



THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 35 OF 2025

Gopal S/o Kailas Pange
Age. 34 Yrs, Occu. Labor,
R/o. Ranmala, Tq Dhule,
Dist. Dhule.

... **Petitioner**

Versus

1. District Magistrate, Dhule,
District Dhule.
2. The State of Maharashtra,
Through the Additional Chief Secretary,
Govt. of Maharashtra, Home Department
Mantralaya, Mumbai-32.
3. The Jail Superintendent,
Central Prison, Dist. Nashik.

... **Respondents**

...
Mr. Chaitanya C. Deshpande, Advocate for Petitioner.
Mr. G. A. Kulkarni, APP for Respondents.
...

CORAM : **SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 21st March, 2025.

J U D G M E N T : (Per Sanjay A. Deshmukh, J.)

1 Rule. Rule made returnable forthwith. The petition is
heard finally with the consent of the learned Advocates for the parties.

2 By invoking the powers of this Court under Article 226 of the Constitution of India, the petitioner has challenged the order of detention, dated 22nd April, 2024, passed by respondent No.1 – District Magistrate, Dhule in DANDAPRA/KAVI/MPDA/01/2024 under Sections 3(2) 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 (hereinafter referred to as the “MPDA Act”).

3 The learned counsel for the petitioner has pointed out the impugned order and the material, which was relied upon and supplied to the petitioner by the detaining authority at the time of passing of the impugned order. The learned counsel for the petitioner pointed out the grounds of detention in the impugned order, particularly, ground No.1, as per the following charts:-

“धुळे जिल्ह्यातील मोहाडी नगर / चाळीसगांव रोड पोलीस स्टेशन येथे दखलपात्र गुन्ह्यांची माहिती खालील प्रमाणे आहे.

अ. क्र	पोलीस स्टेशन	गुरनं	गुन्हा दाखल दिनांक	अटक दिनांक	कलम	सद्यस्थिती
१	मोहाडी नगर	१६०/२०१६	२९/१२/२०१६	०२/०१/२०१७	भादंवि कलम ३२४, ३२३, ५०४, ५०६	न्यायप्रविष्ट

२	मोहाडी नगर	१६३/२०१६	३०/१२/२०१६	०२/०१/२०१७	भादंवि कलम ३२३,३२४, ५०४,५०६	न्यायप्रविष्ट
३	मोहाडी नगर	०४/२०१९	१०/०१/२०१९	अटक नाही (फौ.प्र.सं. क. ४१ (१) (अ) ची नोटीस अदा)	भादंवि कलम ३२३,३२४, ५०४,४२७	न्यायप्रविष्ट
४	मोहाडी नगर	६९/२०२०	२७/०७/२०२०	२९/०७/२०२०	भादंवि कलम ३०७,४३६, ४५२,१४३,१४७ ,१४९,४२७,५० ४,५०६	न्यायप्रविष्ट
५	मोहाडी नगर	२०३/२०२२	२८/०२/२०२२	२०/०८/२०२२	भादंवि कलम ३९२ प्रमाणे	न्यायप्रविष्ट
६	चाळीसगां व रोड	१८७/२०२२	०७/०७/२०२२	२३/०८/२०२२	भादंवि कलम ३२३,३२४, ५०४, ५०६	न्यायप्रविष्ट
७	मोहाडी नगर	३२/२०२३	२२/०२/२०२३	अटक नाही (फौ.प्र.सं. क. ४१ (१) (अ) ची नोटीस अदा)	भादंवि कलम ३२३,३२४, ५०४,५०६	न्यायप्रविष्ट
८	मोहाडी नगर	३९४/२०२३	२७/१२/२०२३	२८/१२/२०२३	भादंवि कलम ३५४,५०६	न्यायप्रविष्ट
९	मोहाडी नगर	०३/२०२४	०६/०१/२०२४	१२/०१/२०२४	भादंवि कलम ३२६, ५०४, ५०६	पोलीस तपासावर प्रतंबित

धुळे जिल्ह्यातील मोहाडी नगर पोलीस स्टेशन येथे दाखल अदखलपात्र गुन्ह्यांची माहिती खालील प्रमाणे आहे.

अ. क्र.	पोलीस स्टेशन	पनाका रजि.नं.	गुन्हा दाखल दिनांक	कलम	सद्यस्थिती
१	मोहाडी नगर	९/२०२१	२०/०१/२०२१	३२३,५०४,५०६	
२	मोहाडी नगर	३५/२०२१	१७/०३/२०२१	५०४,५०६	
३	मोहाडी नगर	२०/२०२३	२८/०१/२०२३	५०४,५०६	
४	मोहाडी नगर	२१/२०२३	२९/०१/२०२३	३२३,५०४,५०६	
५	मोहाडी नगर	२५/२०२३	१९/०२/२०२३	३२३,५०४,५०६	
६	मोहाडी नगर	३१/२०२३	०४/०३/२०२३	३२३,५०४,५०६	
७	मोहाडी नगर	४२/२०२३	०५/०४/२०२३	५०४,५०६	
८	मोहाडी नगर	२९/२०२४	१२/०२/२०२४	५०४,५०६	

(मोहाडी नगर / चाळीसगांव रोड पोलीस स्टेशन स्टेशन जि धुळे)
येथील प्रतिबंधात्मक कार्यवाहीचा तपशिल

अ. क्र.	पोलीस स्टेशनचे नाव	दाखल दिनांक	रजिष्टर क्रमांक	कलम	सद्यस्थिती
१	मोहाडी नगर	११/११/२०२०	१५/२०२०	फौजदारी प्रक्रिया संहिता, १९७३ चे कलम ११०	
२	मोहाडी नगर	२२/०३/२०२१	५५/२०२१	फौजदारी प्रक्रिया संहिता चे कलम १०७	
३	मोहाडी नगर	१४/०३/२०२२	३३/२०२२	फौजदारी प्रक्रिया संहिता चे कलम १०७	
४	मोहाडी नगर	३०/१२/२०२२	१६९/२०२२	फौजदारी प्रक्रिया संहिता चे कलम १०७	
५	मोहाडी नगर	१५/०५/२०२३	३७/२०२३	फौजदारी प्रक्रिया संहिता चे कलम १०७	
६	मोहाडी नगर	१६/०२/२०२४	१७/२०२४	फौजदारी प्रक्रिया संहिता चे कलम १०७	

अलीकडील ०६ महिन्यांच्या आत दाखल गुन्हाचा तपशिल

अ. क्र.	पोलीस स्टेशन	गुरनं	गुन्हा दाखल दिनांक	अटक दिनांक	कलम	सद्यस्थिती
१	मोहाडी नगर	३९४/२०२३	२७/१२/२०२३	अटक नाही (फौ.प्र.सं. क. ४१ (१) (अ) ची नोटीस अदा)	भादंवि कलम ३५४, ५०६	म.न्यायालयात दोषारोप पत्र दाखल करणेवर प्रलंबित
२	मोहाडी नगर	०३/२०२४	०६/०१/२०२४	१२/०१/२०२४	भादंवि कलम ३२६, ५०४, ५०६	पोलीस तपासावर
३	मोहाडी नगर	२९/२०२४	१२/०२/२०२४	अटक नाही (अदखल पात्र गुन्हा)	भादंवि कलम ५०४, ५०६	अदखल गुन्हा पात्र

4 It is the contention of the detaining authority that there are two in-camera statements, which are recorded by the detaining authority.

5 The learned counsel for the petitioner pointed out the grounds of objections raised in the petition and submitted that the detaining authority has not arrived at the subjective satisfaction as the two in-camera statements are certainly not establishing the issue of threat to public order on the part of the petitioner. The alleged offences for which the petitioner is held liable for detention, are not showing that the petitioner is a habitual offender. Therefore, the said action is drastic, illegal and not sustainable as it causes injustice to the petitioner. There is inordinate delay caused for taking action against the petitioner. He submitted that the requisites of Section 3(2) of the MPDA Act are not established against the petitioner. The petitioner is not a dangerous person as defined under the MPDA Act. The action is taken on the basis of crimes from which element of public order is not establishing. Those cases are pending in which bail was granted to the petitioner. No action for cancellation of bail is taken against the petitioner. From the said ground, it is clearly establishing that the action taken against the petitioner is against the provisions of the MPDA Act which does not establish requisites. The action taken against him is also against the Article 22(5) of the Constitution of India. The reasons and circumstances given by the concerned authority are not acceptable and sustainable in the eyes of

law. The reasons show that there is no subjective satisfaction of the detaining authority. The detaining authority has failed to apply its mind and has not considered these material aspects in its proper perspectives while passing the impugned order. It is lastly prayed to allow the writ petition by quashing and setting aside the impugned order.

6 The learned APP for the respondents submitted that the petitioner is a 'dangerous person' as defined under the MPDA Act. There are two in-camera statements of the witnesses about which the subjective satisfaction has been arrived at by the detaining authority. There is neither legal nor factual error on the part of the detaining authority while recording the in-camera statements of the witnesses. The petitioner has created grave terror in the surrounding area. Therefore, general people are not ready to proceed against him by lodging the report for taking criminal action which can be seen from the in-camera statement A & B witnesses. This is sufficient to hold that because of the petitioner, there is an issue of public order in the area in which criminal activities of the petitioner are going on. No delay is caused in taking the action and passing the impugned order. The petitioner is involved in number of crimes, which are serious. Therefore, he comes under the category of dangerous person as per

the MPDA Act. The activities of the petitioner could not have been stopped, except upon his detention under the MPDA Act. No legal or factual error is committed by the detaining authority while passing the impugned order. He, therefore, lastly prayed to dismiss the writ petition.

7 We have perused the impugned order of detention and the grounds upon which it is based as well as the objections raised by the petitioner in the petition.

8 As far as the cases registered against the petitioner upon which the authority has relied upon are concerned, there are three charts as given above, in which it has been pointed out that the petitioner is involved in the serious crimes. The fourth chart shows that three cases are registered against the petitioner under Sections 354, 323, 504 and 506 of the Indian Penal Code, 1860. In the third crime i.e. Crime No.29 of 2024, the charge-sheet is not yet filed. From these three crimes, it is not pointed out that bail was not granted to the petitioner. On the contrary, in these three cases, admittedly, the petitioner is released on bail immediately after his arrest. The allegations in the three cases against the petitioner are of personal nature.

9 As far as two in-camera statements are concerned, the first in-camera statement of witness-A is recorded about the incident of 9th February, 2024, which occurred at 08:00 pm, in which the said witness-A has stated that when he was proceeded to his house by his motorcycle, the petitioner under the influence of liquor was standing in front of his house. At that time, the petitioner abused him. After seeing this, the neighbourers of the said witness-A got scared and went inside their houses. The petitioner slapped the said witness-A and said, *“You have to stay properly here. Do you even know who I am? Don’t mess (take risk) with me”*. Thereafter, suddenly, the wife of the said witness-A opened the door and out of fear, the said witness-A quickly went inside his house and closed the door. The petitioner then started hurling abuses and kicked the door and then went away. Because of the fear of the petitioner, the witness-A could not lodge the report. The ordinary people residing in that area, are having fear of their lives and the properties.

10 In in-camera statement of witness-B, he stated that on 14th August, 2023, the day of the Pola festival, at around 6:00 PM, the said witness-B took his pair of bullocks to the Khanderao Maharaj Temple in Ranmala village for *Darshan*. At that time, several farmers

from the village and nearby areas gathered in the Chowk in front of the Khanderao Temple with their bullocks. The petitioner came there and started to abuse informant without any reason. The petitioner shouted loudly again and picked up a wooden log, and said, "Didn't you hear me?" Fearing him, the people hurriedly took their bullocks and left that place.

11 The witness-B stated that he was also leaving with his bullocks, the petitioner stopped him by assaulting on his back with the stick and threatened him to leave that place quickly. Because of his immense fear, the said witness-B could not lodge the report. Witness-B further stated that generally the petitioner is having the wooden log or iron rod in his hand. Some times, the petitioner carries folded knife. The said witness-B was having fear that if he is going to lodge report, the petitioner being dangerous person, may assault him. Therefore, he did not lodge the report. The said witness-B further stated that because of over acts of the petitioner there is danger to the public at large and there is unreasonable stress in the society. Because of the fear of the petitioner, nobody is daring to make complaint against him. The petitioner has been imprisoned for multiple times in many crimes registered against him, yet his conduct remains unchanged. The people in Ranmala Chowk are under constant fear and after seeing the

petitioner, they leave that place.

12 In paragraph No.11 of the impugned order, the authority has noted the satisfaction about the criminal background of the petitioner and therefore, it has come to the conclusion that the petitioner is a dangerous person.

13 We have perused all the documents relied upon by the authority, particularly, the two in-camera statements of witnesses A and B recorded by the detaining authority. From the statements of the two in-camera witnesses, it is clear that those alleged incidents are of personal nature against them. These material aspects are not considered by the detaining authority. Those are not sufficient to arrive at the conclusion by subjective satisfaction that the petitioner is a habitual offender and he is a dangerous person for the public at large and because of him, there is constant fear and issue of public order arose. In the case of ***Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, [1995 (3) SCC 237]***, the statements of in-camera witnesses were not accepted as those anti-social activities amounting to public order issue was not proved against the petitioner. As per the law laid down in the case of ***Ameena Begum Vs. The State of Tamilnadu and Ors., [2023 LiveLaw (SC) 743]***, the fairness and

reasonableness on the part of the detaining authority is lacking. The detaining authority has failed to apply the criteria that the acts of the petitioner are dangerous and it affects the public order, which is different from the law and order. The acts of the petitioner did not cause disturbance to the current life of the public at large, so as to cause disturbance of public order. On the contrary, the record shows that it merely affects on the individual living and the tranquility of the society at large remained undisturbed as held in the case of **Kanu Biswas Vs. State of West Bengal, [1972 (3) SCC 831]**, wherein a reference was made to the decision in the case of **Dr. Ram Manohar Lohia vs. State of Bihar and Ors. [1966 (1) SCR 709]**.

14 Therefore, we are of the view that the detaining authority has failed to exercise its discretion in accordance with the section 3 of the MPDA Act. The authority has not acted as per the provisions of the MPDA Act.

15 Though the impugned order has been approved by the Advisory Board, we are of the view that it has not considered the above foundational factual aspects as held in the case of **Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, [(1981) 4 SCC 647]**.

16 Further the proposal was sent on 28th March, 2024. The statements of in-camera witnesses are recorded on 16th February, 2024 and 19th February, 2024. Those statements were verified on 7th March, 2024. The detention order was passed on 22nd April, 2024. The grounds of detention were served on the petitioner on the same day. The report was sent to the State Government on 23rd April, 2024 on the second day of passing of detention order. The detention order was approved by the State Government on 2nd May, 2024. The Advisory Board heard the petitioner on 28th May, 2024 and the order of detention was confirmed on 7th June, 2024. If the period required for processing of the action and passing of the impugned order and granting of approval etc., there appears no need of taking urgent action to secure object of maintaining public order against the petitioner to control his activities, which affects the public at large and create an issue of public order.

17 Considering all these aspects and the reasons discussed above as well as the law laid down in the above authorities and from the criminal cases registered against the petitioner relied upon by the authority and statements of witnesses A and B, we are of the view that the petitioner had not created issue affecting public order. He had not

caused disturbance to the public order. He is not dangerous person as per Section 3 of the MPDA Act.

18 The Advisory Board though approved the detention of the petitioner, we are of the view that there is no reliable relevant material to proceed against the petitioner to categorize him as a dangerous person. By passing the impugned order, the fundamental rights, particularly, the liberty of the petitioner as per Article 21 of the Constitution of India is affected and there is no legal as well as factual ground for the passing of impugned order. Therefore, we are constrained to hold that the impugned order is illegal and not sustainable. The same deserves to be quashed and set aside. The petition deserves to be allowed. Hence, the following order:-

ORDER

- I. The writ petition stands allowed.
- II. The detention order passed by respondent No.1 – District Magistrate, Dhule in DANDAPRA/KAVI/MPDA/01/2024, dated 22.04.2024 as well as approval order dated 02.05.2024 and the confirmation order dated 07.06.2024, are hereby quashed and set aside.

III. Petitioner Gopal Kailas Pange shall be released forthwith, if not required in any other offence.

IV. Rule is made absolute in the above terms.

[SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]

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