



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.5102 OF 2025**

Shivani Mahadev Das and Ors. ... Petitioners
versus
The State of Maharashtra ... Respondent

WITH
WRIT PETITION NO.5103 OF 2025

Lucky Prabhu Yadav and Anr. ... Petitioners
versus
The State of Maharashtra ... Respondent

WITH
WRIT PETITION NO.5113 OF 2025

Laxmi Kashinath Chalk ... Petitioner
versus
The State of Maharashtra ... Respondent

WITH
WRIT PETITION NO.5116 OF 2025

Rubina Khatun Jamal Dushas and Ors. ... Petitioners
versus
The State of Maharashtra ... Respondents

WITH
WRIT PETITION NO.5117 OF 2025

Sonam Gopal Yadav ... Petitioner
versus
The State of Maharashtra ... Respondent

Mr. Rummon Shaikh with Mr. Iram N., Mr. Shahid Iqbal, Mr. Ramash Shaikh,
Mr. Bilal Shaikh, Ms. Hazifa Sayed, for Petitioners in all Petitions.
Smt. R.S.Tendulkar, APP for State in WP No.5102 of 2025.
Mr. P.P.Malshe, APP for State in WP Nos.4103 of 2025, 5113 of 2025, 5116 of
2025 and 5117 of 2025.

CORAM: N.J.JAMADAR, J.

DATE : 3 OCTOBER 2025

P.C.

1. Heard the learned Counsel for the parties.
2. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
3. These Petitions under Articles 226 and 227 of the Constitution of India assail the legality, propriety and correctness of the orders dated 3 September 2025 and 9 September 2025 passed by the learned Sessions Judge, thereby dismissing the appeals preferred by the Petitioners against the final orders of detention passed by the learned Magistrate under Section 17(4) of the Immoral Traffic (Prevention) Act, 1956 (the Act, 1956).
4. Though the factual matrix in regard to the recovery of the Petitioners – victims in the raids conducted by the police, upon being apprised of the Petitioners having been forced into the sex work, are different, yet, the core controversy that crops up for consideration in all the Petitions is common, namely, whether the impugned orders passed by the learned Magistrate under Section 17(4) of the Act, 1956 and affirmed in appeals by the learned Sessions Judge, are rendered illegal and void on account of the detention of the Petitioners beyond the maximum period permissible under Section 17(3) of the Act, 1956.
5. The aforesaid being the nature of the controversy, the facts in WP No.5102 of 2025 are noted as the representative facts, in the lead petition.

WP No.5102 of 2025

6. On 21 June 2025, pursuant to an intimation, a raid was conducted by the D.B.Marg Police Station, at Rele Building, Shamrao Vitthal Marg, Grant Road (E), Mumbai. A dummy customer was sent to the said place. In all 14 victims, including the Petitioners, were found thereat. The victims were recovered. Crime came to be registered at C.R.No.522 of 2025 for the offences punishable under Sections 3, 4, 5 and 6 of the Act, 1956; sections 143(3), 144(2), 118(1), 115(2), 127(4), 110, 3(5) of BNS against brothel keepers and the pimps.

7. As warranted by Section 15(5) of the Act, 1956, the victims, including the Petitioners, were produced before the learned Magistrate on 21 June 2025. The learned Magistrate passed an order for the safe custody of the victims. After completing inquiry as envisaged by Section 17(2) of the Act, 1956, as regards the character and antecedents of the victims and the suitability of the parents, guardian or husband for taking charge of and the nature of the influence which the conditions in home are likely to have on them, if they are sent home and noting the reports of their medical examination, the learned Magistrate was persuaded to hold that it was necessary to detain the Petitioners – victim Nos.1, 2 and 10, at Jabala Home, Kolkata / Liluawh Home, Kolkata (West Bengal) for their medical examination and rehabilitation, as during the course of medical examination, the

Petitioners were found to be VDRL re-active and TPHA positive. It was noted that the positive VDRL and TPHA tests results suggest the current or past syphilis infection which has serious health implications for the victims and the persons who may come in contact with the victims. The final order was passed by the learned Magistrate on 15 July 2025.

WP No.5103 of 2025

8. The victims were produced before the learned Magistrate on 10 June 2025. As the medical examination of the Petitioners – victim Nos.2 and 3, revealed that they were VDRL reactive and TPHA positive, the learned Magistrate ordered their detention for the period of one year at Jabala Institute, Kolkata by a final order dated 2 July 2025.

WP No.5113 of 2025

9. The victims, including the Petitioner, were produced before the learned Magistrate on 21 June 2025. The Petitioner – victim No.23, was found VDRL reactive and TPHA positive, during the course of medical examination. Thus, by an order dated 16 July 2025, the learned Magistrate directed detention of the Petitioner for a period of one year at Jabela Institute, Kolkata, for her care, protection and shelter for vocational training.

WP No.5116 of 2025

10. The victims, including the Petitioners, were produced before the learned Magistrate on 21 June 2025. Learned Magistrate found that in their

medical examinations, the Petitioners i.e. victim Nos.8, 20, 26 and 28 were detected HIV positive. Petitioner i.e. victim No.9 was detected HCV Antibody positive and Petitioners i.e. victim Nos.4 to 8, 10 to 13, 15, 17, 18, 22 to 27, 20 and 30 were detected VDRL reactive and TPHA positive. Learned Magistrate by a final order dated 16 July 2025 directed the detention of the Petitioners for one year for their appropriate medical treatment, rehabilitation at the protective homes nearby their respective places.

WP No.5117 of 2025

11. The victims, along with the Petitioner – victim No.3, were produced before the learned Magistrate on 20 June 2025. By a final order dated 14 July 2025, the learned Magistrate ordered the detention of the Petitioner as she was detected HIV positive for a period of one year.

Appeals before the Court of Session :

12. The Petitioners challenged the orders of their detention before the learned Sessions Judge. By judgment and orders dated 3rd and 9th September 2025, the appeals were dismissed by the learned Sessions Judge observing, inter alia, that, though the Petitioners were detained beyond the period of 21 days, yet, the said further detention was not in pursuance of the orders passed by the learned Magistrate.

Submissions :

13. Learned Counsel for the Petitioners took exception to the impugned

orders on the ground that the detention of the petitioners beyond 21 days for the purpose of the conduct of the inquiry envisaged by Section 17(2) of the Act, 1956, was wholly illegal. Admittedly, the Petitioners were detained till the final orders were passed in the respective cases, which was beyond the said period of 21 days. As the detention of the petitioners beyond the period of 21 days was illegal, the consequential orders of detention of the petitioners for the period of one year under Section 17(4) of the Act, 1956, are vitiated. Therefore, the Petitioners deserve to be set at liberty.

14. Learned Counsel for the Petitioners placed reliance on a judgment delivered by this Court in the case of **Somaiya Aalam Shaikh V/s. The State of Maharashtra**¹, wherein in an identical fact situation, this Court had quashed and set aside the order of detention and directed the release of the Petitioner therein.

15. Learned APPs in the respective Petitions, however, resisted the submissions on behalf of the Petitioners. It was urged that the learned Magistrate had ordered the detention of the petitioners in larger public interest as there was an imminent risk of the petitioners further transmitting the sexual transmitted diseases, of which they were found to be infected. This is the distinguishing factor and, therefore, the decision in the case of **Somaiya Aalam Shaikh (Supra)**, would not govern the facts of the case at hand. It

1 Cri.WP LD/VC/OCR/112/2020 dated 10 July 2020

was, however, not disputed that in each of the cases, the Petitioners were detained beyond 21 days till the passing of the final order by the learned Magistrate.

Consideration :

16. I have given careful consideration to the submissions canvassed across the bar. The question that wrenches to the fore is whether the detention of the person beyond the period prescribed by the second proviso to Section 17(3) of the Act, 1956, vitiates the order passed under Section 17(4) of the Act, 1956. Section 17(3) of the Act, reads as under :

“17. Intermediate custody of persons removed under section 15 or rescued under section 16. -

.....

(3) The Magistrate, may, while an inquiry is made into a case under sub-section (2), pass such orders as he deems proper for the safe custody of the person :

Provided that where a person rescued under section 16 is a child or minor, it shall be open to the Magistrate to place such child or minor in any institution established or recognized under any Children Act for the time being in force in any State for the safe custody of children:

Provided further that no person shall be kept in custody for the purpose for a period exceeding three weeks from the date of such an order, and no person shall be kept in the custody of a person likely to have a harmful influence over him.”

17. To facilitate the conduct of the inquiry under Section 17(2) of the Act,

the Magistrate is empowered under Section 17(3) to pass such orders as he may deem proper for the safe custody of the person. The second proviso to Section 17(3), however, mandates that no such person shall be kept in custody for the said purpose for a period exceeding three weeks from the date of such order, under the main part to sub-section (3) of Section 17.

18. It is imperative to note that the second proviso uses a negative word “no”. The implication is that, the interdict contained against detention of such person in respect of whom an inquiry under Section 17(2) is being conducted for a period exceeding three weeks is peremptory. Any further detention beyond three weeks becomes illegal. The Court also needs to be sensitive to the fact that the person against whom an inquiry is being conducted under Section 17(2) of the Act is not an accused. Often such person is a victim. That makes the prohibition against the detention beyond 21 days even more imperative, as the detention impinges upon the cherished personal liberty of the person concerned.

19. In the case of **Somaiya Aalam Shaikh (supra)**, this Court had dealt with the precise question which arises for consideration in this case and after adverting to the decisions in the cases of **Preeti Deepak Patel V/s. The State of Maharashtra**², **SanamVimala Joshi and Ors. V/s. State of Maharashtra**³ and **Renuka Durgappa Kamble V/s. State of Maharashtra**⁴ this Court had

2 Cri.WP No.3951 of 2018 dt. 23 July 2019

3 2006 ALL MR (Cri) 2810

4 Cri. WP No.2050 of 2019

made an endeavour to enunciate the legal position as under :

“23. It is trite that the intention of the legislature is to be found from the words used in the statute. Ordinarily, when the words of the statute are plain and unambiguous, they are to be construed in accordance with their natural, ordinary and grammatical meaning. From the text of the second proviso, it becomes evident that the legislature has provided a time limit of detention not exceeding three weeks from the date of order, for the purpose of inquiry envisaged by section 17(2) of the I.T.P. Act, 1956. The main part of sub-section (3) throws light on the intent of the legislature. It confers discretion on the Magistrate to pass an order for the safe custody of the person. In a given situation, it is conceivable that an inquiry can be conducted under section 17(2) of the I.T.P. Act, 1956 without passing an order for safe custody of the concerned person. However, once a person is detained by passing an order under sub-section (3), of section 17, the second proviso mandates that the said person shall not be so detained in custody for the purpose of such inquiry for a period exceeding three weeks. The language of the second proviso to section 17(3) is peremptory in nature.

24. From a conjoint reading of the aforesaid provisions, it becomes explicitly clear that the second proviso to sub-section (3) of section 17 does not provide a time limit for conducting the inquiry, as understood by the learned Magistrate. What the second proviso ordains is that if, for the purpose of inquiry under section 17(2), a person is kept in custody, the period of said custody shall in no case exceed three weeks.

25. The question which thus crops up for consideration

is whether infraction of this mandate vitiates the inquiry and the ultimate order passed under section 17(4) of I.T.P. Act, 1956 ?

26. I find it rather difficult to accede to the submission on behalf of the State that since no consequences are provided in the I.T.P. Act, 1956 for the breach of the said time limit, the said provision can be construed as directory. The reason is not far to seek. Personal liberty is cherished. No person shall be deprived of his personal liberty except according to procedure established by law, guarantees Article 21. It is pertinent to note that the detention of a person under section 17(3) of the I.T.P. Act, 1956 is only for the purpose of facilitating the inquiry. The victim is not arraigned as an accused. Thus, the infraction of the mandate contained in the second proviso to sub-section (3) of section 17 cannot be construed as breach of a directory provision. It is not a question of delay of a day or two. If the provision is construed as directory then justification can be offered even for delay running into weeks/months. That would impinge upon the guarantee of personal liberty.

27. The antecedents of the petitioner should not be permitted to cloud the Court's approach when the question is of protection of her constitutional rights. The petitioner, though found to have indulged in prostitution, is entitled to protection of her constitutional and statutory rights. Her rights cannot be trampled upon on the premise that the ultimate order is passed for her care and protection.

28. It is imperative to note that, in the case at hand, one gets an impression that the learned Magistrate though alive to the prescription contained section 17(3) of the I.T.P. Act,

1956, endeavoured to side step the pivotal issue, as is evident from the following observations :

“Second proviso of Section 17(3) of the I.T.P.Act says that aforesaid inquiry shall be completed within 3 weeks from the date of first order/production.

Accordingly in present matter court has completed aforesaid inquiry and called their different reports as mentioned aforesaid, within 3 weeks.”

29. As indicated above, the mandate of the second proviso is not in respect of time limit for conducting the inquiry but detention of a person beyond the period of three weeks. The learned Sessions Judge also fell into error in discounting the said aspect of delay despite noting that there was such delay. An illegality which impinges upon the personal liberty cannot be countenanced and condoned.

30. Thus, for the aforesaid reasons and the consistent views, recorded in the judgments referred to above, I am not persuaded to record a discordant note, as Mr. Pethe invited the Court to do, and take a different view of the matter.

31. In view of the illegality manifested in detention of the petitioner beyond the statutorily permissible period of three weeks, the order of detention becomes legally unsustainable. Resultantly, the law must take its own course. Therefore, I am inclined to allow the petition and direct the release of the petitioner.”

20. The aforesaid enunciation of law governs the facts of the case at hand with equal force. In each of the cases, the Petitioners came to be detained beyond the permissible period of 21 days for the purpose of the conduct of

the inquiry under Section 17(2) of the Act, 1956. Learned Magistrate was alive to the mandate of the second proviso to Section 17 of the Act, and yet tried to ascribe certain reasons. Learned Sessions Judge, in turn, tried to distinguish the aforesaid decision in the case of **Somaiya Aalam Shaikh (supra)**, by observing that, no order for detention beyond the prescribed period was passed by the learned Magistrate and, therefore, the detention of the Petitioners beyond the period of 21 days was not in pursuance of the order passed by the learned Magistrate.

21. I find it rather difficult to approve the aforesaid reasoning of the learned Sessions Judge. What was required to be applied was the “effect test”. Incontrovertibly, the Petitioners were kept in the safe custody under Section 17(3) to facilitate the inquiry as envisaged by sub-section (2) of Section 17, by the orders of the learned Magistrate. The mere fact that the initial order of safe custody was shorter than or co-terminus with the period of three weeks would not save the resultant detention beyond the said period of 21 days from the vice of illegality. The net effect of the orders passed by the learned Magistrate, was that the detention of the Petitioners stood extended beyond the permissible period of three weeks.

22. It is trite, where personal liberty is sought to be curtailed by resorting to the provisions of law, any device or subterfuge which impinge upon the personal liberty cannot be countenanced. The legality of the action is

required to be tested on the touchstone of the protection of the fundamental right to life and personal liberty. In the instant case, the detention of the Petitioners beyond the period of three weeks impinged upon their fundamental right to personal liberty and, therefore, the resultant order of detention of the petitioners stood vitiated. Once the detention of the Petitioners was found to be illegal, the reasons which weighed with the learned Magistrate in passing the order of detention under Section 17(4) pale in significance and must yield to the constitutional guarantee of protection of life and personal liberty.

23. For the foregoing reasons, I am inclined to allow the Petitions and direct the release of the Petitioners.

24. Hence, the following order :

ORDER

(i) The Writ Petitions stand allowed.

(ii) The orders passed by the learned Magistrate dated 15 July 2025, 2 July 2025, 16 July 2025, 16 July 2025 and 14 July 2025, directing the detention of the Petitioners for a period of one year under Section 17(4) of the Act, 1956 and affirmed by the learned Sessions Judge in Appeals by orders dated 3 September 2025 and 9 September 2025 stand quashed and set aside.

(iii) The Petitioners be released forthwith, if not required to be

detained in any other case.

(iv) Rule made absolute in the aforesaid terms with no order as to costs.

(N.J.JAMADAR, J.)