

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

CRIMINAL WRIT PETITION NO. 1299 OF 2025

Abhijit @ Chokya Tukaram Yelwande
Age : 28 years, Occu.:
Residing at Room No. 5, Jadhav Chawl,
Near Kakade Palace, Karvenagar, Pune.
(At present Nashik Prison)

... Petitioner

V/s.

1. The Commissioner of Police,
Pune City, Pune.
2. The State of Maharashtra
(Through The Principal Secretary,
Home Department, Mumbai.)
3. The Superintendent of Jail
Nashik Central Prison, Nashik.

... Respondents

Mr. Samay Pawar with Mr. Yash Fadtare, Mr. Nitin Rai, Mr. N. Kadam i/b.
Mr. Satyavrat Joshi, Advocate for the Petitioner.
Mr. J.P. Yagnik, Additional Public Prosecutor for the Respondent- State.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.**

DATE : 3rd OCTOBER 2025.

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JUDGMENT [Per: RANJITSINHA RAJA BHONSALE, J] :-

1) By the present Petition filed under Article 226 of the Constitution of India, the Petitioner seeks to challenge the Detention Order, bearing No. O. W. No./CRIME PCB/DET/WARJE MALWADI/YELWANDE/986/2024 dated 4th

December 2024 (the Detention Order), issued under Section 3(2) of 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 (MPDA Act) and the Order of Committal of even date, thereby detaining the Petitioner in the Nashik Central Prison, Nashik. The Petitioner being detained seeks a direction for being released and set at liberty.

2) By Order dated 21st March 2025, this Court issued Rule in the Petition. The Respondent Nos.1 to 3, have filed their respective Affidavit in replies dated 27th March, 2025, 3rd April, 2025 and 20th March 2025 respectively, dealing with the contentions/grounds raised by the Petitioner and opposed the Petition.

3) We have heard Mr. Samay Pawar, learned Counsel for the Petitioner and Mr. J .P Yagnik, learned Additional Public Prosecutor for the Respondent-State. Perused the record and the Affidavits in Reply.

4) At the outset, it is pertinent to note that, though the learned Advocate for the Petitioner has raised various grounds in paragraph No.5 (a) to 5 (s) in the Petition, for challenging the Detention Order dated 4th December 2024, however, he has mainly argued that the subjective satisfaction arrived at by the Detaining Authority, is misplaced and unfounded on the ground of delay. Further, elaborating the said point, learned Advocate for the Petitioner submitted that, the Detention Order is based on two offences i.e. C. R.

No.275/2024 registered on 8th July 2024 and C. R. No.360/2024 registered on 11th September 2024, both with Warje Malwadi Police Station and two in-camera statements, recorded on 29th October 2024 and 23rd October 2024 for the incidents pertaining to 9th September 2024 and 19th October 2024 respectively. Learned Advocate for the Petitioner submits that, the Petitioner was arrested on 11th September 2024 in relation to C. R. No. 360/2024 and granted bail on 19th September 2024. Learned Advocate for the Petitioner further points out that, the in-camera statement of witness 'A' was recorded on 29st October 2024, pertain to incident dated 9th September 2024. It is submitted that, from the date of getting bail i.e. 19th September 2024, there is a delay of 40 days in recording statement of witness 'A'. The learned Advocate for the Petitioner submits that, the Detention Order dated 4th December 2024, is passed after 36 days, from the date of the last in-camera statement dated 29th October 2024. In view of the delay, the Detention Order is vitiated. Learned Advocate also submits that, it appears, that the delay has not been considered by the Detaining Authority.

5) Mr. J. P. Yagnik, learned APP for the State, in reply, states that though the Petitioner was released on bail on 19th September 2024 and the in-camera statement of witness 'A' was recorded on 29th October 2024, the subjective satisfaction is correctly arrived at, after considering the two crimes and the two in-camera statements and the acts of the Petitioner which clearly indicate that the Petitioner's activities are prejudicial to the public order and

disrupt the normal life and the even tempo of the society.

6) From a perusal of the record, it appears that, the ground of delay in issuing Detention Order appears to be well founded. Petitioner was released on bail on 19th September 2024 and after being released on bail, the two in camera statements of witness 'A' and 'B' are recorded on 29th October 2024 and 23rd October 2024, which clearly indicates the delay. It is pertinent to note that, in the facts of the present case, the unexplained delay in recording the in camera statements will have a bearing on the Detention Order. We have noted, that the Detenu was on bail, when the in-camera statements of the witnesses were recorded. The recording of the in-camera statements, after the Petitioner being released on bail, will clearly demolish the apprehension of the Detaining Authorities for the need of preventive detention.

7) Considering the aforesaid facts, we are of the opinion that, there is an unexplained delay in the present matter in recording the in-camera statements and the purpose of preventive detention is defeated. On the ground of unexplained delay, the basis of the Detention Order is misplaced. Further, if the dates of the registration of the crimes, date of incidents, dates of the in-camera statements and Petitioner's release on bail are all considered together, the Detention order appears to be untenable and misplaced. Under the preventive detention laws, personal liberty of individual is curtailed and at stake, in summary procedure i.e. without a trial. The swift and immediate action is the very need and basis for a preventive detention order.

Unexplained delay, cannot be the basis of a preventive detention order.

8) In view of the above, the Detention Order deserves to be quashed and set aside.

8.1) Hence, the following order;

a) Detention Order bearing No.OW.NO./CRIME PCB/ DET/ WARJE MALWADI/YELWANDE/986/2024 dated 4th December 2024 is quashed and set aside.

b) Petition is allowed in terms of prayer clause (B).

c) Petitioner be released from Jail forthwith, if not required in any other case/cases, on production of an authenticated copy of this operative part of the Judgment.

d) Rule is made absolute in the aforesaid terms.

2) All the concerned to act on the basis of an authenticated copy of this operative part of the Judgment.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)