. Mrs. Pai further referred to another judgment of the Hon'ble Supreme Court in the case of State of Gujarat v. Sunil Fulchand Shah and Anr. wherein also the Hon'ble Supreme Court has, held that it is not necessary to mention in the grounds the reaction of the Detaining Authority in relation to every piece of evidence, separately. The learned APP has contended that the Detaining Authority may set out in detail the grounds of detention on the basis of record made available to it. However, the Detaining Authority, in the said

grounds of detention, need not set out the reactions to the said facts as has been held by the Hon'ble Supreme Court in the aforesaid case.

23. Mr. Pai also referred to another judgment of the Hon'ble Supreme Court in Ram Bali Rajbhar v. The State of W.B. and Ors. - wherein the Hon'ble Supreme Court has reiterated in paragraph 13 that the High Court as well as the Supreme Court should not act as the Courts of appeal on the questions of fact with regard to the order passed by the Detaining Authority. Finally, Mrs. Pai referred to the Hon'ble judgment of the Hon'ble Supreme Court in the case of Union of India and Ors. v. Arvind Shergill and Anr. - . In paragraph 4 of the said judgment, in no uncertain terms, the Hon'ble Supreme Court has held that the responsibility for making a detention order rests upon the Detaining Authority who alone is entrusted with the duty in that regard and it will be a serious derogation from that reasonability if the Court substitutes its judgment for the satisfaction of that authority on an investigation undertaken regarding sufficiency of the materials on which such satisfaction was grounded.

24. Having considered all the facts and circumstances and the various judgments cited hereinabove, in the instant case, the main contention of the learned Counsel for the Petitioner is that the Detaining Authority has not disclosed any cogent material to indicate as to how the detenue was likely to be released on bail in the near future. With regard to the above, as pointed out hereinabove, in the grounds of detention, the Detaining Authority has set out the factual aspects as well as the statements recorded with regard to the incident which took place on 15.11.2001. The said narration of the facts very clearly indicate that though the Petitioner has been charged with the offence punishable under Section 302 IPC, the sequence of events clearly indicate that the detenu as well as his associates had intended only to rob the taxi driver. It appears that when the taxi driver got down from the taxi and caught hold of the detenu the detenu had inflicted wound on the neck of the taxi driver and thereafter he and his associates started running. All these facts have been taken into account by the Detaining Authority and prima-facie the Detaining Authority seems to have come to the conclusion based on the above sequence of events that the charge under Section 302 IPC may not be sustained and hence the Detaining Authority has observed that there was every likelihood of the Petitioner being released on bail in the near future. Even otherwise, even if the accused is charged under Section 302 IPC, it is not that such an accused would never get bail. There is always every likelihood of such person being released on bail. The Detaining Authority was very much aware of the same, and accordingly, had clearly mentioned as to how the Petitioner who was in custody was likely to be released on bail in the near future and would indulge in the prejudicial activities which would be against the public order. In the instant case, there are three cases filed against the detenu. Over and above, there are two in-camera statements and the modus operandi appears to be that the Petitioner and his associates armed with knives had been extorting money and committing robbery from the taxi drivers and the traders in the particular area thereby creating a situation of terror and fear in such locality and thereby endangering the public order. As has been observed by the Hon'ble Supreme Court in the above judgment, it is not for this Court to sit in judgment over the sufficiency of material produced before the Detaining Authority as to whether the detenu was likely to be released or not.

25. As rightly pointed out by the learned APP that the Detaining Authority had FIRs, various statements made by various witnesses, the punchanamas etc., and the application of mind by the Detaining Authority is also clear from the narration of facts. In the facts of the case with regard to the incident of 15.11.2001 there was every likelihood of the Petitioner being released on bail even if the charge is under Section 302 IPC and this view of the Detaining Authority cannot be faulted on the ground that it was based on no evidence and that there was no cogent material or that there was a case of non-application of mind. Under these facts and circumstances, we do not find any ground whatsoever made out by the Petitioner as sought to be contended. Petition is devoid of merits, hence rule stands discharged.

26. Parties to act on an ordinary copy of this order duly authenticated by the Associates. Issuance of certified copy is expedited.