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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1098 OF 2025

Vishal Manik Dambe,
Age: 24 years, Occu: Labour,
R/o. Bahegavan, Tq. Wadwani
Dist. Beed.

... Petitioner

Versus

1. The State of Maharashtra
Through The Additional Chief Secretary (Home),
Home Department (Special),
Mantralaya, Mumbai - 400032

2. The District Magistrate,
Beed.

3. The Superintendent of Police,
Beed, Dist. Beed.

4. Sub-Divisional Police Officer,
Majalgaon, Tq. Majalgaon,
Dist. Beed.

5. Officer Incharge,
Police Station Wadwani,
Dist.Beed.

... Respondents

.....

Mr. S.J. Salunke, Advocate for Petitioner

Mr. S.A. Gaikwad, APP for Respondents No.1 to 5

.....

**CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.**

DATED : 20 SEPTEMBER, 2025

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JUDGMENT [Per Hiten S. Venegavkar, J.] :-

1. **Rule.** Rule is made returnable forthwith. By consent of the learned advocates appearing for both the parties, the petition is taken up for final disposal at the stage of admission.

2. By the present petition filed under Article 226 of Constitution of India, the petitioner has laid a challenge to the order of preventive detention dated 11th May 2025, passed by the District Magistrate, Beed, bearing No.2025/RB-Desk-1/Pol-1/MPDA-07, under Section 3 (2) of Maharashtra Prevention of Dangerous Activities Act 1981 (hereinafter referred to as "MPDA" Act). The petitioner also impugns the subsequent orders dated 21st May 2025, passed by the State Government Home Department Special granting approval to the said detention order and thereafter the order passed by the adjudicating authority. The prayer is for quashing of all these orders and directing immediate release of the petitioner.

3. The facts which can be briefly stated are that the Assistant Police Inspector, Wadwani Police Station, submitted a proposal for preventive detention of the petitioner on 18th March 2025, which came to be processed through the Superintendent of Police, Beed and the Sub-Divisional Police Officer, Majalgaon. Acting upon the said proposal, the

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District Magistrate, Beed passed the impugned detention order on 11th May 2025. The order is founded primarily upon two criminal cases and two in-camera statements of confidential witnesses. The two offences are, (i) Non-cognizable Report No. 319 of 2024, registered on 5th November 2024, under Section 351(4) of the Bharatiya Nyaya Sanhita (BNS), and (ii) Crime No. 28 of 2025, registered on 1st February 2025, for offences under Section 70 and 79 of BNS and Section 812 of Protection and Section 8 and 12 of POCSO Act.

4. It is material to note that in Crime No. 28 of 2025, the petitioner has been released on bail on 11th February 2025 by the competent Court in Criminal Bail Application No. 42 of 2025. The bail order and the reasoning recorded by the Court while granting bail were admittedly not placed before the detaining authority at the time of passing the impugned order.

5. The petitioner contends that the order of detention is vitiated on multiple grounds. Firstly, there is complete non-application of mind as the detaining authority failed to consider the bail order and the reason for grant of bail. Secondly, there is an unexplained delay of over three months between the last alleged prejudicial act, i.e., 1st February 2025 and the order of detention, 11th May 2025, thereby snapping the live link

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between the alleged activities and the purpose of detention. Thirdly, though the detention order purports to rely only on two offences, it makes extensive reference to past criminal history and antecedents of the petitioner. None of these materials were ever supplied to the petitioner for making an effective representation; and lastly, the in-camera statements of two confidential witnesses are vague, stereotype and disclose, at the best, private disputes incapable of disturbing public orders.

6. The learned APP has opposed the petition by submitting that the petitioner is a habitual offender and a dangerous person within the meaning of section 2 (B-1) of the MPD Act, whose acts have created terror in the minds of local residents. According to the State, the subjective satisfaction of the detaining authority cannot be substituted by this court and preventive detention being a measure of social defense, the order is immune from interference.

7. We have carefully perused the detention order, the grounds of detention and the material placed before the detaining authority and also the affidavit in reply filed on behalf of the respondents. Preventive detention being a serious encroachment on the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of

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India, the safeguards enshrined in Article 22 (5) must receive strict compliance.

8. The detaining authority must reach its subjective satisfaction on the basis of all relevant and vital material and the detainee must be supplied with such material to enable an effective representation.

9. In the present case, though the detaining authority was aware that the petitioner has been released on bail in C.R. No.28 of 25, the bail application, the supportive documents and the bail order dated 11th February 2025 were not placed before or considered by the detaining authority. This omission goes to the very root of the decision-making process. The Hon'ble Supreme Court in *Rekha v. State of Tamil Nadu*, (2011) 5 SCC 244 has consistently held that non-placement and non-consideration of bail order is fatal to a preventive detention order. As the detaining authority is hereby deprived of considering whether the conditions imposed by the bail court adequately prevent the alleged prejudicial activities.

10. Equally serious is the unexplained delay in passing the detention order. The last alleged incident relied upon is dated 1st February 2025. The detention order was passed on 11th 2025 i.e. after a gap of more than three months. It is well settled that the live and proximate link

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between the prejudicial activity and the purpose of detention must be maintained and any unexplained delay snaps that link. The Hon'ble Supreme Court in *T. A. Abdul Rehman v. State of Kerala*, (1989) 4 SCC 741, has held that an order of detention suffers from the vice of staleness if there is such unexplained delay. In the case in hand, no satisfactory explanation is forthcoming.

11. The detention order itself contains a tabular recital of several past offences and chapter proceedings allegedly showing an ascending trend in the petitioner's criminal activity. In paragraph 11 of the affidavit in reply filed by the detaining authority, it is candidly stated that reference to the past offence is made to depict the petitioner's criminal history. It is elementary that once the detaining authority is influenced by such material, copies of the same must be furnished to the detainee. Failure to supply those documents amounts to violation of article 22(5) as laid down in the case of *Khudiram Das v. State of West Bengal*, (1975) 2 SCC 81. Reliance on extraneous or undisclosed material vitiates the subjective satisfaction.

12 We have also scrutinized the two in-camera statements of confidential witnesses. Both statements relate to isolated incidents of alleged assault and extortion which are essentially private disputes. The distinction between law and order and public order is well established. In

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the case of ***Ram Manohar Lohia v. State of Bihar***, AIR 1966 SC 740, the Hon'ble Supreme had observed that every infraction of law affecting order is not necessarily prejudicial to public order, an act which disturbs only an individual or a few individuals does not amount to disturbance of public order. The incidents narrated here, even if true, do not establish that the petitioner's activities have disturbed the even tempo of society.

13. The cumulative effect of the above infirmities is that the subjective satisfaction recorded by the detaining authority cannot be sustained in law. Preventive detention is not to punish for past acts but to prevent future conduct. The preventive object must be supported by cogent, proximate and relevant material. Where such material is absent or where vital documents like the bail order are ignored, the very foundation of the order falls.

14. In the circumstances, we hold that the impugn order dated 11th May 2025 passed by the District Magistrate, Beed and the approval order dated 21st May 2025 passed by the State Government along with the adjudicating authority's order dated 07.07.2025, suffers from non-application of mind, reliance on extraneous and undisclosed material and also violation of constitutional safeguards and are therefore liable to be quashed and set aside.

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15. For the aforestated reasons, we proceed to pass the following order:

ORDER

- I) The Writ Petition stands allowed.
- II) The detention order dated 11.05.2025 bearing No.2025/RB-Desk-1/Pol-1/MPDA-07 passed by respondent No.2 as well as the approval order dated 21.05.2025 and the confirmation order dated 07.07.2025 passed by respondent No.1, are hereby quashed and set aside.
- III) Petitioner – Vishal Manik Dambe shall be released forthwith, if not required in any other offence.
- IV) Rule is made absolute in the above terms.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

S.P. Rane