

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.311 OF 2025

Raju @ Shendi Bhishan Tak

Age : 39 Years, Occupation : Nil,
Residing at : Behind Manu Clinic,
Ambedkar Colony, Pimpri, Pune.

...Petitioner

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Versus

1. **The State of Maharashtra**

(Through the Secretary of the Govt.
of Maharashtra (Preventive Detention),
Home Department (Special), Mantralaya,
Mumbai : 400 032.

2. **The Commissioner of Police,**

Pimpri Chinchwad, having address at:-
Prem Lok Park, Chinchwad,
District : Pune – 411 033.

3. **The Superintendent,**

Yerwada Central Prison, Yerwada,
District Pune.

...Respondents

Mr.Ganesh Bhujbal – Advocate for Petitioner.

Smt.M.H.Mhatre – APP for Respondents – State.

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

DATE : 21st MARCH 2025

ORAL JUDGMENT (PER SARANG V. KOTWAL, J.)

1. The Petitioner has challenged the order dated 28th

October 2024 bearing No.PCB/DET/346/2024 passed by the

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Commissioner of Police, Pimpri-Chinchwad, District : Pune under 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 (“**M.P.D.A Act**”). Along with the detention order, committal order was passed and the Petitioner was directed to be detained at Yerwada Central Prison, Pune.

2. Heard learned counsel Mr.Ganesh Bhujbal for the Petitioner and learned APP Smt.M.H.Mhatre for Respondents – State.

3. The Petitioner was served with the grounds of detention dated 28th October 2024. In paragraph No.3, the previous two offences registered against the Petitioner at Pimpri Police Station vide C.R. No.380 of 2020 and C.R. No.236 of 2021 were mentioned. Those were registered on 17th June 2020 and 30th March 2021 respectively. The C.R. No.380 of 2020 was mainly under Section 326 of the Indian Penal Code, 1860 (“**I.P.C.**”). The C.R. No.236 of 2021 was mainly under Section 395 of IPC and subsequently, the provisions of the Maharashtra Control of Organised Crime Act, 1999

(“**M.C.O.C. Act**”) were applied.

4. Learned counsel for the Petitioner states, that in respect of C.R. No.236 of 2021, though the paragraph No.3 mentions the provisions of the M.C.O.C. Act, in fact, no sanction was accorded in respect of the Petitioner in M.C.O.C. Act. In paragraph No.3.1, there is a reference to the preventive action taken against the Petitioner in the case No.39 of 2022 dated 16th March 2022 under Sections 110(a),(e),(g) of the Code of Criminal Procedure, 1973 (“**Cr.P.C.**”). The Petitioner was directed to execute final bond for a period of two years from 22nd March 2022.

5. Importantly, in paragraph No.3.2, the detaining authority has stated that he had not considered the above mentioned offences for passing the detention order. Which means, neither C.R. No.380 of 2020 nor the C.R. No.236 of 2021 nor the preventive action 39 of 2022 were considered for passing of the detention order.

6. The detaining authority has referred to C.R. No.675 of 2024 registered at Pimpri Police Station on 26th July 2024 under Sections 118(2), 118(1), 115(2), 352, 351(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023 (“**BNS**”) read with Sections

4, 25 of the Arms Act read with Sections 37(1)(3), 135 of the Maharashtra Police Act, 1951 (“**MP Act**”) and under Sections 3, 7 of the Criminal Law Amendment Act. He has also referred to the two in-camera statements mentioned in paragraph Nos.6.1 and 6.2. Thus, the detaining authority had passed the detention order only on the basis of C.R. No.675 of 2024 of Pimpri Police Station and under the two in-camera statements.

7. The C.R. No.675 of 2024 pertains to the incident dated 25th July 2024 in which, the Petitioner had caused grievous injuries to the First-Informant by means of Koyta. The in-camera statement of Witness-A was pertaining to the incident which had occurred in the last week of June-2024. In that incident, the Petitioner had caused damage to the two-wheeler of the Witness-A and had threatened him. The Witness-A was also assaulted with kicks and blows. The statement of the Witness-B pertains to the incident which had taken place in the second week of July-2024 in which, that witness was slapped, threatened and beaten.

8. Learned counsel for the Petitioner though has raised many grounds but made submissions only on the ground of non-application of mind on the part of the detaining

authority and on the ground, that his right to make an earliest effective representation was infringed.

9. Shri.Bhujbal submitted that though the detaining authority had categorically stated, that he was not relying on the past history, in paragraph No.8, he has taken a completely contrary stand and had referred to the past history to arrive at his subjective satisfaction. On this basis, Shri.Bhujbal seeks setting aside of the detention order.

10. Learned APP, on the other hand, tried to justify the stand taken by the detaining authority. She submitted, that the past history was only referred to show the tendency of the Petitioner and not to pass the detention order.

11. We have considered these submissions. Shri.Bhujbal relied on the averment made in paragraph No.8 of the grounds of detention. The relevant averment is as follows:-

“8. I have mentioned the offences and preventive action taken in para 3, and 3.1 of the grounds of detention to show that you are habitual criminal involved in continuous criminal activities. Accordingly I have relied upon the facts mentioned in para 5.1, 6.1 and 6.2 of the grounds of detention to arrive at my subjective satisfaction that you are a Dangerous Person as defined in para 2(b-1) of the

M.P.D.A. Act and your criminal activities are prejudicial to maintenance of public order....”

12. As rightly submitted by Shri.Bhujbal, this is a completely contrary stand, the detaining authority has taken compared to his averments in paragraph No.3.2. In that paragraph, he has specifically stated that, while passing the detention order, he had not considered the C.R. No.380 of 2020, C.R. No.236 of 2021 and the preventive action 39 of 2022. All these offences and preventive action are mentioned in paragraph No.3 and 3.1 and the grounds of detention. This aspect is important because habitual nature of the proposed detainee is an important consideration for passing of the detention order.

13. Section 2(b-1) defines a “*dangerous person*” as follows:-

“[(b-1) “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];”

Thus, habitual activity is an important

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consideration. To conclude that the Petitioner had habitually indulged in those activities, the detaining authority had referred to the activities mentioned in paragraph Nos.3 and 3.1 which itself is contrary to his stand that the detention order was not passed on these activities. This clearly shows non-application of mind. Apart from that, it has created confusion thereby affecting the valuable right of the Petitioner to make an effective earliest representation challenging the detention order.

On both these counts, the detention order is unsustainable and is liable to set aside. Hence, the following order:-

ORDER

- (i) The detention order No.PCB/DET/346/2024 is set aside.
 - (ii) The Petitioner be released forthwith, if not required in any other case.
 - (iii) The Rule is made absolute.
14. The Writ Petition is disposed of accordingly.

(S.M.MODAK, J.)

(SARANG V. KOTWAL, J.)