

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4798 OF 2025**

Ismail Mainuddin Sherikar
Age: 23 years, Occ:- -
Residing at: Near Bhimjyot Mitramandal,
Laxminagar, Yerwada, Pune.
(Presently at Chh. Sambhaji Nagar Central Prison)

... Petitioner

V/s.

1. The State of Maharashtra
(Through Its Principal Secretary Ministry
of Home Affairs, Mantralaya, Mumbai)
2. The State of Maharashtra
(Through Its Commissioner of Police,
Pune City 2, Sadhu, Waswani Raod,
Camp, Pune.

... Respondents

Mr. Amit Mane, Advocate for the Petitioner.
Mr. Shreekant V. Gavand, APP for the State.
Mr. Lamlchade- A.P.I., attached to Yerwada Police Station, Pune City.

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

RESERVED ON : 28th NOVEMBER 2025.

PRONOUNCED ON : 9th DECEMBER 2025.

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

1) By the present Petition, filed under Article 226 of the Constitution of India, Petitioner seeks to quash and set aside the Detention Order, bearing OW. No.CRIME/PCB/DET/YERWADA/SHERIKAR/320/2025, dated 16th April

2025 (the Detention Order), passed by the Respondent No.2 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). The Petitioner further prays that the Petitioner who has been detained in the Chhatrapati Sambhaji Nagar Central Prison be released.

2) By Order dated 18th September 2025, this Court granted time to the Respondents to file their Affidavits in Reply. The Respondents have filed their respective Affidavits in Reply dealing with the contentions/grounds raised by the Petitioner and opposed the Petition.

3) We have heard Mr. Amit Mane, learned Advocate for the Petitioner and Mr. Shreekant V. Gavand, APP for the Respondent–State. Perused the record and the Affidavits in Reply.

4) At the outset, it would be important to mention the fact that, though the learned Advocate for the Petitioner has raised various grounds in paragraph No.5 (i) to 5 (xii) of the Petition for challenging the Detention Order dated 16th April 2025, however, learned Advocate submits that he is restricting his argument only to grounds (ii), (iv) and (vi) of the Petition.

4.1) Learned Advocate for the Petitioner submits that, when the Detention Order dated 16th April 2025 was passed, the Petitioner was already in custody in connection with CR No. 59 of 2025, registered with the Yerwada

Police Station and therefore there was no possibility or any chance that he would cause or that his activities would be prejudicial to the public order. That being in custody, passing of the Detention Order by the Authority did not serve any purpose.

4.2) Learned Advocate for the Petitioner would further submit that, the Detaining Authority ought to have taken into consideration the grounds on which the Petitioner was released on bail in the Crime No. 56 of 2025, on which reliance has been placed by the Detaining Authority for arriving at its subjective satisfaction. That, the Detaining Authority has not considered the ground on which the Petitioner has been released on bail and, therefore, the subjective satisfaction is vitiated.

4.3) Learned Advocate for the Petitioner submits that, when the Detention Order dated 16th April 2025 was passed, the Petitioner was in custody in connection with CR No.59 of 2025 registered on 23rd January 2025 with the Yerwada Police Station. That, the Detaining Authority in the grounds of Detention has only stated that the Petitioner will secure bail considering that the offence is not punishable with death and apart from this there is no other reason given. The Detaining Authority has not referred to nor has stated the material on which the Detaining Authority had “reason to believe” that there is an immediate likelihood or prospect of the Petitioner being released on bail and that he would commit similar activities or that the same will cause prejudice to public order.

4.4) Learned Advocate for the Petitioner in support of his argument referred to and relied upon the following Judgments :

4.4.1) Judgment and Order in the case of *Joyi Kitty Joseph V. Union of India & Ors.* reported in *[2025] 3 S.C.R.419* to submit that when bail is granted by the Court on certain conditions, the Detaining Authority ought to have examine whether the said conditions were sufficient to curb the evil of further indulgence in identical activities, on which basis the preventive detention is ordered. He submitted that, if the Detention Order is silent, on this aspect this Hon'ble Court ought to interfere and set aside the Order of Detention.

4.4.2) Judgment of this Court in the case of *Mahesh Balasaheb Thorat Versus Commissioner of Police Pune, Pune City & Anr* passed in *Writ Petition (ST) No. 23283 of 2024* to submit that a mere observation by the Detaining Authority that the Petitioner was likely to be released on bail as none of the sections of the Indian Penal Code were applied in the said offence were punishable with death penalty is not sufficient. He submits that, such an observation would mean that the subjective satisfaction of the Detaining Authority that, the Applicant was likely to be released on bail was not based on any cogent material except the fact that the offences are not punishable under death penalty.

4.4.3) Judgment of this Court in the case of *Shri Sagar @ Manish Shailesh Belamkar Versus State of Maharashtra and Ors* in *Writ Petition*

No.3289 of 2025, to submit even if the detenu is in custody, Detention Order can be passed after recording satisfaction. In respect of a person in custody a detention order can be validly passed if the Detaining Authority is aware of the fact that, the person is actually in custody has reason to believe on the basis of reliable material placed before it that there is a real possibility of the person if released on bail and after being so released would in all probability indulge in pre-judicial activity and therefore it is fare essential to detain the person to prevent him from doing so. Detaining Authority has to consider the aforesaid factors to satisfy itself that in the present case the aforesaid factors have not been considered.

5) Learned APP has opposed the Petition. He submits that the Detaining Authority has referred to the said CR, the statement of witnesses recorded therein so also reference is made to the Spot Panchnama. The Detaining Authority refers to the fact that the Petitioner being arrested on 23rd January 2025 was remanded to Police Custody till 21st January 2025 and then to Magisterial Custody till 7th February, 2025. That on 26th March 2025, the Petitioner applied for bail which was allowed on 27th March 2025. A reference is also made to the fact that the charge-sheet has been submitted on 14th March 2025.

5.1) He submits that the Detaining Authority has relied upon the CR.No.56 of 2025 and 59 of 2025 registered with the Yerwada Police Station, Pune and also in camera statements of witness 'A' and 'B' to arrive at his

subjective satisfaction that, the Petitioner is a dangerous person as defined under Section 2(b-1) of the MPDA Act. The Detaining Authority has recorded that the criminal activities of the Petitioner are prejudicial to the maintenance of public order. That, the Petitioners Bail Application in CR No.56 of 2005 has been allowed and that the Petitioner was in judicial custody in respect of CR. No. 59 of 2005. That, there is a possibility in the future that the Petitioner will be granted bail under the ordinary law of the land as the said offence is not compulsory punishable with death sentence. That, the Petitioner's tendency and inclination towards criminality and propensity towards criminality is reflected in the offences committed by the Petitioner as well as the in-camera statements recorded in respect of witness 'A' and 'B'.

5.2) Learned APP further submits that, considering the conduct of the Petitioner as is evident from the grounds of detention it is clear that, the criminal activities of the Petitioner and violent tendencies and inclination to perpetuate his criminal activities to term the Petitioner as a dangerous person under the MPDA Act. The Petitioner is a member of the gang engaged in criminal activities i.e. A.K. criminal company. That, in December 2024 the Petitioner had been arrested in a crime registered under the provisions of MCOCA. That, in the present Detention Order the Detaining Authority has relied upon two crimes i.e. CR No. 56 of 2025 registered under Section 308(4) of the BNS and CR No. 59 of 2025 under Section 309(4), 118(1), 352, 351(2), 324(4), 3(5) of the BNS. Perusal of the said sections would indicate

that the said offences are punishable with imprisonment ranging from 2 (two) years to 10 (Ten) years and none of the same are punishable with death penalty. That, considering the nature of the offences the possibility of the Petitioner's being released on bail is significantly more. Learned APP reiterated that the activities of the Petitioner are detrimental to the well being and peace of the society and against public order.

6) We have perused the entire record, so also the affidavits in reply filed by the Respondents. As regards the point raised by the Petitioner that, there is no reference to the bail being granted or to the bail order, we find no substance in the said contention. On perusal of the grounds of detention, we find that, there is a reference to the pending CR's, steps taken therein by the prosecution as also by the Petitioner. With reference to CR. No. 56 of 2025, the Detaining Authority has specifically referred to the fact that statements of witnesses were recorded, spot panchnama was prepared, petitioner was arrested on 23rd January, 2025, produced before the learned Magistrate and remanded to police custody till 25th January 2025 and then remanded to the Magisterial Custody till 7th February 2025. The Detaining Authority also refers to the fact that the Petitioner applied for bail on 26th March 2025 and it was granted on 27th March 2025. Further in para 8 of the grounds of Detention, the Detaining Authority has referred to the Bail Application in CR.No.56 of 2025 and the fact that the Petitioner was in Judicial custody in CR.No.59 of 2025. We find that, the Detaining Authority has also recorded that,

considering the nature of offences the Petitioner has been charged for in both CR's, there was a possibility in the future that the Petitioner may be granted bail, as the said offences were not punishable with death sentence. The Detaining Authority has also referred to the tendency and inclination of the Petitioner towards committing offences. According to the Detaining Authority the said tendency and inclination is reflected in the relied upon offences committed by the Petitioner and supported by the in-camera statements. From the record it appears that, the Petitioner has a propensity towards crime, is a part of criminal gang and the Provisions of MCOCA have also been invoked against him. We find that, the subjective satisfaction has been arrived at after considering all the facts and material on record.

7) The Detaining Authority has also recorded its subjective satisfaction that, the Petitioner after availing bail and becoming a free person would again revert to similar activities/acts which are prejudicial to the maintenance of public order and it was necessary to take steps to prevent the Petitioner from acting in such a prejudicial manner in the future. We note that, the Detaining Authority has taken an overall view of the matter and considered the relied upon CR's and the in-camera statements. On perusal of the grounds of detention clearly indicate that the Detaining Authority was very well aware of the two CR's and the fact that the Petitioner was in custody. The Detaining Authority has "reason to believe" which is based on the material available before it i.e. offences under which crimes are registered. The Detaining

Authority has recorded its subjective satisfaction that, there is a possibility of the Petitioner being released on bail considering the offences and on being so released, would conduct himself in a manner which is prejudicial to public order and peace. The Detaining Authority has relied upon cogent material in the form of the CR's and the in-camera statements. We note that the Petitioner has raised no grievance in respect of the in-camera statements and recording thereof and or the verification process.

8) As regards the ground that, the Petitioner was in custody in CR. No.59 of 2025, we find that the said aspect has been considered and taken into account by the Detaining Authority. In the ground of detention, the Detention Authority has referred to the said two CR's and the in camera statements so also to the fact that the Petitioner was in custody and on being granted bail would indulge in criminal activities prejudicial to maintenance of public peace. We may also note that, the Hon'ble Apex Court in the case of *Kamarunnisa V. Union of India* reported in (1991) 1 SCC 128 in para 13 has held that even in case of a person in custody, the detention order can be validly passed. It is held that in respect of a person in custody, a detention order can be validly passed if the following conditions are satisfied:

- (1) if the authority passing the order is aware of the fact that he is actually in custody;
- (2) If he has reason to believe on the basis of reliable material placed before him
 - (a) that there is a real possibility of his being released on

bail, and

(b) that on being so released, he would in all probability indulge in prejudicial activity and

(3) If it is felt essential to detain him to prevent him from so doing.

In the present case, we are of the opinion that the condition as stood in *Kamarunnisa V. Union of India (supra)* are satisfied.

9) As regards, the judgment cited by the Petitioners, we find that the case of *Joyi Kitty Joseph V. Union of India & Ors.*, (supra), provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act) were involved wherein the criminal prosecutions were launched and preventive detention was ordered on the very same allegations of organised smuggling activities, through a network. Further the contention was that, when bail is granted in such cases, Detaining Authority ought to have examined whether the conditions were sufficient to curb the evil of further indulgence in identical activities, which forms the very basis of preventive detention. We find that in the present case, there is no such bail condition which would be of any use or assistance to ensure that the Petitioner is prevented from indulging in his criminal activities. We have further noted that, in the present case the bail granted to the Petitioner vide Order dated 27th March 2025 was given only on the basis that the trial had not yet commenced. The said order of bail was not on merits nor does the order impose any conditions which can be called in aid and substitution of the Detention Order under the preventive detention laws.

10) As regards, the reference made to the order in the case of *Mahesh Balasaheb Thorat (supra)*, we find that in the present case the subjective satisfaction of the Detaining Authority is not solely based on the fact that the Petitioner is going to be released on bail or that the Petitioner was likely to be released on bail because none of the section of IPC applied in the registered offence were punishable with death penalty. We find that Detaining Authority has relied upon cogent material which is available on record against the Petitioner and this is coupled with the fact that the Petitioner's conduct and activities indicate his propensity towards criminal acts and criminality. It is not that the subjective satisfaction of the Detaining Authority is based only on the fact that the Petitioner may be released on bail as he is not charged with an offence punishable with death penalty. This is not the sole criteria in the present matter as was in the case of *Mahesh Balasaheb Thorat (supra)*. The said judgment is of no assistance to the Petitioner.

11) As regards, the reliance placed on the Order in the case of *Shri Sagar @ Manish Shailesh Belamkar (supra)*, we find that the facts of the present case are different and distinct. In the present case, the Detaining Authority has referred to various cogent and material factors in the grounds of detention. In as much as the Detaining Authority has referred to two CR's and two in-camera statements. The criminal acts of the Petitioner and his propensity towards committing crimes is borne out. The subjective satisfaction is bound on cogent material. Perusal of the record indicates that there is

sufficient cogent material available on record for the Detaining Authority to come to its subjective satisfaction.

12) In view of the above, we find that there is no case made out to warrant any interference with the Detention Order dated 16th April 2025. We find that the Detention Order is passed on the basis of cogent material available and there is no legal infirmity in the subjective satisfaction arrived at and the process followed by the Detaining Authority thereof.

13) The aforestated discussion leads us to hold that, there are no merits in the Petition. There is no legal infirmity in passing the Detention Order dated 16th April 2025 and the Committal Order of even date by the Respondent No.2.

14) The Petition being dehors of merits and is accordingly dismissed.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)