

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4097 OF 2025

Vikas @Papya Ashok Shinde
Age: 27 years, Occ:- Employed
R/at: Near MIDC Water Tank Road,
Beside Ration Store, Hanuman Nagar,
Ulhasnagar – 2
At present detained in Yerawada Jail, Pune ... Petitioner

V/s.

1. Commissioner of Police,
Thane.
2. State of Maharashtra
(Through Government of Maharashtra)
Home Department (Special),
Mantralaya, Mumbai ... Respondents

Mr Satyavrat Joshi a/w Mr. Priyesh More, Advocate for the Petitioner.
Mr. Ajay Patil, A.P.P. for the State.
Mr. A. H. Bhilare, PSI a/w Ms. Nikita K. Bhoigad PSI,
Crime Branch, Ulhasnagar Police Station.

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

DATE : 15th DECEMBER, 2025.

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

1) By the present Petition under Article 226 of the Constitution of India, the Petitioner seeks to quash and set aside the Detention Order, bearing No. TC/PD/DO/MPDA/01/2025, dated 6th February, 2025 (the Detention

Order), passed by the Respondent No. 1 i.e. Commissioner of Police, Thane 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, whereby the Petitioner is detained in the Yerwada Central Prison, Pune.

2) This Court by its Order dated 1st August, 2025 was issued notice to the Respondents. The Respondents have filed their Affidavits in reply and opposed the grant of any relief in the petition.

3) Heard Mr. Satyavarat Joshi, learned Advocate for Petitioner and Mr. Ajay Patil learned A.P.P. for the State.

4) Learned Advocate for Petitioner submitted that, though the Petitioner has raised various grounds in the Petition i.e. Grounds 6(a) to 6(t) in the petition, the learned Advocate for the Petitioner has restricted his argument to Ground (k) and Ground (m) of the petition i.e. (i) in between recording the two in-camera statements of witnesses 'A' and 'B' on 2nd January, 2025 and 3rd January, 2025. The Detention Order is passed on 6th February, 2025 and that there is delay in respect thereof and (ii) that the acts and conduct of the petitioner do not demonstrate activities which can termed as activities which are prejudicial to the interest of public order.

5) The learned Advocate for the Petitioner submitted that, the

Detaining Authority has relied upon three C.R's and two in-camera statements of witnesses 'A' and 'B'. That, the last C.R. being C.R. No. 997 of 2024 was registered on 10th of November, 2024, the Petitioner was arrested on 11th November, 2024 and released on bail on 22nd November 2024. He submits that, the in-camera statements of witnesses 'A' and 'B' which have been relied upon are recorded on 2nd January, 2025 and 3rd January,, 2025 for incidents related to the month of December, 2024.

6) Learned Advocate for the Petitioner further submits that, the Detention Order is passed on 6th February, 2025. Adverting to the aforesaid facts, the learned Advocate for the Petitioner submitted that, the last C.R. being C.R. No. 997 of 2024 was registered on 10th of November, 2024. The Petitioner was arrested on 11th November, 2024 and released on bail on 22nd of November, 2024. That, the in-camera statements of witnesses 'A' and 'B' which have been relied upon are recorded on 2nd January, 2025 and 3rd of January, 2025 and verified on 9th January, 2025. He submitted that, the Detention Order is passed only on 6th February, 2025. He submits that, the in-camera statements have been recorded only to fill in the gap between the last registered C.R. and passing the Detention Order. He submits that, it is pertinent to note that, the in-camera statements have recorded after petitioner was released on bail on 22nd November, 2024. He further submits that, in between the recording of the last in-camera statement on 3rd January, 2025 and passing of the Detention Order on 6th February, 2025 there is a delay of 34

days. He submits that, the said delay had not been explained.

6.1) The Learned Advocate for the Petitioner further submits that, the Detention Order dated 6th February, 2025 relies upon three C.R.s i.e. C.R. No. 859 of 2024 registered on 17th August, 2024, C.R. No. 938 of 2024 registered on 19th October, 2024 and C.R. No. 997 of 2024 registered on 10th November, 2024, all registered with the Ulhasnagar Police Station and in-camera statements of witnesses 'A' and 'B' registered on 2nd January, 2025 and 3rd January, 2025 for an incident which took place in the month of December, 2024. He submitted that, the first and the second FIR are both lodged by the grandmother of the Petitioner. He submits that on perusal of the FIR, it is clear that none of the FIR amount to a conduct/acts which are prejudicial to public Order. He submits that, the FIR have arisen due to internal family issues/disputes in which the public is not concerned. He submits that in CR No.859 of 2024 is again lodged by the grandmother of the Petitioner and pertain to some issues and disputes between the family members of the Petitioner and Complainant. The assault as alleged in the said C.R. is solely against the Complainant. There is no allegation that due to the said assault or the conduct of the Petitioner there was any breach of Public Order or much less any public disorder. In respect of C.R. No. 938 of 2024, the learned Advocate for the Petitioner would submit that, in this C.R. the complainant is again the grandmother of the Petitioner. Perusal of the allegations contend in the said complaint also indicates that, there is some infighting amongst

relatives. The assault is individualistic. The Complainant was rescued by passersby where she cried for help and taken to the hospital by her son. He submits that, in the said C.R. there is no allegations of any sort of panic or fear instill in the general public or any fear created by the acts of the petitioner. As regards the C.R. No. 997 of 2024, the Petitioner further submits that, the Complainant therein is a Police Officer and when he was going for his patrolling duty he got information that, externed person from Ulhasnagar Police Station i.e. the Petitioner was roaming on the road in the said area with sword in his hand. It is alleged that, when the complainant tried to search for the Petitioner he was not found. That, the Petitioner was found near the MIDC Road, Hanuman Nagar, Ulhasnagar 2. That when the Petitioner was apprehensive or sensed that the police were trying to catch him he tried to run away but was caught at that spot and taken into custody. That, there is no allegation of the Petitioner assaulting or obstructing the Police Officers from doing their duty that, the Petitioner was only made unsuccessful attempt to run away. He submits that, the general allegations that, the area was under terror and people were terrified and also shut down their shops. He submits that, there was no overt act attributed to the Petitioner. That, from December, 2024 till 6th February, 2025 there is no Complaint or FIR lodged against the Petitioner. He submits that, the offence as alleged against the Petitioner cannot be said to cause public disorder or termed as acts prejudicial to public order.

7) The learned A.P.P. in reply submitted that, the Sponsoring and

Detaining Authority have acted in a prompt and swift manner while referring to the affidavit in reply by the Respondent No. 1. He submitted that, after verification of the in-camera statement on 9th January, 2025 the proposal was prepared by the sponsoring Authority on 20th January, 2025 and mooted through the proper channel to the MPDA Cell on 21st January, 2025. The MPDA Cell made a detailed scrutiny of the proposal and forwarded the same to the A.C.P (Preventive) on 23rd January, 2025. The A.C.P (Preventive) forwarded the said file to the D.C.P. Crime and finally the papers were placed before the Additional Commissioner of Police (Crime) on 28th January, 2025. After the Additional Commissioner of Police (Crime) scrutinized the said proposal the proposal was forwarded to the Detaining Authority. The Detaining Authority after considering the entire material gave approval on 3rd February, 2025 and formulated the ground of Detention. That, after completing the necessary work of typing, photo copying and translation of the ground of Detention the proposal was once again placed before the Detaining Authority on 6th February, 2025. The Detaining Authority issued the Detention Order.

8) This is the only explanation given in respect of the movement of the Detention proposal and its culminating into the Detention Order dated 6th February, 2025. We find that, there is no explanation provided for the period of 34 days from 3rd January, 2025 when the last in-camera statement of witness 'B' was recorded till the passing of the Detention Order on 6th

February, 2025.

9) The explanation provided is general vague and routine. What the affidavit explains is only the movement of the proposal from one Authority to the other in the hierarchy of Officers. We further note that, there is no explanation for the period between 3rd January, 2025 to 9th January, 2025 that is period of six days when the in-camera statements were verified and for a period of twelve days from 9th January, 2025 to 21st January, 2025 when the proposal was moved by the Sponsoring Authority to the MPDA Cell. Here the period of 11 clear days has not been explained. We also find, as afore-noted the period between recording of last in-camera statement and passing of Detention Order has not been properly explained. We have time and again expressed our concern and displeasure on the nature and contents of affidavit filed by the Detaining Authority. Considering the tone and tenure of the affidavits and the attempted explanation put forth by the Authorities, we are afraid to say but it is routine and casual. A perusal of the said affidavits would prima facie indicate that, the Authorities time and again even though aware deal with matters of preventive Detention in the most casual and unconcerned manner. A perusal of the affidavits would only lead us to conclude that the delay remains unexplained and therefore vitiate the Order of Detention.

10) We are in agreement with the contention of the Advocate of the Petitioner that, the acts and conduct of the petitioner which is sought to be faulted with so as to term same as acts and conducts prejudicial to Public

Order is nothing but acts and conducts which are individualistic in nature and character. A perusal of the statements of the C.R.s would indicate that, the acts of complainant are individual dealings and issues inter-say between the family.

11) The Supreme Court, in the Case of *T. Devaki v/s Government of Tamil Nadu and Others*, reported in (1990) 2 SCC 456, decided on March 7, 1990.

18. The question which falls for consideration is whether single incident of murderous assault by the detenue and his associates on the Minister at the seminar held at Dry Chilly Merchants' Association Kalai Arangam Hall was prejudicial to the maintenance of public order. Any disorderly behavior of a person in the public or commission of a criminal offence is bound to some extent affect the peace prevailing in the locality and it may also affect law and order problem but the same need not affect maintenance of public order. There is basic difference between 'law and order' and 'public order', this, aspect has been considered by this Court in a number of decisions, see: Dr Ram Manohar Lohia v. State of Bihar; Pushkar Mukherjee v. State of West Bengal and Shymal Chakraborty v. Commissioner of Police, Calcutta. In these cases it was emphasized that an act disturbing public order is directed against individuals which does not disturb the society to the extent of causing a general disturbance of public peace and tranquility. It is the degree of disturbance and its effect upon the life of the community in the locality which determines the nature and character of breach of public order. In Arun Ghosh v. State of West Bengal, the court held that the question whether a man has only committed a breach of law and order, or has acted in a manner likely to cause disturbance of the public order, is a question of degree and the extent of the reach of the act upon the society. This view was reiterated in Nagesh Nath Mondal v. State of West Bengal, Sudhir Kumar Saha v. Commissioner of Police, Calcutta S.K. Kedar v. State of West Bengal, Kanu Biswas v. State of West Bengal, Kishori Mohan Bera v. State of West Bengal and Amiya Kumar Karmarkar v. State of West Bengal.

12) The Supreme Court in the case of *T. A. Abudl Rahman v/s State of Kerala*, reported in (1989) 4 SCC 741, after considering various decisions on this point laid down the following dictum in Para No. 10, which read as under:-

10. “*The conspectus of the above decision 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 casual connection has been broken in the circumstances of each case.*”

13) In *Ram Manohar Lohia v. State of Bihar*, it has been held as under: (1965 SCC OnLine SC 9) paras 54-55

“54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression “public order” take in every kind of disorders or only some of them? The answer to this serves

to distinguish “public order” from “law and order” because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace order if disturbed, must 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. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

55. It will thus appear that just as “public order” in the ruling 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. By using the expression “maintenance of law and order” the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.”

14) 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) 12 SCR 637 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....

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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] 11 SCR 958 (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(1966) 1 SCR 709] 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 un-organised 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 behavior 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.

15) 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 34 days in between the recording of the in-camera witness statement 'B' on 3rd January, 2025 and passing of the Detention Order dated 6th of February, 2025. The said delay of 34 days has not been explained.

16) 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. According to us, unexplained delay vitiates a Detention Order. For the aforesaid reasons we cannot accept the reasons for the delay.

17) Hence, the following order:

- i) Detention Order dated 6th February 2025, bearing No. TC/PD/DO/MPDA/01/2025, issued by the Respondent No.1, is quashed and set aside.
- ii) Petition is allowed in terms of prayer clause (ii).
- 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.)