

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

WRIT PETITION NO. 2192 OF 2025

Ismail Husain Shaikh @ Taufiq Cheena,
Age: 22 years, Occupation: None
Residing at D/O Dilbahar Shaikh, Abdul
Rasul Chawl, Nagina Bakery, Gill Bert Hill
Road, Juhu Gali, Near Naka Masjid, Andheri
West, Mumbai, Maharashtra- 400 058
Presently lodged at Thane Prison.

... Petitioner.

V/s.

1. The State of Maharashtra
Through the Additional Chief Secretary,
having its office at Mantralaya, Mumbai.
2. Commissioner of Police, Gr. Mumbai,
having office at Mahatma Phule Road,
(Crawford Market) Dr. D.N. Road,
Mumbai- 400 001.

... Respondents.

Mr.Shivamsinh Deshmukh with Mr.Aaditya Sharma, Ms.Priya Mourya
and Mr.Vinamra Kamble for the Petitioner.
Mr.Shreekant V. Gavand, A.P.P for the Respondent- State.

**SANJAY
KASHINATH
NANOSKAR**

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**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.
DATE : 16th DECEMBER 2025.**

JUDGMENT: (Per Ranjitsinha Raja Bhonsale)

1) By the present Petition under Article 226 of the Constitution of India, the Petitioner seeks to challenge the Detention Order dated 28th March 2025 bearing No.D.O.No.01/PCB/DP/ZONE-IX/2025 issued by

Respondent No.2 so also the Committal Order of even date whereby the Petitioner was detained in Nashik Road Central Prison, Nashik. The Petitioner further prays that, he be released and set at liberty.

2) In the present Petition, Rule was issued on 21st April 2025. The Respondents have filed Affidavits in reply opposing the Petition.

Heard Mr.Deshmukh, learned Advocate for the Petitioner and Mr.Gavand, learned A.P.P. for the Respondent-State. Perused the record and the Affidavits in Reply.

3) At the outset, learned Advocate for the Petitioner submitted that, though various grounds have been raised in paragraph No.8 of the Petition assailing the Detention Order, he is restricting his arguments to the ground of delay in issuing the Detention Order. Learned Advocate for the Petitioner submitted that, the Detention Order dated 28th March 2025 relies upon solitary C.R.No.1149 of 2024 dated 26th October 2024 registered with D.N.Nagar Police Station, Mumbai under sections 309(6), 311, 112, 352, 351(3), 3(5) Bharatiya Nyaya Sanhita r/w sections 4, 25 the Arms Act r/w section 142 of the Maharashtra Police Act, 1951 r/w section 7 of the Criminal Law Amendment Act, 2013 and two in-camera statements dated 12th February 2025 and 15th February 2025 in respect of incidents which had taken place in October 2024. That, the in-camera statements of the witnesses were verified on 17th February 2025. The last in-camera statement was recorded on 15th February 2025 and the Detention Order

has been passed on 28th March 2025 i.e. approximately after a period of 41 days. He submitted that, said delay has not been explained and the same is fatal to the Detention Order.

4) In reply, Mr.Gavand, learned A.P.P submitted that, there is no delay in passing the Detention Order and that the Respondent Authorities have acted in swift and prompt manner. That, the time taken in processing the Detention proposal has been properly explained and that there is no delay. He referred to the Affidavit in Reply of the Detaining Authority to explain the process and procedure followed by the Sponsoring and the Detaining Authority in passing Detention Order. He submitted that, the time taken to pass the Detention Order is due to the process which is followed and the various approvals which are required to be taken in the said process.

5) We have considered the submissions made on behalf of the parties so also the Affidavits in reply filed by the Respondent-Authorities. We find that once again the same explanation in respect of process and movement of files has been put forth to explain the time taken to pass the Detention Order. We note that, in the present case the Detention Order is based on solitary C.R. and two in-camera statements. The said crime was registered on 26th October 2024 in which the Petitioner was granted bail on 13th February 2025 and was released on bail on 18th February 2025. The in-camera statements are recorded on 12th February 2025 and the last

in-camera statement was recorded on 15th February 2025 in respect of incidents of October 2024. The same appears to have been recorded to fill the time gap which has occurred from the date of registration of the said solitary C.R. till passing of the Detention Order.

6) This Court in the case of *Deepak Govind Murudkar Vs. Mr. R. H. Mendonca and ors.* reported in *2001 ALL MR (Cri) 357* in paras- 10 and 11 has held that for the purposes of computing delay in issuing detention order, the period of delay has to be computed from the date of the last in-camera statement. In the case in hand, we find that between the recording of the last in-camera statement recorded on 15th February 2025 and passing of the Detention Order dated 28th March 2025 there is a period of 41 days. The said delay of 41 days has not been explained properly. A routine, general and vague explanation has once again been offered. It is settled law that in preventive detention matters the Authorities ought to act in a prompt and swift manner. Preventive detention is based on suspicion/apprehension and is a summary procedure wherein the detenue is detained and liberty is curtailed without a trial. Therefore the procedural aspects ought to be complied with strictly and in a prompt and swift manner. On perusal of the Affidavits we find that, the usual explanations of the movement of the files from one Authority to the other, time taken for photocopying, making translations etc. have been put forward. In our opinion, considering the consequences of preventive detention cases and

Orders passed therein the said routine, vague and general explanations of the movement of the files cannot and ought not to be accepted. In the present case, we find that the delay is unexplained and the said unexplained delay vitiates the Detention Order and the same cannot be sustained.

7) Hence, we pass the following order.

- a) Detention Order bearing D.O.No.01/PCB/DP/ZONE-IX/2025 dated 28th March 2025 issued by Respondent No.2 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.
- e) 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.)