

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

CRIMINAL WRIT PETITION NO. 1548 OF 2025

Kishor Laxman Kawale @ Kawalya
Age : 20 years,
R/o. Room No.708, Building No.16,
Nisarg Society, Dharmveer Nagar,
Thane (W).
(At present Yerwada Prison, Pune)

... Petitioner

V/s.

1. Commissioner of Police,
Thane.
2. The State of Maharashtra
(Through Addl. Chief Secretary to
Government of Maharashtra, Mantralaya,
Home Department Mantralaya, Mumbai.)
3. The Superintendent,
Yerwada Central Prison, Pune.

... Respondents

Ms. Jayshree Tripathi, a/w Anjali Raut, Advocate for the Petitioner.
Mr. Shreekant V. Gavand, Additional Public Prosecutor for the State.

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

DATE : 7th OCTOBER 2025.

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

- 1) By the present Petition under Article 226 of the Constitution of India, the Petitioner seeks to challenge the Detention Order, bearing D. O. No.

Digitally signed
by SANJAY
KASHINATH
NANOSKAR
Date:
2025.10.27
18:37:28
+0530

TC/PD/DO MPDA 15/2024 dated 05th 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 Yerwada Central Prison, Pune. 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 Affidavits in reply dated 11th April 2025, 23rd April 2025 and 19th April 2025 respectively, dealing with the contentions/grounds raised by the Petitioner and opposed the Petition.

3) Heard Ms. Jayshree Tripathi with Anjali Raut, learned Advocates for the Petitioner and Mr. Shreekant V. Gavand, learned Additional Public Prosecutor for the State. Perused entire record and the Affidavits in Reply filed by the Respondents.

4) Learned Advocate for the Petitioner submits that, though she has raised various grounds in paragraph No.4 (a) to 4 (g) of the Petition for challenging the Detention Order dated 05th December, 2024, however, she is restricting her argument only on the ground mentioned in paragraph No.4(f) of the Petition i.e delay in passing the Detention Order.

5) Learned Advocate for the Petitioner submits that, for the purpose

of Detention Order, the Detaining Authority has relied upon one crime i.e. C. R. No.577/2024, registered with Chitalsar Police Station, Thane, dated 9th June, 2024 under Sections 307, 326, 504, 506, 34 of Indian Penal Code, read with Section 4, 25 of Arms Act, read with Section 37(1), 135 of the Maharashtra Police Act and two in-camera statements of witness 'A' and 'B' recorded on 4th November, 2025 and 9th November, 2025 respectively. She submits that, the Petitioner was arrested in C. R. No.577/2024 on 11th June, 2024 and was released on bail on 28th August, 2024. That, the in-camera statements of witness 'A' and 'B' were recorded on 4th November, 2025 and 9th November, 2025 respectively and the Detention Order is passed on 5th December, 2024. Learned Advocate for the Petitioner states that, there is delay of about 26 days in between recording of the in-camera statements and passing of Detention Order and a delay of more than 3 months from the date of his release on bail and passing of Detention Order. She further submits that, there is no explanation at all offered for the said delay.

6) We have perused the record and given our considered thought to the ground of delay as raised by the learned Advocate for the Petitioner. Perusal of the grounds of detention indicate that, the Detaining Authority has taken into consideration and relied upon one Crime i.e. C. R. No.577/2024, registered with Chitalsar Police Station, dated 9th June, 2024 under Section 307, 326, 504, 506, 34 of Indian Penal Code, read with Section 4, 25 of Arms Act, read with Section 37(1), 135 of the Maharashtra Police Act and two in-camera statements of witness 'A' and 'B' recorded on 4th November, 2025 and

9th November, 2025 respectively. The last in-camera statement of witness 'B' was admittedly recorded on 9th November, 2025.

7) Record indicates that in C. R. No.577/2024 i.e. the crime on which the Detaining Authority has placed reliance, the Petitioner was arrested on 11th June, 2024 and was released on bail on 28th August, 2024. As noted hereinabove, the last in-camera statement was recorded on 9th November, 2024. Perusal of the Affidavit-in Reply filed by the Respondent No.1, indicates that there is no satisfactory explanation offered in respect of delay from 28th August, 2025 (i.e. date of Petitioner release on bail) till recording of the in-camera statement of witness 'A' on 9th November, 2024 i.e. approximately 73 days. We find that, there is no attempt made on behalf of the Detaining Authority to explain the said delay of 73 days in recording the in-camera statements. There is no explanation either in the grounds of the detention dated 5th December, 2024 or in the Affidavit in Reply filed by the Respondents.

8) It would not be out of place to make a mention here that, the Hon'ble Supreme Court in the case of *Pradeep Nilkanth Paturkar vs. S. Ramamurthi and others reported in 1993 Supp (3) SCC 61*, has expressed its anguish in respect of the fact that, the statements of witnesses were recorded only after the detenu is released on bail or successful in getting bail from the Court in the concerned crime. The Hon'ble Supreme Court has further held that, the unexplained delay, whether short or long, especially when the detenu has taken a specific plea of delay, has to be explained properly. This Court in the cases of *Austin William Luis Pinto Vs Commissioner of Police, Greater*

Mumbai & Ors., reported in 2005 ALL MR (Cri) 28, Daksh Juber Ghelani vs. The Commissioner of Police, Pune City & Ors (Writ Petition No.3994/2023 decided on 4th April 2024) and Sameer @ Panna Mehboob Shaikh vs. The State of Maharashtra & Anr. (Writ Petition No.1136/2025 decided on 20th September 2025) has also granted benefit of unexplained delay, to the detenus therein.

9) In the present case, the Petitioner was released on bail on 28th August, 2024, in-camera statements of witness 'A' and 'B' recorded on 4th November, 2025 and 9th November, 2025 respectively and the Detention Order was passed on 5th December, 2024. We find that, there is unexplained delay of 26 days in issuing the Detention Order from the date of recording statement of witness 'B' i.e. on 9th November, 2025. The said delay has also not been satisfactorily explained by the Detaining Authority.

10) In view of ratio laid down by the Hon'ble Supreme Court in the case of Pradeep Nilkanth Paturkar (supra) and the decisions of this Court in the cases of Austin William Luis Pinto (supra), Daksh Juber Ghelani (supra) and Sameer @ Panna Mehboob Shaikh (supra), the Detention Order deserves to be quashed and set aside on the ground of unexplained delay on both counts i.e. 73 days from 28th August, 2024 to 4th November, 2024 and 26 days in passing the Detention Order. We are also of the firm opinion that, if the Sponsoring Authority was satisfied that, the Petitioner is a 'dangerous person' as defined in section 2(b-1) of the MPDA Act, the concerned Authorities for preventing the Petitioner from acting in any manner prejudicial to the

maintenance of public order, ought to have taken effective steps in a swift and prompt manner to detain the Petitioner under the provisions of the said Act. As there is unexplained delay, as noted hereinabove, according to us, the purpose and object of the Act is not met and the unexplained delay on both counts is contrary to the very purpose and object of the Act. In view thereof, the Detention Order is vitiated on account of delay and therefore deserves to be quashed and set aside.

10.1) Hence, the following order;

- (a) Detention Order dated 5th December, 2024 bearing No. TC/PD/DO/MPDA 15/2024 issued by the Respondent No.1, is quashed and set aside.
- (b) Petitioner/Detenué be released from Jail forthwith, if not required in any other case/cases, on production of an authenticated copy of the operative part of present Judgment.
- (c) Petition is allowed in terms of prayer clause (b).
- (d) Rule is made absolute in the aforesaid terms.
- (e) All the concerned to act on the basis of an authenticated copy of this Judgment.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)