



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

CRIMINAL WRIT PETITION NO. 906 OF 2025

Vijay Raju Pathare,
Age: 34 years, Occ: - Labour,
R/o: - Siddharthnagar, Municipal Colony,
Tq. and Dist. Ahilyanagar.

... **Petitioner**

Versus

1. The State of Maharashtra
Through Section Officer,
Home Department (Special),
2nd Floor, Mantralay, Mumbai-32.
2. The District Magistrate,
Office of District Magistrate,
Ahilyanagar.
3. The Superintendent,
Central Prison, Harsool,
Aurangabad.

... **Respondents**

...
Ms. Sunita G. Sonawane, Advocate for Petitioner.
Mr. A. D. Wange, APP for Respondents.
...

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

DATE : 05th August, 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 order dated 5th June, 2025 passed by respondent No.1, whereby detention order dated 25th March, 2025, passed by the learned District Magistrate, Ahilyanagar, in exercise of powers conferred under Section 3(1) 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”) has been confirmed.

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, as per the following charts:-

Offences

Sr. No.	Police Station	Crime register No. and Section	Filing Date	Current Position
1.	Tophkhana	272/2016 u/s 384, 427, 326, 143, 147, 148, 149, 504, 506 & 37(1)(3) of Mah. Police Act	03.09.2016	Court Pending RCC No 441/2017
2.	Tophkhana	1/2018 u/s 395, 307, 427, 324, 323, 504, 506 of I.P.C r.w. 4/25, 3/25 of Arms Act & u/s 37(1)(3)/135 of Mah. Police Act.	01.01.2018	Court Pending RCC No.304/2021
3.	Tophkhana	901/2019 u/s 452, 504, 506, 34 of IPC and u/s 142 of Mah. Police Act.	14.06.2019	Court Pending RCC No.152/2021
4.	Tophkhana	7458/2020 u/s 188 of I.P.C and u/s 142 (2) of Mah. Police Act.	13.10.2020	Court Pending SCC No.5577/2020
5.	Tophkhana	7494/2020 u/s 452, 504, 506, of I.P.C	18.10.2020	Court Pending RCC No.865/2021
6.	Tophkhana	7603/2020 u/s 353, 332, 143, 147, 149, 504, 506 of I.P.C.	10.11.2020	Court Pending RCC No.384/2021
7.	Tophkhana	228/2021 u/s 395, 386, 452, 427, 323, 504, 506, 120(b), 201 of I.P.C, 142 of Mah. Police Act. and 3(1)(ii), 3(2) and 3(4) of MOCCA.	20.03.2021	Court Pending Special Case No.360/2021
8.	Tophkhana	385/2021 u/s 323, 324, 506, 504, 34 of I.P.C.	19.05.2021	Court Pending RCC No.1080/2021
9.	Tophkhana	71/2024, u/s 324, 323, 143, 147, 148, 149, 506, 34 of IPC	17.01.2024	Under Investigation
10.	Bhingar Camp	69/2024 u/s 324, 323, 504, 506, 34 of IPC	28.01.2024	Court Pending RCC No 640/2024
11.	Tophkhana	475/2024 u/s 307, 143, 147, 148, 149, 323, 324, 504, 506, 427 of IPC, 37(1)(3)/135 of Mah. Police Act, and 7 of Criminal Law Amendment Act	13.04.2024	Under Investigation
12.	Tophkhana	1308/2024 u/s 118(1), 352, 351(2), 351(3) of B.N.S. Act.	15.12.2024	Under Investigation (The MPDA proposal is based on a specific offence.)

Preventive Action

Sr. No.	Police Station	Preventive Action	Section	Current Position
1.	Tophkhana	O No-4353/2018 Dtd 24/06/2018	55 of Mah. Police Act.	Externment for two years by Externment Authority & Superintendent of Police, Ahilyanagar 1326/2019 On Dated 27/04/2019
2.	Bhingar Camp	Chapter Case No.17/2024 Dtd.02/02/2024	110(e)(g) Cr.P.C.	The preventive action has been cancelled.

Offence considered for passing Detention Order

Sr. No.	Police Station	C.R number and sections	Filing Date	Current Position
1.	Tophkhana	1308/2024 u/s 118(1), 352, 351(2), 351(3)	15/12/2024	(The MPDA proposal is based on a specific offence.)

4 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 detaining authority has passed the detention order mechanically and in a casual manner and has not applied the mind properly while passing the detention order and did not arrive at the subjective satisfaction as to the statements of two in-camera witnesses. The authority also did not

consider the reasons stated in the order passed by the Courts while granting bail to the petitioner. The crimes registered against the petitioner are not showing that he is an habitual offender. The action of the detaining authority is drastic, illegal and not sustainable in the eyes of law, as it causes injustice to the petitioner. There is inordinate delay caused for taking action against the petitioner, which shows that there is no such issue of public order. The essential ingredients of Section 3(2) of the MPDA Act are not establishing against the petitioner. He is not a dangerous person as defined under the MPDA Act. The issue of public order is not establishing from the crimes upon which the action is taken against the petitioner. The action taken against the petitioner is against the provisions of the MPDA Act as well as Article 22(5) of the Constitution of India. The circumstances and reasons given by the concerned authority are not acceptable and sustainable in the eyes of law. The authority concerned failed to consider the 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.

5 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 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 statements of witnesses A and B. 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.

6 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.

7 From the impugned order, it reveals that the action is taken against the petitioner on the basis of last crime, which is registered as Crime No.1308 of 2024, for the offences punishable under Sections 118(1), 352, 351(2) and 351(3) of the BNS. It is an admitted fact that all the Sections invoked against the petitioner in the said crime are bailable. However, this crucial aspect appears to have been overlooked by the detaining authority.

8 On perusal of the statements of the in-camera witnesses, it reveals that on 15th November, 2024, while Witness-A was staying with his relatives, the petitioner alongwith his accomplice, was campaigning for a particular political party in connection with the Assembly Elections. On seeing Witness-A, the petitioner questioned him by saying, *“What work do you have here ? Why have you come in our locality ?”* Then the said witness replied to the petitioner that, *“My in-laws reside here, and I have come to meet my relatives.”* Thereafter, the petitioner threatened him by saying, *“If you are done meeting them, then leave immediately, and also tell them to cast their votes in favour of the particular candidate, otherwise I will finish you.”* The said witness asked the petitioner, *“What wrong have I done to you ?”* On hearing this, the petitioner became enraged, caught hold

his collar, pushed him, beat him with kicks, and said, *"If you dare to speak another word, I will kill you."* The petitioner further warned the relatives of Witness-A by saying, *"If you ever call him to your house, then you too will not be allowed to reside here."* Because of the threats and terror of the petitioner, the said witness did not lodge a complaint against him at that time. Out of fear, the said witness and his family returned home. Due to petitioner's fear, the said witness did not file any complaint against him. Since the said witness has been assured that his statement will be kept confidential and that he will not be required to appear before anybody, the said witness has deposed against the petitioner.

9 The statement of Witness-B discloses that on 25th November, 2024, while he was proceeding on his motorcycle, the petitioner signaled him and asked him to stop. This witness got frightened because of the petitioner and did not stop the vehicle and continued to proceed ahead. Upon that, the petitioner came from behind, crossed his vehicle in front of the witness's motorcycle and obstructed his way. He then told the said witness *"Why did you ignore me ? When I told you to stop, how dare you proceed ahead?"* and then gave a slap on his cheek. The said witness further stated that he requested the petitioner not to beat and asked him to disclose the

reason for stopping him. Upon that, the petitioner said, *“Do you not know ? In this locality my dominance prevails, you shall not be allowed to travel daily on this road unless you pay me.”* The petitioner then caught hold the collar of this witness and demanded a sum of Rs.5,000/-. Then this witness replied by saying, *“I am a labourer, I go for daily wages, and I do not have such an amount.”* Upon that, the petitioner threatened him, by saying, *“If you do not pay me money, I will not allow you to pass on this road, I will break your hands and legs.”* The petitioner then abused him, shouted loudly and created fear. On account of his shouting, the people standing nearby, got frightened and ran away. The said witness further stated that there is terror of the petitioner in the area and therefore, earlier, no one had dared to lodge any complaint against him. He stated that since assurance was given that his statement would be kept confidential and he would not be called before anybody, he was giving statement against the petitioner. He apprehended that if the petitioner came to know about it, then there would be danger to his life as well as to the lives of his family members.

10 From these two in-camera statements, it is not revealed that the petitioner created an issue of public order. The allegations in the said crime and the in-camera statements are of personal nature,

which do not establish the essential ingredients of Section 3(2) of the MPDA Act. Further, though it is alleged and held that there was an issue of public order due to fear of the petitioner, it is not established either from the said crime or from the in-camera statements that the criminal activities of the petitioner were creating an issue of public order. Thus, from all the documents relied upon by the detaining authority, we are of the view that the material upon which the authority relied and arrived at a conclusion, is not sufficient to arrive at the subjective satisfaction that the petitioner is a dangerous person for the public at large and because of him, there is constant fear and issue of public order arose.

11 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]***.

12 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.

13 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]***.

14 Further, the statements of in-camera witnesses are recorded on 18th December, 2024 and 19th December, 2024. The statements of in-camera statements were verified on 24 December,

2024 and 26th December, 2024. The proposal was sent by the concerned authority on 20th December, 2024. The SP forwarded the same on 13th January, 2025. The detention order was passed on 25th March, 2025. It was served on the petitioner on same day i.e. 25th March, 2025. This shows that there is delay of more than one month. The grounds of detention were served on 26th March, 2025 (i.e. within five days from the date of detention) and the report was sent to the Statement Government on 25th March, 2025 (i.e. well in advance within twelve days from the date of issuance of detention order). It was sent within 12 days from the date of issuance of the detention order. The approval order was passed by the Statement Government on 4th April, 2025. The Advisory Board passed the order on the same day i.e. on 4th April, 2025. The matter was kept before the Advisory Board on 21st April, 2025. The petitioner was heard by the Advisory Board on 28th April, 2025. The date of confirmation of the detention order was 14th May, 2025. The representation of the petitioner was forwarded to the Statement Government on 21st May, 2025. The said representation was received by the State Government on same day i.e. 21st May, 2025. The remarks were called from the detaining authority on 26th May, 2025. The remarks of the detaining authority were submitted on 2nd June, 2025. The remarks of the detaining authority were received to the Statement Government on same day

i.e. on 2nd June, 2025. The Additional Chief Secretary (Home) considered the remarks and rejected the representation on 5th June, 2025. If the period required for processing of the action and passing of the impugned order and granting of the approval etc. is considered, then there is unreasonable delay which creates reasonable doubt about existence of public order on the part of the petitioner. From the dates discussed above, 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 as contemplated by MPDA Act.

15 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 respondent authority and statements of witnesses A and B, we are of the view that the petitioner had not created an issue affecting public order. He had not caused disturbance to the public order. He is not a dangerous person as per Section 3 of the MPDA Act.

16 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 passing of the 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.2 District Magistrate, Ahilyanagar, bearing No.DC/Desk-9C1/302/2025, Dated 25.03.2025 and the order bearing No.MPDA-0325/C.R.135/Spl-3b, Dated 05.06.2025, whereby the said detention order has been confirmed by respondent No.1 State of Maharashtra through Section Officer, Home Department (Special), Mantralay, Mumbai, are hereby quashed and set aside.
- III) Petitioner Vijay Raju Pathare, 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.]