

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 254 OF 2025

Arjun Sidram Salgar]
Age 45 years, Occ. Business,]
R/s at Plot No. 10, Kalparuksh Perma Society]
Shivaji Nagar, Bale, Solapur,]
Presently detained in Yerwada Central Prison] ... Petitioner

Versus

1. The State of Maharashtra]
Home Department (Special),]
Through the Additional Chief Secretary,]
Home Department (Special),]
Government of Maharashtra,]
Mantralaya, Mumbai – 400 032.]
2. Commissioner of Police, Solapur]
Office of the Commissioner of Police,]
New Administrative Building,]
Gandhi Nagar, Solapur.] ... Respondents

*Mr. Ashutosh Kulkarni (Through V.C.) a/w. Mr. Pawan Mali, Ms. Vrushali Maindad & Ms. Gayatri Kulkarni for the Petitioner.
Ms. M.M. Deshmukh. A.P.P. (Through V.C.) a/w. Mr. Anand Shalgaonkar, A.P.P. for the Respondents-State.*

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

Date : August 26, 2025.

JUDGMENT (PER : Sharmila U. Deshmukh, J.)

1. Rule. Rule made returnable forthwith and taken up for final disposal with consent of the parties. At the outset, Ms. Deshmukh, Learned APP seeks leave to file the Additional Affidavit in response to the amended Petition. The Additional Affidavit is permitted to be filed in the Registry in course of the day. The copy of Additional Affidavit is tendered in Court and the same is taken on record. We have gone through the contents of the Additional Affidavit.

2. The Petition seeks quashing of the Order of detention dated 31st October 2024 vide order dated D.O. No.21/CB/DP/2024 passed by the Respondent No.2-Commissioner of Police, Solapur and the detention orders dated 8th November 2024 and 19th December 2024 passed by the Respondent No.1-State of Maharashtra, Home Department under the provisions of The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons, Video Pirates, Sand Smugglers and persons engaged in Black-marketing of Essential Commodities Act, 1981 (for short, "M.P.D.A. Act").

3. Though the Petition takes multiple grounds for challenging the detention order, Mr. Kulkarni, learned counsel appearing for Petitioner has confined himself substantially to Ground gg(iii) of the Petition which

reads as under :

gg(iii) : The Petitioner submits that the detaining authority in the impugned order only specifies that it has gone through confidential statements (a) and (b) and the verification report but it does not make any mention as to whether the detaining authority interacted with the officer who had recommended the “in camera statement” or has verified and recorded this satisfaction after interaction so as to satisfy itself that the statement of the witness are genuine. It is further submit that detaining authority failed to interact with the Assistant Commissioner of Police or Deputy Commissioner of Police who has verified the truthfulness of “in camera statement”. It is therefore submitted that, the two confidentially in camera statement could not have formed the basis for recording this objective satisfaction of the detaining authority.”

4. Mr. Kulkarni would submit that he is not pressing the amended ground of delayed representation. He submits that the subjective satisfaction has been arrived at on the basis of two crimes registered against the Petitioner and the in-camera statements, which have not been verified by the detaining authority resulting in the detention order being

vitiated.

5. He would submit that the detaining authority has taken into consideration the previously registered offences in order to highlight the previous criminal history and has thereafter contradicted itself by saying that the detention order is not based on the offences. He would further submit that the detaining authority has passed the detention based on two offences being (i) CR No.474 of 2024 dated 30th July 2024 and (ii) CR No. 589 of 2024 dated 2nd October 2024 registered with Faujdar Chawadi Police Station in which the Petitioner was granted bail in November, 2024. He further points out that the detaining authority has taken into consideration that the punishment for the said offence is not compulsorily death and in future if the Petitioner gets bail, there is possibility of indulging in dangerous activity which are prejudicial to the maintenance of public order in future. He submits that, it is the settled position in law that merely recording that the Applicant was likely to be released on bail, because none of the sections of I.P.C. applied in the registered offence was punishable with death penalty was not sufficient and the subjective satisfaction of the detaining authority based on the same is unsustainable in law. In support he relies on the following decisions :

- (i) **Mahesh Balasaheb Thorat Vs. Commissioner of Police, Pune City & Anr.**¹
- (ii) **Shabana Iqbal Shaikh Vs. Commissioner of Police & Ors.**²
- (iii) **Devidas Lalji Ade Vs. State of Maharashtra & Ors.**³
- (iv) **Jayesh Damodar Koli Vs. Commissioner of Police & Ors.**⁴
- (v) **Rekha Vs. State of Tamil Nade**⁵
- (vi) **Nenavath Bujji & Ors. Vs. State of Telangana & Ors.**⁶
- (vii) **Sheikh Nisar Sheikh Kadir Vs. State of Maharashtra & Anr.**⁷
- (viii) **Jayashree Tripathi Vs. State of Maharashtra**⁸

6. *Per contra* Ms. Deshmukh, learned A.P.P. submits that witness statements which are recorded would indicate that the conduct of the Petitioner is prejudicial to the maintenance of the public order which is likely to disturb the tempo of the life of the community and the detaining authority has rightly considered the said two F.I.R.'s, which were lodged against the Petitioner and the two in camera statements. She would further point out that the detaining authority has arrived at a subjective satisfaction based on the material which is placed on record and has

1 Judgment dated 24th January 2025 in Criminal Writ Petition (St.) No. 23283 of 2024

2 2024 SCC OnLine Bom 1038

3 2022 SCC OnLine Bom 11917

4 2023 Supreme (Bom) 983 : 2023 2 BomCR (Cri) 415

5 (2011) 5 SCC 244

6 AIR 2024 SC 1610

7 2024 SCC OnLine Bom 3751

8 2018 ALL SCR (Cri) 1240 : (2018) 9 SCC 562

taken into consideration the possibility upon the detenue being released on bail. She would point out the detention order to contend that the statement of witnesses have been verified by the A.C.P. Div-1 who was satisfied about identity of the witnesses and about truthfulness of the incident and the fear expressed by the witnesses of in-camera statements. In support she relies upon the decision in *Bablu @ Pratik Hari Prakshale Vs. Shri. Ranjit Kumar & Ors.*⁹.

7. We have considered the submissions and perused the record. The Petitioner is detained on the ground that he has proved himself to be a dangerous person within the meaning of Section 2(b-1) of the M.P.D.A. Act and it is necessary to detain the Petitioner to prevent him from acting in a prejudicial manner for maintenance of the public order in future also.

8. Before considering the reasons on the basis of which the detaining authority has arrived at this subjective satisfaction, it would be apposite to make a brief reference to the relevant statutory provisions of the M.P.D.A. Act. Section 2(a) of M.P.D.A. Act provides that acting in a manner prejudicial to the maintenance of public order in case of dangerous person means when he is engaged or is making preparations for engaging, in any of his activity as a dangerous person, which affect

9 2017 ALL MR (Cri) 3059

adversely or is likely to affect adversely the maintenance of public order. Considering the aforesaid statutory provision, it is necessary when the detaining authority is exercising power under Section 3 of the M.P.D.A. Act to arrive at a subjective satisfaction that the act of the person to be detained is prejudicial to the maintenance of public order. The subjective satisfaction of the Detaining Authority is based on the two C.R Nos 474 of 2024 and 589 of 2024 and two in camera statements. Witness "A" who is autorickshaw driver, has stated that the Petitioner along with his associates stopped the witness and demanded extortion money and threatened and abused the passengers in autorikshaw and compelled them to get down. He has further stated that the passerby's, neighboring people etc came to rescue the witness but the Petitioner and his associates threatened them and rushed to assault them with hockey sticks and pelted stones on gathered people and neighbouring houses. The people staying there shut down the doors and windows of their houses. The Petitioner assaulted the witness with knife who sustained minor injury on his hand.

9. Insofar as witness "B" is concerned, the witness is running his own hotel and the allegation is that the Petitioner and his associates had demanded extortion money from the witness and had assaulted the witness and damaged the articles of the hotel. Seeing this, the customers

ran away screaming and hearing the screams, the shopkeepers, the passerby gathered there and the Petitioner rushed towards the gathered people holding the knife and at the same time the Petitioner's associates assaulted the gathered people. Neighboring shop keepers closed their shops and the people living nearby shut down the doors and windows of their houses.

10. The Detention Order records that the statements of the in-camera witnesses were verified by Shri Pratap Poman, A.C.P Division I, Solapur City who is Senior Police Officer and he was satisfied about identity of the witnesses and about truthfulness of the incident and fear expressed by the witnesses of in-camera statements. The verification by the A.C.P which is endorsed below the in-camera statements verifies that the witnesses have given their statement on their own free will. It is further stated that the A.C.P visited the site of incident and the neighbours have confirmed the incident, however due to fear of Petitioner, they have denied giving evidence. The A.C.P has verified that the statements by the witnesses have been made voluntarily and not about the truthfulness of the statements. The decision of Bablu @ Pratik Hari Prakshale (supra) is clearly distinguishable on facts as in that case, in the Affidavit, the detaining authority had clearly stated that S.D.P.O. had personally got it confirmed from in-camera witnesses that the incidents mentioned are

true. In the present case the Detaining Authority has accepted the verification of the findings of the in-camera statements by Shri Poman, which verification was only that the statements were made voluntarily and not about the truthfulness of the statements.

11. In the case of *Shaikh Nisar Shaikh Kadir Vs. State of Maharashtra & Anr.* (supra), the Coordinate Bench of this Court was considering an identical issue and noted the decision of *Shaikh Hussain @ Shahrukh Shaikh Fatru vs State of Maharashtra in Criminal Writ Petition No. 873/2022*, which has held in paragraph Nos. 18 and 19 as under:

“18. First of all, it is observed that the grounds of detention nowhere discloses that the detaining authority interacted with the witnesses A and B so as to satisfy itself that the statements of these witnesses are genuine to be true and or instances which they disclosed were correct. There is no interaction by the detaining authority with the Assistant Superintendent of Police, who verified such statements. The copies of statements of witnesses A and B attached to the petition and provided to the detainee, nowhere show any endorsement of the detaining authority so as to confirm that such statements were perused by the detaining authority and said authority considered that the witnesses were depicting true events. There is absolutely no whisper in the grounds of detention as to on what count the detaining authority found itself satisfied about the truthfulness or genuineness of such statements made by the witnesses.

19. This Court in the case of Shahjahan w/o. Kalimkhan

Samshadkhan Pathan v. State of Maharashtra, 2016 ALL MR (Cri) 4233 (supra), observed in para 5 that, in the absence of any record of the statements being seen by the Commissioner of the Police thereby affecting his subjective satisfaction, the Petitioner is entitled to succeed in the petition. These observations are clearly attracted to the matter in hand. There is no contemporaneous material placed before us to show that the detaining authority had in fact verified the statements and had any interaction with the Assistant Superintendent of Police, who recorded his report. Similarly, by reproducing the contents of statements of witness A and B in the grounds of detention without the material to show that the detaining authority had in fact interacted either with the witnesses or discussed it with the authority, who verified such statements, the order of detention stands vitiated.”

12. The consistent view is that the Detaining Authority’s subjective satisfaction, if based on the in-camera statements of witnesses, must be verified by the Detaining Authority. It is not sufficient to base its satisfaction on the verification by some other officer.

13. The Hon’ble Division Bench in the decision noted above, observed that the detention order therein mentioned criminal activities which are not considered while issuing the impugned detention order and the same were referred to show criminal antecedents of the Petitioner and held that if these pending cases were not considered by the detaining authority, then there was no reason to mention the same in the first place

in the detention order. In the present case, the detaining authority has identically mentioned the six criminal offences, which are registered against the Petitioner in paragraph No.4 and the previous preventive action against the Petitioner and has thereafter mentioned that the detention order is not based on the offences and are mentioned only to highlight previous criminal history and are only referred criminal documents. Though not stated in so many words, it is not far to deduce that the Detaining Authority's satisfaction was influenced by the criminal antecedents which were not material in absence of live link.

14. In order to arrive at subjective satisfaction the Detaining Authority has further considered the following :

“Further, you have applied for bail in CR No. 474/2024 & 589/2024 (i.e. Relied offences). The said bail applications are pending before the Hon’ble Court, Solapur. Thus, there is a provision under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) that the Hon’ble High Court or Session Court may grant conditional bail for accused. As the principle of Supreme Court states that “Bail is rule and Jail is Exception”. Also, punishment for the relied offences (i.e. CR No. 474/2024 & 589/2024) as mentioned in Para 5-1 & 5-2 is not compulsorily death. So in future, if you get bail, there is every possibility that you will indulge in dangerous activities and taking into consideration your propensity towards criminality, there is an ‘imminent possibility’ that you will

likely to revert to the similar activities which are prejudicial to the maintenance of public order in future.

From all these, it shows your consistency in criminal activities. Thus, you have proved yourself as a 'Dangerous Person' within the meaning of section 2(b-1) of the M.P.D.A. Act, 1981. So, it has become necessary to detain you as early as possible, under the MPDA Act, 1981 to prevent you from acting in such a prejudicial manner to the maintenance of public order in future too."

15. Mr. Kulkarni has rightly relied upon the decision in the case of ***Mahesh Balasaheb Thorat Vs. Commissioner of Police, Pune*** (supra) where there was similar mention by the detaining authority and the Hon'ble Division Bench has held that the same cannot be basis on which the subjective satisfaction can be arrived at by the detaining authority.

16. The Detention order is passed in order to prevent the detainee from acting in a manner prejudicial to maintenance of public order, which in turn was on the basis of in-camera statement of witnesses. As the bed-rock of the subjective satisfaction has been eroded by reason of failure of the Detaining Authority in verifying the truthfulness of the two confidential in-camera statement, the detention order stands vitiated.

17. Resultantly, we are of the considered opinion that the detention order dated 31st October 2024 vide order dated D.O. No.21/CB/DP/2024

passed by the Respondent No.2-Commissioner of Police, Pune and detention orders dated 8th November 2024 and 19th December 2024 passed by the Respondent No.1-State of Maharashtra cannot be sustained and is therefore quashed and set-aside. The Detaining Authority is directed to forthwith release the Petitioner, if not required in any other case.

18. Rule is made absolute in the above terms.

[Sharmila U. Deshmukh, J.]

[M. S. Karnik]

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