

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 302 OF 2025

Vishnu Nanabhau Devkate
Father of Mahadev Vishnu Devkate
(Detenue-detained in Yerwada Prison, Pune)
Age : 61 years, Occ. : Nil
residing at Chakan Road,
Hanumanwadi, Thakar Vasti,
Alandi Rural, Alandi Davachi,
Pune, Maharashtra – 412105.

.....Petitioner

Versus

1. The State of Maharashtra

2. Commissioner of Police, Pimpri Chinchwad
Pune

3. Superintendent of Police,
Yerwada Central Prison,
Pune.

.....Respondents

Adv. Satyavrat P. Joshi a/w Adv. Yash G. Fadtare a/w Adv. Shivani
Kondekar - Advocate for the Petitioner.

Ms. M. H. Mhatre - APP for the Respondent-State.

PSI T. S. Pawar – Alandi Police Station

**CORAM : SARANG V. KOTWAL &
S.M. MODAK, JJ.**

DATE : 09th APRIL 2025

JUDGMENT : (Per SARANG V. KOTWAL, J.)

1. This petition is filed for setting aside the detention order bearing OW No. PCB/DEI/101/2024, dated 17.04.2024 issued by the Respondent No. 2-the Commissioner of the Police, Pimpri Chinchwad. The order was passed against one Mahadev Vishnu Devkate. The petition is filed by the detainee's father for his release by setting aside the detention order. The detention order is passed under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing Essential Commodities Act, 1981. The detention order was not executed for quite some time and the detainee got arrested only on 23.12.2024.

2. Heard learned Counsel Shri Joshi for the Petitioner and learned APP Ms. Mhatre for the Respondent-State.

3. Learned Counsel for the Petitioner has raised many grounds in this petition. However, he argued only one ground to challenge the detention order. He submitted that in paragraph nos. 3 and 3.1, the detaining authority has mentioned eight past offences and two past

preventive actions taken against the detainee between the year 2019-2023. At the end of paragraph no. 3.2, the detaining authority has clearly stated that, he has not relied upon those offences while issuing order of detention. After that, the detaining authority has referred to C.R. No. 45 of 2024 registered at Alandi Police Station and two in-camera statements of Witnesses A and B. After recording that material, the detaining authority in paragraph no. 8, has stated that, he had mentioned the offences and preventive actions taken in paragraph no. 3 and 3.1 of the grounds of detention to show that the detainee was a habitual criminal involved in continuous criminal activities. Learned Counsel submitted that this averment is completely contradictory to the stand taken by the detaining authority in paragraph no. 3.2 where he has stated that he was not relying on those offences and preventive actions while passing the detention order. He submitted that this shows non-application of mind and also created confusion affecting the detainee's right to make the earliest effective representation against the order of detention.

4. Learned APP submitted that the detaining authority has spelt out the material on which he was passing the detention order. He

has clarified the position in paragraph no. 7 and therefore, it cannot be said that the detaining authority had relied on the past offences mentioned in the paragraph no. 3 of the grounds of detention.

5. We have considered this submission. The detaining authority has mentioned eight offences registered at Alandi Police Station between the year 2019-2023. Those offences are mentioned in paragraph no. 3 of the grounds of detention. Apart from that, he has referred two preventive actions taken against the detainee at the instance of Alandi Police Station in the year 2019 and 2022. Having noted this material, in paragraph no. 3.2 the detaining authority has stated that those offences and those preventive actions were referred only to show his habitual criminal activities and how the preventive action had no effect on his criminal activity. He has further stated that the said material shows that the detainee was a dangerous person as defined under Section 2(b-1) of the MPDA Act. Importantly, he has further stated in the said paragraph that he had not relied upon those offences while issuing the present order of detention against him. The stand taken by him in paragraph no. 3.2 itself is contrary because on one hand he has stated that he has not relied upon those offences, and yet he has recorded that those

offences show that he was a dangerous person as defined under Section 2(b-1) of the said Act.

6. Apart from that, he has then referred to CR No. 45 of 2024 registered at Alandi Police Station under Sections 307, 504, and 506 of the Indian Penal Code. The said offence is referred in paragraph no. 4.1. Paragraph No. 5 of the grounds of detention mentions that it was the offence considered for passing the detention order.

7. Paragraph no. 6.1 refers to in-camera statement of witness-A in respect of the incident which had taken place in the third week of January 2024.

8. In paragraph no. 6.2 refers to in-camera statement of witness-B in respect of the incident which had taken place in the second week of February 2024.

9. After recording this, in the grounds of the detention, the detaining authority has stated in paragraph no. 7 that the facts narrated in the grounds 5.1, 6.1 and 6.2 was the material on which he was subjectively satisfied that the detainee was a dangerous person as defined under Section 2 (b-1) of the said Act. Again in paragraph no. 8, he has taken a contrary stand, and again he has

mentioned that he has mentioned the offences and preventive actions taken in paragraph no. 3 and 3.1 of the grounds of detention to show that he was a habitual criminal involved in continuous criminal activities. Thus, in different paragraphs the detaining authority has taken contrary stand in respect of the past eight offences mentioned in paragraph no. 3. This has definitely created confusion, and it shows non-application of mind. This is important in the context of the definition of a dangerous person under Section 2 (b-1) of the MPDA Act which reads thus:-

“‘Dangerous person’ means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.”

10. Therefore, the main ingredient of Section 2(b-1) was about habitual nature of the said person to commit such offences. Therefore, this is an important aspect and the detaining authority has not clearly mentioned and in fact has taken contrary stand as to

what is the effect of the past eight offences registered at Alandi Police Station mentioned in paragraph no. 3, on his subjective satisfaction. This shows non application of mind on his part and also has created confusion thereby affecting the detenue's right of making an effective representation at the earliest challenging the detention order.

11. Based on this discussion, it is quite clear that impugned detention order is liable to be set aside.

12. Hence, the following order :-

ORDER

(i) The detention order bearing No. OW No. PCB/DEI/101/2024, dated 17.04.2024 is quashed and set aside.

(ii) The Detenue is directed to be released forthwith if not required in any other case.

(iii) Rule is made absolute in the aforesaid terms.

13. The Writ Petition is disposed of.

(S.M. MODAK, J.)

(SARANG V. KOTWAL, J.)