



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.50 OF 2025

Shubham S/o Rambhau Wasnik
Aged about 30 years, Occ. : Labour,
R/o. Dorli Road, Patipura,
Yavatmal,
Tq. & Dist. Yavatmal.

Petitioner
(In jail)

-Versus-

1 **The State of Maharashtra,**
through Home Department (Special),
Mantralaya, Madam Kama Road,
Mumbai – 400

2 **The Principal Secretary to**
Government of Maharashtra,
Home Department (Special),
Mantralaya, Madam Kama Road,
Mumbai – 400 032.

3 **The Collector & District Magistrate,**
Yavatmal, Tq. & Dist. Yavatmal.

Respondents

Mr. Agrawal Pravin Radheshyam, counsel for the Petitioner.

Mr. Nitin Autkar, A.P.P. for R-1 to 3.

CORAM : NITIN W. SAMBRE AND

MRS. VRUSHALI V. JOSHI, JJ.

DATE : 22/04/2025

ORAL JUDGMENT (Per: Vrushali V. Joshi, J.)

1) Heard.

- 2) **Rule.** Rule made returnable forthwith. By consent of the learned Counsel for the parties, the Criminal Writ Petition is heard finally.
- 3) In the present petition, the petitioner is invoking the writ jurisdiction of this Court by challenging the order of detention dated 23/10/2024, bearing No. Home/ POL/ Desk-12/ ws/ 2314/ 2024 issued by Respondent No.3 - The Collector & District Magistrate, Yavatmal, in exercise of the powers conferred by Section 3 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, (*here-in-after referred as “said Act”*), and subsequently approved by Respondent No.1 on 30/10/2024, wherein the petitioner is detained as a “Dangerous Person”.
- 4) Upon perusal of the grounds of detention, it shows that, initiation of preventive action previously turned out to be futile and the detenu continued his criminal activities after being released on bail which resulted into registration of the crimes at Police Station, Yavatmal City, bearing Crime no. 480/2024 punishable for the offence under Section 354(D) of the Indian Penal Code read with sub-Section 12 of the POCSO Act and

C.R. no.839/2024 under Sections 4, 25 of the Arms Act, which have been taken into account for passing the said detention order.

5) In Crime No.480/2024, the case is registered by the complainant aged 15 years who used to be followed by the petitioner when found alone. On 02/05/2024 around 5:00 P.M. when she was on her bike going from her house at Chhoti Fujri to Jaibhim Chowk, she was followed till Futane Galli by the petitioner and he tried to talk to the complainant. Due to panic, he tried to leave her bike on the side lane, however, the petitioner was still following her. So, she got scared and went home without taking goat fodder.

6) In another Crime, i.e., C.R. no. 839/2024, the detenu was found in possession of sharp old used knife running in the area of Patipura when he caught sight of the policemen approaching towards him.

7) The grounds raised by the petitioner are as under:

(a) That the detaining authority nowhere properly considered the effect of granting bail in C.R.no. 480/2024. In C.R. no. 839/2024, the petitioner was not taken into custody. The police authorities issued notice u/s 35(3) to (6) of BNSS, 2023.

(b) A perusal of the in-camera statement of witness-B, shows that there is no date of incident and the space for date is kept blank. The grounds of detention are vague and are passed without reaching the subjective satisfaction by the detaining authority.

8) Learned counsel for the petitioner, Mr.Agrawal, submitted that the impugned order has been passed after unreasonable delay that has elapsed between the date of incident and the date of detention and same does not have a nexus with each other.

9) Mr. Agrawal further submitted that the incident recited in the statements cannot be said to be a breach of public order. It is his contention that the detaining authority is influenced by the extraneous material apart from the material shown in paragraph Nos. 4 and 5 of the grounds of detention as it consists of list of all the cases registered against the petitioner. Therefore, the detaining authority has taken into consideration the material not germane before passing the order of detention.

10) On the other hand, learned A.P.P. Mr. Autkar vehemently opposed the arguments made by the petitioner.

11) He submitted that the detaining authority has properly considered all the documents and case papers put up before him and conducted discussion with Police Inspector, Police Station,

Yavatmal City and Sub Divisional Police Officer, Pandharkawada in the matter and also verified from them two in-camera statements given by the witnesses and was subjectively satisfied about the truthfulness and genuineness of the statements given by witnesses along with proper consideration of two recent crimes, i.e., Crime nos. 480/2024 and 839/2024 as mentioned in the grounds of detention.

12) Learned A.P.P. further argued that the statements of in-camera witnesses “A” and “B” were recorded on 03/09/2024 and 04/09/2024 by the Police Inspector, Police Station, Yavatmal City. The Respondent no.3 made his endorsement on these statements on 07/10/2024. He specifically submitted that, post securing bail in Crime no. 480/2024, the petitioner committed another crime, i.e., C.R. no. 839/2024, after release. Therefore, the same reveals that he kept on continuing his criminal activities.

13) It is the contention of the learned A.P.P. that the criminal history of the petitioner is properly mentioned in paragraph no. 4 of the grounds of detention which shows his criminal tendency. In paragraph no. 5 of the grounds, the information about preventive actions which were taken against the petitioner in order to prevent him from committing crimes is mentioned. It

is submitted that after preventive action taken against the petitioner, his behaviour did not change and he continued his criminal activities, which shows criminality and tendency of the petitioner to commit crimes.

14) Heard the learned counsel appearing for the petitioner and the learned Assistant Government Pleader for the State.

15) The detention order is passed considering two crimes and the statements of two confidential witnesses. Crime No.480 of 2024 is for the offence punishable under Section 354-D of the Indian Penal Code read with Section 12 of the POCSO Act and another offence is Crime No.839 of 2024 is for the offence punishable under Section 41 read with 25 of the Arms Act. It is necessary while passing the detention order to see whether the public order is disturbed due to crimes committed by the detenu. The offence which is committed by the petitioner is under Section 354-D i.e. of stalking. The victim, who is 15 years of age lodged the complaint stating that when she was going on her two wheeler to bring fodder for goats, the petitioner along with his friends followed her and because he followed her, she got frightened and went home without taking fodder. In this case, the petitioner was arrested and released on bail. While lodging the

complaint, she has narrated about the enmity between her maternal uncle and the petitioner. It reveals that the offence is against an individual and considering the nature of offence it does not affect the public order. The offence under the provisions of POCSO Act is already registered against the petitioner.

- 16) Another offence is under Section 4 /25 of the Arms Act. The information was received that the petitioner is roaming with knife at Ambedkar Nagar, Panch Photo and the knife was seized from his pocket. It is not the case that the petitioner was holding the knife and terrorising the people in the said area. Though after receiving information, he was apprehended and the knife was seized which was concealed by him behind his waist in his pant.

- 17) In the latest judgment of *Ameena Begum Vs. The State of Maharashtra and ors.*, [SLP (Criminal) No.8510 of 2023] the Hon'ble Apex Court has referred the decision of the Constitutional Bench of the Apex Court in the case of *Ram Manohar Lohia Vs.State of Bihar*, reported in (1966) 1 SCR 709, wherein it is observed as under:

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. 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 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"

- 18) Considering the nature of offences, it does not reflect the fact

that in both the offences public order is disturbed.

19) Confidential statements are also considered for passing the detention order. On perusal of both the statements, the statements are identical. Both the witnesses were slapped by the petitioner and he also threatened them by showing knife and thereby asked them what they were doing there. He also used abusive language against them. Identical statements are made by both the witnesses.

20) The Hon'ble Apex Court in the recent judgment in the case of *Arjun Ratan Gaikwad Vs. The State of Maharashtra and ors arising out of SLP (Cri.) No.12516 of 2024* in paragraph No.17 of the said judgment has observed as under:-

17. "Insofar as the statement of the two unnamed witnesses are concerned, the allegations are as vague as it could be. In any case the statements which are stereotype even if taken on its face value would show that the threat given to the said witnesses is between the appellant and the said witnesses. The statements also do not show that the said witnesses were threatened by the appellant in the presence of the villages which would create a perception in the mind of the villagers that the appellant herein is a threat to the public order".

21) As the public order is not disturbed by the offences which are considered by the detaining authority and the statements which are made by the confidential witnesses are identical, therefore, in view of

the observations made by the Hon'ble Apex Court the order passed by the detaining authority is required to be set aside.

22) The Writ Petition is allowed in terms of its prayer clauses (i) and (ii). The petitioner be set at liberty forthwith, if not required in any other crime.

23) Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J) (NITIN W. SAMBRE, J)