

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

CRIMINAL WRIT PETITION NO. 3471 OF 2025

Nilofer Ramjan Shaikh

Age: 39 years, Occ:- Housewife

Residing at: Galli No.12/A, Mohammadwadi

Road, Sayyednagar Hadapsar,

Pune City, Hadapsar, Pune-411028

... Petitioner

V/s.

1. Commissioner of Police, Pune City.

2. The State of Maharashtra

3. The Superintendent of Jail,
Wardha Prison, Wardha.

4. The Secretary
Advisory Board (MPDA),
Mantralaya, Mumbai

... Respondents

Ms. Misbaah Solkar along with Ms. Faiza Gawandi, Nawaz Dordi i/by
Mr. Amin Solkar Advocate for the Petitioner.

Mr. Shreekant V. Gavand, APP for the Respondent-State.

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

**RESERVED ON : 11th DECEMBER 2025
PRONOUNCED ON : 15th DECEMBER 2025.**

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

1) Petitioner, the mother of the Detenue, by present Petition, filed under Article 226 of the Constitution of India, seeks to quash and set aside the Detention Order, bearing No. OW. No./CRIME PCB/DET/KALEPADAL/

SHAIKH/384/2025, dated 5th May 2025, issued by the Respondent No.1 i.e. Commissioner of Police, Pune City (Detaining Authority) 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). The Petitioner, further prays that the Detenue being detained in the Wardha Prison be released and set at liberty.

2) By Order dated 22nd July 2025, this Court had issued Notice to the Respondents. The Respondent Nos.1 to 3 have filed their Affidavits in reply and opposed the Petition.

3) We have heard Ms. Misbaah Solkar, learned Advocate for the Petitioner and Mr. Shreekant V. Gavand, learned APP for the Respondents. Perused the record and the Affidavits in Reply filed by the Respondent Authorities.

4) At the outset, learned Advocate for the Petitioner submits that though the Petitioner has raised various grounds in the Petition for challenging the Detention Order dated 5th May 2025, she is restricting her arguments only to grounds 6(B) and 6(E) i.e. (i) activities of the detenue are not prejudicial to maintenance of public order and (ii) delay in issuing the Detention Order dated 5th May 2025, in as much as the last in-camera witness statement of witness 'B' was recorded on 7th February 2025.

4.1) Learned Advocate for the Petitioner submits that, the Detaining

Authority has for the purposes of passing the Detention Order relied upon one C.R. and two in-camera statements. The C.R. in question being C.R. No.6 of 2025 pertains to an incident of 26th January 2025, registered with the Kalepadal Police Station on 11th February 2025 under Sections 309(6), 352, 351(1), 3(5) of BNS and under Section 4 and 25 of Arms Act and under Section 3, 7 of Criminal Law Amendment Act. The Detention Order also relies on the in-camera statement of witness 'A' relating to an incident of 3rd February 2025 recorded on 25th February 2025 and in-camera statement of witness 'B' relating to an incident of 7th February 2025 recorded on 27th February 2025. That, a perusal of the said C.R. and the two in-camera statements does not indicate that the 'public order' was disturbed or that the acts of the detainee led to public disorder.

4.2) Learned Advocate for the Petitioner further submits that, the sole CR No.6 of 2025 is registered on 11th of February 2025 and the detainee was arrested on the same date. That, the two in-camera statements of witness statement of 'A' and 'B' were recorded on 25th February 2025 and 27th February 2025 respectively and the Detention Order is dated 5th May 2025. That, the period between 27th February 2025 and 5th May 2025 i.e the period between the recording of the last in-camera statement and passing the Detention Order is not explained. That, there is delay of more than two months for which the Detaining Authority has offered no explanation. That, on these two grounds the Detention Order is vitiated and therefore deserves to

be quashed and set aside.

5) Mr. Shreekant V. Gavand, learned APP for the Respondent-State in reply, while referring to in-camera statements of witness 'A' and witness 'B' submits that, perusal of the two in-camera statements clearly indicates that the conduct of the detainee is prejudicial to public order. That, as per the statement of witness 'A' the detainee was wielding deadly weapon (Koyta) while he was standing in the middle of road, extorting money and threatening people. That, a perusal of the in-camera statement of witness 'B' indicates that the conduct and acts of the detainee are clearly prejudicial to the public order as he was wielding deadly weapons and threatening people. That, a perusal of the relied upon C.R. would also indicate that the conduct and acts of the detainee are prejudicial to public order.

5.1) As regards, the contention of the Petitioner that, there is a long gap/delay between the recording of the last in-camera statement and passing of the Detention Order, the learned APP would submit that, the Respondent Authority in the affidavits in reply have explained the circumstances under which the detention proposal was moved, approved and the steps taken therein. That, at the first instance the witnesses were not coming forward and had to be persuaded to give the statements. That, after the in-camera statements were recorded and verified, the detention proposal was moved and forwarded through the proper channel. That, the detention proposal was considered and scrutinized by the various authorities at various levels i.e. first

by the Assistant Commissioner of Police, Wanavadi, then by the Deputy Commissioner of Police Zone V, then by the Additional C. P., East Region, then by the Senior Police Inspector PCB, Crime Branch and ultimately placed before the Detaining Authority. That, in between proposal had to be returned to the Sponsoring Authority for want of some documents and to rectify errors. After rectifying the errors the sponsoring Authority submitted the proposal to the Senior Police Inspector, who prepared a note sheet on 15th April 2025 and forwarded the proposal to the ACP Crime I. That, after receiving the remarks of ACP Crime I dated 21st April 2025, the proposal was submitted to the Deputy Commissioner of Police Crime and then to the Additional Commissioner of Police Crime and the Joint Commissioner of Police. The Joint Commissioner of Police went through the papers and gave his endorsement on 30th April 2025 after which the proposal was put up before the Detaining Authority. The Detaining Authority, after perusing the proposal, applying its mind and being satisfied, gave its approval. That, the proposal was then again forwarded to the Sponsoring Authority for the purposes of fair typing, preparing the translation of documents in the language known to the detainee and preparing necessary sets of the documents. That, after completing all necessary administrative formalities and procedural work related to the proposal, the proposal was placed before the Detaining Authority. The Detaining Authority once again carefully went through the proposal, the accompanying papers and after applying its mind issued the Order of

Detention dated 5th May 2025. That, considering the steps taken and procedure followed, the Sponsoring and Detaining Authority have acted in a swift manner and with sincerity. Lastly, he submits that in view of the aforementioned facts, there is no delay in passing the Detention Order. That, the time taken to pass the Detention Order has been properly explained by the Detaining Authority.

6) We have perused the record and considered the arguments advanced before us by the learned advocates for both the parties. We are in agreement with the contention of the Petitioner that, the instances on which the Detention Order dated 5th May 2025 relies i.e C.R. No.6 of 2025 registered on 11th February 2025 and in-camera statements of witness 'A' and witness 'B' dated 25th April 2025 and 27th February 2025 do not disclose that the acts and/or conduct of the detainee was of such a nature and gravity that the same would be termed as 'act or activities prejudicial to public order' or that the conduct of the detainee caused public disorder or disturbed the even tempo of life. We are of the opinion that, in the present case, a perusal of the statement in respect of C.R. No.6 of 2025 and the in-camera statements, would indicate that, the acts complained of are largely individualistic in nature and not against the public order or the public or the society. The acts complained appeared to be vexed against a particular individual.

7) We would make a useful reference to the judgment of the Supreme Court in the case of *Arjun S/o Ratan Gaikwad Vs. The State of*

Maharashtra reported in 2024 SCC onLine SC 3718 wherein in paragraphs 12 to 15 it is observed that,

12. The distinction between a public order and law and order has been succinctly discussed by Hidayatullah, J. (as His Lordship then was) in the case of Ram Manohar Lohia v. State of Bihar and Anr. 1965 : INSC:175: (1966) 1 SCR 709:

“54.... Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are....

55. It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.

13. It could thus be seen that a Constitution Bench of this Court in unequivocal terms held that every breach of peace does not lead to public disorder. It has been held that when a person can be dealt with in exercise of powers to maintain the law and order, unless the

acts of the proposed detainee are the ones which have the tendency of disturbing the public order a resort to preventive detention which is a harsh measure would not be permissible.

14. Recently, a Bench of this Court has referred to various judgments of this Court while following the law laid down by this Court in the case of Ram Manohar Lohia (supra), it will be appropriate to reproduce the following paragraph from the judgment of this Court in the case of Ameena Begum v. State of Telangana and Ors. (2023) 9 SCC 587.

“38. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, C.J. in Arun Ghosh v. State of W.B. [Arun Ghosh v. State of W.B., (1970) 1 SCC 98: 1970 SCC (Cri) 67], is this: (SCC p. 100, para 3)

“3.... Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?”

39. In Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98: 1970 SCC (Cri) 67], the petitioning detenu was detained by an order of a District Magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read: the offending act) "does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order. (Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98: 1970 SCC (Cri) 67], SCC p. 101, para 5)

40. In the process of quashing the impugned order, the Hidayatullah, C.J. while referring to the decision in Ram Manohar Lohia [Ram Manohar Lohia v. State of Bihar, 1965 SCC onLine SC 9 also ruled : (Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98:

1970 SCC (Cri) 67], SCC pp. 99-100, para 3)

“3.... Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order... It is always a question of degree of the harm and its effect upon the community. This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.”

41. In *Kuso Sah v. State of Bihar* [*Kuso Sah v. State of Bihar*, (1974) 1 SCC 185: 1974 SCC (Cri) 84], Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that: (SCC pp. 186-87, paras 4 & 6)

“4.... The two concepts have well defined contours, it being well-established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder.

6.... The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised.”

(emphasis supplied)

15. As to whether a case would amount to threat to the public order or as to whether it would be such which can be dealt with by the ordinary machinery in exercise of its powers of maintaining law and order would depend upon the facts and circumstances of each case. For example, if somebody commits a brutal murder within the four

corners of a house, it will not be amounting to a threat to the public order. As against this, if a person in a public space where a number of people are present creates a ruckus by his behaviour and continues with such activities, in a manner to create a terror in the minds of the public at large, it would amount to a threat to public order. Though, in a given case there may not be even a physical attack.

8) In our opinion, observations of the Hon'ble Supreme Court are squarely applicable to the facts of the present case. A bare perusal of the material which has been relied upon in the Detention Order i.e. relied upon CR and in-camera statement 'A' and 'B' would clearly indicate that, the acts/conduct of the detainee which are complained of, are against an individual and not against public order or the society at large. The conduct of the detainee in the present case appears to be an act which affects the law and order and not the public order. We are of the opinion that, in the present case, the conduct of the detainee cannot be said to amount to an act of public disorder. In our opinion, the wrong doings/wrongful acts of the Detainee do not impact the society so as to adversely affect the general public to instill a feeling of fear, panic or insecurity. A natural reaction of prudence of the public in staying away from trouble makers or keeping away from trouble makers cannot be said or construed to be a result of the general disturbance to public tranquility that affects public order.

9) It is the settled position of law that, every breach of peace does not lead to public disorder. Every breach of peace cannot be construed to

mean disturbance of the general public or disturbing the even tempo of the society. It is well settled that acts prejudicial to public order are acts which affect the even tempo of life of the community taking the country as a whole or may be even a specified locality. Each infraction of law or wrongdoing, is bound to in some manner or extent lead to a disorder, but every infraction of law does not necessarily result in public disorder. Such infractions of law/wrongdoings can be dealt with under the powers to maintain law and order. Every breach of the peace does not lead to a public disorder. For such infractions one does not need to invoke the provisions of preventive detention laws. We are of the opinion that, in order to invoke the preventive detention laws, the infraction of law or act complained of should be of such a nature that, if public order is disturbed, it must necessarily lead to public disorder. The infraction of law or wrongful act or conduct to affect public order should be of such a nature and gravity that it affects the community or the public at large. It ought to have an adverse impact on the community as whole or the general public even if in some cases restricted to a specific locality. The resultant adverse impact of the act, should evoke feelings of fear, panic and or insecurity. In the present case, as aforementioned, the acts of the detainee are directed against individuals, though unruly and/or harsh do not disturb the general public or society to such an extent as to cause a disturbance in the equilibrium of the society or of public tranquility. The acts of the detainee, in the present case, are not of such a degree or level so as to disturb the even

tempo of life. In view thereof and considering the incidents relied upon in the present case, we are of the clear view that the conduct and wrong doings attributed to the detenue cannot be termed as acts prejudicial to public order. The same are individualistic acts against certain persons which can be termed as a law and order issue and dealt with accordingly.

10) As regards, the ground of delay as raised by the learned Advocate appearing for the Petitioner, we find that the Detention Order dated 5th of May 2025, is passed after the period of 67 days of recording the last in-camera statement of witness 'B' on 27th February 2025. We find that, the said period/delay of 67 days has not been explained or even attempted to be justified. General and usual vague explanations given in a routine manner cannot be accepted as an explanation to justify inaction or delay. We have on various occasions in the past, expressed our concern for the casual manner in which matters under preventive detention laws have been dealt with. The explanations being put forth by the Detaining Authority, in the Affidavit in reply, leave much to be desired. The explanations are general in nature, routine and casual. We may also refer to the case of *Sameer @ Panna Mehboob Shaikh Vs. State of Maharashtra and ors*, Writ Petition No.1136 of 2025, in para 6 whereof this Court has observed that,

“6. In the case of Pradeep Nilkanth Paturkar V. S. Ramamurthi and others reported in 1993 Supp (3) SCC 61, the Hon'ble Supreme Court has expressed its anguish about the fact that, the statements of witnesses were recorded only after the Detenue became successful in getting bail from the concerned Court. It is further held

that the unexplained delay, whether short or long, especially when the Detenue 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 and Daksh Juber Ghelani V. The Commissioner of Police, Pune City & Ors (Writ Petition No. 3994/2023 decided on 4th April 2024 has also granted benefit of unexplained delay, to the Detenues therein.

11) This Court in the case of *Deepak Govind Murudkar Vs. Mr. R. H. Mendonca and ors* reported in 2001 ALL MR (Cri) 357 in para 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 there is a delay of 67 days in between the recording of the in-camera witness statement 'B' on 27th February 2025 and passing of the Detention Order dated 5th May 2025. The said delay of 67 days has not been explained. Perusal of the affidavits indicate that a general and vague explanation is given in respect of the procedure and process adopted by the Sponsoring and Detaining Authorities. We have noticed that, the Detaining Authority has referred to certain public holidays in the months of March and April 2025. Even if the said holidays are taken into consideration, at the most a period of 20 days may be explained. A long period of 40 days would still remain to be explained. This, only if, the benefit of all public holiday/holidays can be given to the Authorities in preventive detention matters. We have our own doubts in that regard. In Preventive detention the detenue is detained behind the bars on the basis of grave

suspicion. This indulgence of taking benefit of all holidays/public holidays, would in our opinion, not be available to the Sponsoring- Detaining Authorities in matters under preventive detention laws. We find that the delay of 67 days is unexplained. According to us, unexplained delay vitiates a Detention Order. For the aforesaid reasons we cannot accept the reasons for the delay.

12) In effect, the Detention Order is vitiated on account of delay and that the acts attributed to the detenue cannot be termed as acts prejudicial of public order. In view thereof, the Detention Order dated 5th May 2025, cannot be sustained and deserves to be quashed and set aside.

13) Hence, the following order:

- i) Detention Order dated 5th May 2025, bearing No. OW. No./ CRIME PCB/DET/KALEPADAL/SHAIKH/384/2025, issued by the Respondent No.1, is quashed and set aside.
- ii) Petition is allowed in terms of prayer clause (a).
- iii) Petitioner be released from Jail forthwith, if not required in any other case/cases, on production of operative part of an authenticated copy of this Judgment.
- iv) All the concerned to act on the basis of an authenticated copy of this Judgment.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)