

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

**CRIMINAL WRIT PETITION NO. 4540 OF 2025**

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SHIVAJI  
JAGTAP

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Hira alias Purshottam Mallinath alias Malappa ... Petitioner  
Gunjale  
Age – 34 years, R/o. Byagehalli Road,  
Akkalkot, Tal. Akkalkot,  
Dist. - Solapur  
At present in Yerawada Central Jail, Pune

**Versus**

1. The District Magistrate, Solapur
  2. The State of Maharashtra  
(Through Addl. Chief Secretary to Government  
of Maharashtra, Home Department,  
Mantralaya, Mumbai)
  3. The Superintendent,  
Yerwada Central Prison, Pune.
- ... Respondents

.....

Ms. Saniya Patki i/b Jayshree Tripathi, Vikrant Phatate for the  
Petitioner.

Ms. A.A. Takalkar, APP for the Respondent - State.

.....

**Coram : M. S. Karnik &  
Ajit B. Kadethankar, JJ.**

**Date : December 23, 2025.**

**ORAL JUDGMENT :- (Per M.S. Karnik, J.)**

1. This petition takes an exception to the order of Detention dated  
12<sup>th</sup> February 2025 issued under Section 3 of the Maharashtra

Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (for short "MPDA Act") . The Superintendent of Police, Solapur submitted a proposal on 26<sup>th</sup> November 2024 for detention of the petitioner. The District Magistrate and Detaining Authority carefully considered and scrutinized the material placed on record and was subjectively satisfied that the activities of the said person were prejudicial to the maintenance of public order. The Detaining Authority recorded the satisfaction that the said person was acting in a manner prejudicial to the maintenance of public order and, therefore, it was necessary to detain the petitioner under the said Act with a view to prevent him from acting in a similar manner in future. The Detaining Authority has placed reliance on two in-camera statements of the witnesses which, came to be recorded on 22<sup>nd</sup> October 2024 and 23<sup>rd</sup> October 2024. The Detaining Authority submitted a report as required under Section 3(3) of the MPDA Act to the Government of Maharashtra on 16<sup>th</sup> February 2025 by email and by hand on 17<sup>th</sup> February 2025. The State Government approved the order of Detention on 21<sup>st</sup> February 2025 and confirmed the said order on 6<sup>th</sup> March 2025.

2. We have heard learned Counsel for the petitioner, who invited

our attention mainly to the grounds (e) and (f) in the memo of the petition. It is further submitted that the two in-camera statements of the witnesses recorded on 22<sup>nd</sup> October 2024 and 23<sup>rd</sup> October 2024 were recorded in respect of an incident that took place prior to the arrest of the petitioner on 2<sup>nd</sup> October 2024 in one C.R. being C.R. No. 436 of 2024, dated 1<sup>st</sup> October 2024 registered against the petitioner, where he was released on bail vide order dated 4<sup>th</sup> October 2024. It is submitted that the order of Detention was passed on 12<sup>th</sup> February 2025 i.e. after about more than 3 months from the release of the petitioner on bail. Learned counsel for the petitioner relied on a decision of the Hon'ble Supreme Court in the case of *Pradeep Nilkant Paturakar Vs. S. Ramamurthi & Ors.* 1993 Supp (2) SCC 61. She has also placed reliance on the following decisions of this Court in support of her submissions :-

- (i) *Haridas Shankar Gaikwad Vs. State of Maharashtra & Ors. Cri. W.P. No. 3071 of 2025.*
- (ii) *Joyi Kitty Joseph Vs. UOI & Ors., (2025) 4 SCC 476.*
- (iii) *Shaik Nazeen Vs. State of Telangana, 2022 Live Law (SC) 559.*
- (iv) *Bhushan Eknath Gaikwad Vs. D.M. Pune & Ors. Cri.W.P. No. 4498 of 2021.*
- (v) *State of U.P. Vs. Kamal Kishor Saini, (1988) 1 SCC 287.*

**3.** Learned APP on the other hand supported the order of

detention. It is submitted that it is merely because the incident in respect of which the in-camera witnesses were recorded happened prior to the enlargement of the petitioner on bail is not a ground to quash the detention order. It is submitted that from the materials on record and the grounds of detention, it is amply evident that the activities of the petitioner are prejudicial to the maintenance of public order and hence it was essential to detain the petitioner with a view to prevent him from acting in a similar manner in future. It is submitted that on all aspects the detaining authority has recorded its subjective satisfaction.

**4.** We have heard learned counsel. It is pertinent to note that the petitioner was arrested on 2<sup>nd</sup> October 2024 in C.R. No. 436 of 2024. The petitioner was released on bail on 4<sup>th</sup> October 2024. Two in-camera statements of witnesses "A" and "B" were recorded on 22<sup>nd</sup> October 2024 and 23<sup>rd</sup> October 2024 for the alleged incidents of 3<sup>rd</sup> September 2024 and 12<sup>th</sup> September 2024 respectively, which had occurred prior to the arrest of the petitioner. The order of detention was passed on 12<sup>th</sup> February 2025 i.e. after more than 3 months from the date of detenu's release on bail. Nothing is placed on record to indicate that the petitioner was involved in prejudicial activities since his release on bail, till passing of the order of detention, except one

N.C. registered against him.

5. We have carefully perused the order of detention and the grounds of detention. Though the Detaining Authority has recorded subjective satisfaction on all other aspects, however, there is no subjective satisfaction recorded as to efficacy of the conditions while enlarging the applicant on bail not being sufficient to restrain the detenu from indulging in such activities. In this regard, a significant reference needs to be made to the decision of the Hon'ble Supreme Court in *Joyi Kitty Joseph Vs. UOI & Ors.* (surpa). Their Lordships in paragraphs 32 to 35 have observed thus :-

*"32. Likewise, in the present case, we are not concerned as to whether the conditions imposed by the Magistrate would have taken care of the apprehension expressed by the detaining authority; of the detenu indulging in further smuggling activities. We are more concerned with the aspect that the detaining authority did not consider the efficacy of the conditions and enter any satisfaction, however subjective it is, as to the conditions not being sufficient to restrain the detenu from indulging in such activities.*

*33. Ameena Begum, noticed with approval Vijay Narain Singh v. State of Bihar and extracted paragraph 32 from the same (Vijay Narain Singh) : (SCC pp.35-36)*

*"32. .... It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the*

*purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.*

*[emphasis supplied]*

34. *The criminal prosecution launched and the preventive detention ordered are on the very same allegations of organised smuggling activities, through a network set up, revealed on successive raids carried on at various locations, on specific information received, leading to recovery of huge cache of contraband. When bail was granted by the jurisdictional Court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention ordered.*

35. *The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the Magistrate while granting bail for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging in further like activities of smuggling."*

6. In *Shaik Nazneen Vs. State of Telangana* (supra), Their Lordships in paragraph 19 observed thus :-

*"19. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and / or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case"*

**7.** It is not in dispute that the statements of the in-camera witnesses were recorded after the release of the petitioner on bail. However, the incident in respect of which the in-camera statements were recorded, pertained to the period prior to the petitioner's arrest in the C.R. No. 436 of 2024 in which the petitioner was released on bail. The Detaining Authority has not considered the efficacy of the conditions imposed by the jurisdictional Court while enlarging the petitioner on bail and enter any satisfaction, however subjective it is, as to the conditions not being sufficient to restrain the detenu from indulging in such activities. As held by the Hon'ble Supreme Court, if the person is enlarged on bail by Competent Criminal Court, great caution should be exercised in scrutinizing the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court. There is nothing on record to indicate that after enlargement on bail, the petitioner has indulged in any criminal activities, except for one NC registered, or for that matter, the prosecution has moved any application for cancellation of bail.

**8.** When bail was granted by the jurisdictional Court, that too on conditions, the Detaining Authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities which is the very basis of the preventive detention order. The

State is not without a remedy. In case the detenu is such a menace to the society as alleged then prosecution should seek cancellation of bail and / or move appeal to the higher Court. But definitely seeking shelter under the Preventive Detention Law is not the proper remedy under the facts and circumstances of the present case.

9. Learned APP has relied upon the decision of this Court in *Dharmendra Kamlakar Tangadi Vs. Commissioner of Police, Thane & Ors.* in Criminal Writ Petition No. 1215 of 2012 decided on 25.06.2012 and invited our attention to paragraph No.18, which reads thus :-

*"18) This argument is completely illadvised. On reading the grounds of detention, it is amply clear that the Detaining Authority arrived at subjective satisfaction about the necessity to detain the detenu to prevent him from acting in prejudicial manner in future not on the basis of one incident, which was registered as C.R. The Detaining Authority has taken over all view of the matter, including the fact that after grant of Bail on 23<sup>rd</sup> October, 2011, the detenu and his associates continued with their criminal activities unabated. The incamera statements of the two witnesses, who were unwilling to complain openly, against the detenu and his associates, have mentioned about the specific two incidents, after 23<sup>rd</sup> October, 2011 i.e., dated 29<sup>th</sup> October, 2011 and 30<sup>th</sup> October, 2011. It is also mentioned in the grounds of detention that even in the past, on two occasions, the detenu was required to be detained under MPDA Act and the detention order was confirmed by the Advisory Board, against him. Several criminal cases have been registered against the detenu since 1995, as can be discerned from the Paragraph 2 of the grounds for detention. Suffice it to observe that it is not a case of issuance of detention order on the basis of solitary criminal case registered against the detenu, as is contended. Whereas, the Detaining Authority was subjectively satisfied that the detenu was of criminal character*

*of violent and terrorising nature, indulged in criminal activities only to establish his criminal awe in the area and thereby to procure the pecuniary benefits by way of committing the offences in the limits of Narpoli Police Station, Thane and was habitual offender involved in criminal activities, which adversely affected and also likely to adversely affect the maintenance of public order of the said locality and that the detenu was a dangerous person. The detaining Authority was also subjectively satisfied that the preventive action under existing law of the land was found to be insufficient to curb the detenu's criminal activities, who has made the life of the residents and small businessmen of the area under Narpoli Police Station, miserable. Accordingly, there is no merits even in this ground under consideration."*

**10.** It is therefore submitted that non-supplying of bail order to the detenu will not vitiate the order of detention.

**11.** In our opinion, we are dealing with completely different fact situation in the present case. In *Dharmendra Kamlakar Tangadi* (supra) Their Lordships were considering a case where even after the grant of bail on 23<sup>rd</sup> October, 2011, the detenu and his associates continued with their criminal activities unabated. Such is not a case here. It is pertinent to note that in the present case, after the petitioner was released on bail, except one N.C. registered against him.

**12.** We, therefore, have no hesitation in setting aside the order of detention. Accordingly the Petition succeeds in terms of prayer clause (b), which reads thus :-

*“(b) The order of Detention bearing No. 2024/DCB-2/RR-1059(1)/2025 dated 12.02.2025 issued under Section 3 of M.P.D.A. Act 1981 by the Respondent No.1 be quashed and set aside and on quashing the same, the petitioner be ordered for release forthwith.”*

**13.** The Writ Petition is disposed of.

**[Ajit B. Kadethankar, J.]**

**[ M. S. Karnik, J.]**