

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3289 OF 2025

Shri Sagar @ Manish Shailesh Belamkar]
Age 23 years, R/o-79, Kumar Swami Nagar,]
MIDC, Solapur (At present Yerwada Jail).] ...Petitioner.

Versus

1] The State of Maharashtra]
Through Additional Chief Secretary,]
Home Department, Mantralaya,]
Mumbai – 400032.]
]
2] Mr. Kumar Ashirwad, I.A.S.,]
District Magistrate, Solapur.]
Collector Office, Collector Compounds,]
First Floor, Main Building, Sidheshwar Peth,]
Solapur, Maharashtra, 413001.]
]
3] The Superintendent,]
Yerwada Jail, Yerwada, Pune 411006.] ...Respondents.

Mr. Harshvardhan B. Suryawanshi for the Petitioner.
Ms. Veera Shinde, APP for the Respondent-State.

**Coram : M. S. Karnik &
Sharmila U. Deshmukh, JJ.**

Date : October 13, 2025.

Oral Judgment (Per M. S. Karnik, J.) :

1. Challenge in this petition is to the order of detention dated 30th April 2025 passed by the Respondent No.2 under Section 3 of the Maharashtra Prevention of Dangerous Activities Act, 1981 [“MPD Act” for short].

2. Though several contentions were urged by learned Counsel for the Petitioner which learned APP has been successful in demolishing most of them, in our opinion, the present petition deserves to succeed on one ground, in view of the law laid down by the Hon'ble Apex Court in ***Kamarunnisa v. Union of India***¹.

3. Facts necessary for deciding the present petition presented by learned Counsel for the Petitioner as can also be seen from the affidavit-in-reply filed by Shri. Raj Kumar, Commissioner of Police, Solapur City, Solapur on 21st July 2025 are briefly stated. The proposal of detention along with the attached papers were perused by the detaining authority and he was of the opinion that this is a fit case for detention under the MPD Act. He was also satisfied that preventive action taken in the past against the Petitioner was insufficient to curb his criminal activities, and, hence he gave approval to the said proposal on 17th April 2025. After completing all necessary formalities and scrutinizing documents, the detaining authority forwarded the same to Police Inspector, Crime for further action on 23rd April 2025. The Police Inspector, Crime scrutinized all the documents and prepared the detention order / committal order and related documents. He forwarded the same to the detaining authority on 29th April 2025. When satisfied with the grounds of detention and other related

1 (1991) 1 SCC 128.

papers, the detention order was issued on 30th April 2025.

4. It is pertinent to note that in the grounds of detention, the detaining authority states that he is aware of the bail application filed by the detainee in C.R. Nos. 899 of 2024 and 905 of 2024 (relied offences). The detaining authority further records that out of these offences, the trial Court had granted bail to the detainee in C.R. No. 899 of 2024. It is stated that the bail application in C.R. No. 905 of 2024 is pending before the Court for hearing. It is stated that thus there is a provision under the Bhartiya Nagarik Suraksha Sanhita [“BNSS” for short] that High Court or Sessions Court may grant conditional bail to the accused. In the detention order it is stated that the punishment for relied offences is not compulsorily death. The principle which the Hon’ble Apex Court has set out is that the “bail is the rule and jail is an exception” and hence it is stated that in future if the detainee is released on bail in the relied offence in C.R. No.905 of 2024, the detainee will become free person and there is every possibility that he will engage in dangerous activities. It is stated that taking into consideration his propensity towards criminality, there is imminent possibility that he is likely to revert to same activities which are prejudicial to the maintenance of public order, in future. Thus, the detaining authority formed an opinion that the detainee is a dangerous person within the meaning of Section 2(b-1) of the MPD Act, so it

became necessary to detain him as early as possible to prevent him in acting in such a prejudicial manner to the maintenance of public order.

5. In this context, it is pertinent to note that when the approval was granted to the proposal of detention on 17th April 2025, the bail application of detenue was already rejected. The detenue was in custody. There was no application for bail pending as on 17th April 2025 so far as C.R. No. 905 of 2024.

6. The Hon'ble Apex Court in ***Kamarunnisa v. Union of India*** (supra), in paragraph 13 held that even in case of a person in custody, the detention order can be validly passed. Their Lordships held that if the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if the bail is granted notwithstanding such opposition, to question it before a higher Court. Their Lordships, however, held that in respect of a person in custody, a detention order can be validly passed if the following conditions are satisfied :

(1) if the authority passing the order is aware of the fact that he is actually in custody;

(2) if he has reason to believe on the basis of reliable material placed before him

(a) that there is a real possibility of his being released on bail, and

(b) that on being so released, he would in all probability indulge in prejudicial activity and

(3) If it is felt essential to detain him to prevent him from so doing.

7. In the present case, the bail application of the detenue was already rejected when the approval was granted on 17th April 2025. In our opinion, the detaining authority could not have passed the order of detention for the reasons mentioned in the detention order, viz., “bail is a rule and jail is an exception” or “for that matter in future if the detenue is released on bail, he will become free person and he will indulge in dangerous activities”. In our opinion, the detaining authority has not applied the test of ‘real possibility’ of his being released on bail, in terms of what is held by the Hon’ble Supreme Court. According to us, none of the factors relied upon by the detaining authority are sufficient to satisfy the test of ‘real possibility’ of the Petitioner being released on bail. The detaining authority has not relied upon any cogent material to form such opinion of ‘real possibility’ but has generally relied on considerations which exist in every application for bail. The detention order is, therefore, rendered vulnerable.

8. Another reason why the detention order calls for interference is that the material which was not available for consideration of the detaining authority when the approval order was made, was taking into

consideration while passing the order of detention. As indicated earlier, the approval of detention proposal was granted on 17th April 2025. It is after grant of approval, the second application for bail was preferred by the detainee on 24th April 2025. It is this bail application dated 24th April 2025 which was one of the factors considered by the detaining authority in forming an opinion that having regard to such bail application filed, there is imminent possibility of the detainee being enlarged on bail. In our opinion, the filing of second bail application was not a material which could have been taken into consideration by the detaining authority in the present case. The detainee was not even provided an opportunity of making a representation in respect of the additional material relied upon by the detaining authority.

9. The order of detention, in our opinion, is based on extraneous consideration. We are satisfied that the order of detention does not fulfill the test laid down by the Hon'ble Supreme Court in ***Kamarunnisa v. Union of India*** (supra). The detention order is, therefore, not valid. In this view of the matter, the impugned order of detention is quashed and set aside and the detainee - Sagar @ Manish Shailesh Belamkar is directed to be forthwith released.

10. Parties to act on the authenticated copy of this order.

[Sharmila U. Deshmukh, J.]

[M. S. Karnik, J.]