

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3107 OF 2025

Rupesh Laxman Gaikwad
R/o. In-front of T.M.C.
School No. 55, Azad Nagar,
Thane, Dist. Thane
(At present Nashik Road
Central Prison, Nashik)

... Petitioner

V/s.

- 1) Commissioner of Police,
Thane.
- 2) The State of Maharashtra
(Through the Secretary Home
Department (Spl) Mantralaya,
Mumbai.
- 3) The Superintendent,
Nashik Central Prison,
Nashik.

... Respondents

Ms. Jayshree Tripathi a/w Ms. Anjali Raut for Petitioner.
Smt. Madhavi H. Mhatre, A.P.P for Respondent-State.

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

DATE : 22nd SEPTEMBER 2025

JUDGMENT (Per : A.S. Gadkari, J.) :-

- 1) Petitioner, detainee, has invoked jurisdiction of this Court under Article 226 of the Constitution of India, impugning the Detention Order dated 15th April 2024, bearing No.TC/PD/DO/MPDA/09/2024 passed by Respondent No.1 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 (Maha.Act No. IV of 1981) (Amendment-2015) (*for short 'MPDA Act'*) and the Committal Order of even date, directing his detention in Nashik Road Central Prison, Nashik.

2) Heard Ms. Tripathi, learned Advocate for the Petitioner and Mrs. Mhatre, learned A.P.P. for Respondents. Perused entire record produced before us and the Affidavits in reply filed by the Respondent-Authorities.

3) Petitioner has assailed the Order of Detention dated 15th April 2024, predominantly on the ground that, there is a delay of about one year in executing the Detention Order. The Order of Detention was passed by Respondent No.1 on 15th April 2024 and the Petitioner was arrested and the said Order was executed on him on 9th April 2025. A specific ground to that effect has been taken at Sr. No. (d) in the clause of Grounds in the Petition.

4) Perusal of record indicates that, taking into consideration the criminal acts committed by the Petitioner, the Respondent No.1 came to the conclusion that, the Petitioner is a 'dangerous person' as contemplated under Section 2(b-1) of the MPDA Act. After perusing the Report submitted by the sponsoring Authority i.e. the concerned Police Station, the Respondent No.1 reached to a conclusion that, the activities of the Petitioner were prejudicial to the maintenance of the public order and with a view to prevent him from acting in such a manner, it was necessary to make an Order directing the

Petitioner be detained, passed an Order under Section 3(2) of the MPDA Act. It is needless to mention that, the said Order was passed after the Respondent No.1 reached to its subjective satisfaction that, such an Order is necessary for maintenance of public order in the concerned area of the prejudicial activities of the Petitioner.

5) It is an admitted fact on record that, the impugned Detention Order was passed by Respondent No.1 on 15th April 2024, the Petitioner was thereafter arrested on 9th April 2025 and the Detention Order was served and executed on him on same day and he was detained in Nashik Road Central Prison, in furtherance thereof. It is thus apparent that, there is a delay of about one year in executing the impugned Detention Order.

6) Shri Sandip Dhande, the Officer of the sponsoring Authority, in paragraph No.4 of his Affidavit dated 22nd July 2025, has admitted the fact of execution of the Detention Order on Petitioner on 9th April 2025. Perusal of record indicates that, no reasonable and satisfactory explanation is offered by any of the Authorities for the said delay in execution of the Detention Order.

7) The Hon'ble Supreme Court in the case of *T.A. Abdul Rahman v/s. State of Kerala*, reported in *AIR 1990 SC 225*, in paragraphs Nos.11 and 12 has held as under:

“11. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the

prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.

12. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner."

7.1) In the case of *K.P.M. Basheer v/s. State of Karnataka & Anr.*, reported in (1992) 2 SCC 295, the Hon'ble Supreme Court in paragraph No.11 has held as under :

"11. Under these circumstances, we are of the view that the

order of detention cannot be sustained since the 'live and proximate link' between the grounds of detention and the purpose of detention is snapped on account of the undue and unreasonable delay in securing the appellant/detenu and detaining him. As we have now come to the conclusion that the order of detention is liable to be set aside on this ground alone, we are not dealing with other contentions raised in the memorandum of appeal as well as in the writ petition."

7.2) In the case of *Manju Ramesh Nahar v/s. Union of India & Ors.*, reported in (1999) 4 SCC 116, the Hon'ble Supreme Court, after taking into consideration the decisions in the case of *T.A. Abdul Rahman v/s. State of Kerala* (supra) and *SMF Sultan Abdul Kader v/s. Jt. Secy. to Govt. of India*, reported in (1998) 8 SCC 343, in paragraph Nos. 8 and 11, has held as under :

"8. This object can be achieved if the order is immediately executed. If, however, the authorities or those who are responsible for the execution of the order, sleep over the order and do not execute the order against the person against whom it has been issued, it would reflect upon the "satisfaction" of the detaining authority and would also be exhibitiv of the fact that the immediate necessity of passing that order was wholly artificial or non-existent.

9. In T.A. Abdul Rahman v. State of Kerala [(1989) 4 SCC 741 : 1990 SCC (Cri) 76 : AIR 1990 SC 225 : (1989) 3 SCR 945] it was held as under: (SCC p. 749, para 11)

"11. Similarly when there is unsatisfactory and

unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner.”

10. *****

11. *In another decision in SMF Sultan Abdul Kader v. Jt. Secy. to Govt. of India [(1998) 8 SCC 343 : 1998 SCC (Cri) 1534 : JT (1998) 4 SC 457] to which one of us (Saghir Ahmad, J.) was a Member, the unexplained delay in the execution of the order of detention was held “fatal”.*

8) As noted earlier, there is delay of about one year in executing the Detention Order upon the Petitioner. No reasonable and satisfactory explanation is offered by any of the Respondents for the said delay. Consequently, the ‘live and proximate link’ between the grounds of detention and the purpose of detention is snapped and hence the Order of Detention cannot be sustained.

9) It is further to be noted here that, though Section 7 of the MPDA Act provides for certain remedies to the Detaining Authority or other Police Authorities for securing presence of the detenu, record of the case in hand reveals that, no steps at all as contemplated under Section 7 of the Act have been adopted by the concerned.

10) For all the above mentioned reasons, we quash and set aside the Order of Detention dated 15th April 2024, passed by Respondent No.1 and direct the Petitioner/Detenue be set at liberty forthwith, if not required in any other case/cases.

10.1) Hence, the following Order :

ORDER

- a) Detention Order bearing No.TC/PD/DO/MPDA/09/2024 dated 15th April 2024 passed by Respondent No.1, is quashed and set aside.
- b) Petition is allowed in terms of prayer clause (b).
- c) Petitioner be set at liberty, if not required in any other case/cases, on production of an authenticated copy of this Order.
- d) Rule is made absolute in the aforesaid terms.
- e) All the concerned to act on the basis of an authenticated copy of this Order.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)