



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.323/2025

Kunal @ Mahadev @ Devabhai
Vasudev Rohankar,
Aged About 26 years, Occ- Labour,
R/o Khadakpura, Ward no. 6, Nachangaon
Tah Deoli Distt. Wardha
At Present Central Prison, Nagpur ... Petitioner

- Versus -

1. State of Maharashtra,
Through its Secretary, Home Department
(Special) Mantralaya, Mumbai.
2. The Collector, Wardha,
Distt. Wardha. ... Respondents

Mr. M.N. Ali, Advocate for the petitioner.
Mr. U.R. Phasate, A.P.P. for respondent Nos.1 and 2.

CORAM: ANIL S. KILOR AND MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 30.6.2025.
DATE OF PRONOUNCING THE JUDGMENT: 09.07.2025.

JUDGMENT (*Per Mrs. Vrushali V. Joshi, J.*)

Rule. Rule made returnable forthwith. Heard finally
by consent of learned Advocates for the parties.

2. The impugned order dated 05.03.2025 delivered under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Person Engaged in Black Marketing of Essential Commodities Act, 1981, (for short, “the MPDA Act”) is questioned by the petitioner on following grounds:-

(a) The crimes which have been taken into consideration are stale and have no nexus with the passing of the detention order.

(b) Proposal to detain the petitioner was submitted on 10.02.2025, verification of in-camera statements carried out on 17.02.2025 creates doubt about the process of verification.

(c) Ground No.9 according to which the offences have been taken into account is composite when some of the crimes could not have been relied upon for passing of the order of detention, it has vitiated the entire subjective satisfaction with

respect to ground No.8 i.e. pertaining to the illicit activities following preventive action.

3. The detinue has been rendered both as a 'dangerous person' and a 'bootlegger'. To substantiate the aforesaid grounds, the detaining authority has taken into account criminal antecedents of the petitioner which speak of nine offences being registered against him. The offences relied upon by the detaining authority are as under:-

(i) Crime No.01/2025 for the offence punishable under Sections 3 and 25 of the Arms Act, 1959 dated 01.01.2025, registered at the Police Station, Pulgaon, Distt. Wardha.

(ii) Crime No.732/2024 for the offence punishable under Sections 65(a)(e), 77(a) and 83 of the Maharashtra Prohibition Act, 1949 read with Sections 3(1)/181, 130/177 of the Motor Vehicles Act, 1988 dated 05.09.2024, registered at the Police Station, Pulgaon, Distt. Wardha.

In the former offence, it was observed that the detainee was publicly abusing people and spreading fear among them while holding a sharp iron knife. He was taken into custody with the help of police and in presence of witnesses, a sharp iron knife worth Rs.200/- was seized from his possession. The matter is under trial before the concerned Court.

In the latter, he was found transporting country liquor on a moped along with his accomplice. The seized material summed up to an amount of Rs.44,400/- containing 41.52% of ethyl alcohol in the liquor sample.

4. Learned advocate for the petitioner, Mr. Ali, submitted that, perusal of Crime No.732/2024 would show that merely because offence is registered under Prohibition Act would not automatically mean that there is breach of public order. It is further submitted that, as far as C.A. report in Crime no. 51/2023 is concerned, same is pertaining to a crime which is not relied on

while passing the detention order and therefore extraneous material has been taken into consideration.

5. Learned Advocate for the petitioner further stated that, as far as other crimes mentioned at Para No.7 are concerned, material with regard to those crimes has been placed before detaining authority and same has affected subjective satisfaction of detaining authority.

6. Learned A.P.P. opposed the petition stating that C.A. report is there and earlier history proves that the petitioner is a bootlegger. He has supported the order passed by the detaining authority and prayed to dismiss the petition.

7. Heard both sides and perused the record.

8. The petitioner is labelled as a bootlegger and dangerous person. Two crimes are considered for passing the

detention order. Crime No.1/2025 is registered for the offence punishable under Sections 4 and 25 of the Arms Act, 1959. In this offence, it was informed to the patrolling party that the detainee is wandering with knife. The raid was conducted and the detainee was found with knife. The notice under Section 35(3) of the Bhartiya Nagrik Suraksha Sanhita was issued. Another offence i.e. Crime No.732/2024 is of bootlegging punishable for the offence under Sections 65(a)(e), 72(a) and 83 of the Maharashtra Prohibition Act read with Sections 3(1)/181 and 130/177 of the Motor Vehicles Act. The petitioner was found transporting the illicit liquor. In this offence also he was released after issuing notice.

9. On perusal of the order it appears that though in both the offences the petitioner was released after issuing notices, in para 13 of the detention order, the detaining authority has mentioned that the bail orders are considered and the petitioner has violated the conditions of bail orders even after executing the

bail bonds. This fact itself shows that the detaining authority has mechanically passed the detention order without even going through the material placed on record.

10. Learned A.P.P. has submitted that it was not the intention of the detaining authority but as the bonds were executed and the terms and conditions of them were violated by the detainee, the said fact came to be recorded. It is specifically mentioned that even after the execution of bail bonds, the detainee had committed a grievous offence. It appears from the record that Naib-Tahsildar has taken action under Section 116(3) of the Indian Penal Code and fine of Rs.15,000/- was recovered.

11. Considering the nature of the offences, acts and conduct attributed to the petitioner at the most it can be said to be instances of breach of law and order which can be addressed by resorting to the penal provisions of the ordinary law. In the absence of material which would unmistakably demonstrate that

the activities of the petitioner were prejudicial to the maintenance of the public order, the invocation of the provisions of preventive detention is unsustainable.

12. The petitioner has relied on the judgment in case of Nilesh Bansilal Gaywal @ Ghaywal V/s. State of Maharashtra and others reported in **2022 (3) Mh.L.J. (Cri) 85** wherein in para 18 it is observed by this Court as follows:-

“18. We may note with benefit, the concept of "public order" generally and its particular connotation under the MPDA Act. The distinction between the concepts of "public order" and "law and order" is well recognised. Public order is something more than ordinary maintenance of law and order. A proper test to distinguish between "law and order" and "public order" is whether the complained acts led to disturbance of the ordinary tempo of life of the community so as to amount a disturbance of the public order or it merely affected an individual leaving the tranquillity of society undisturbed. It is, therefore, said that the essential distinction between the concepts of "public order" and "law and order" is not in the nature or quality of the act but in the degree, potentiality and extent of its reach upon society. The given act by itself may not be determinant of its own gravity. It is the propensity and potentiality of the act of disturbing the even tempo of life of the community that renders it prejudicial to the maintenance of public order.”

13. Learned Advocate for the petitioner has also placed reliance on the confidential statements of the witnesses. On perusal of the original statements it appears that though the statements were recorded on 19.1.2025 they were not verified and on 17.2.2025 they were verified by the S.D.P.O., Pulgaon stating that he is satisfied about the statements given by the witnesses that the activities of the detenue had created terror amongst society through his illegal activities and he has stated that witnesses have been verified by him. The authority has mechanically attested the said statements by stating that he had personally verified it on 7.3.2025. Therefore, the verification of the confidential statements is not proper. Such an improper verification itself creates doubt about the statements made by the confidential witnesses. Therefore, by relying on said statements the order of detention of the petitioner cannot be passed.

14. In Criminal Writ Petition No.434/2024 (Sheikh Nisar Sheikh Kadir V/s. State of Maharashtra and another) this Court has relied on the judgment in Criminal Writ Petition No.873/2022 (Shaikh Hussain @ Shahrukh Shaikh Fatru V/s. State of Maharashtra) wherein it is observed in paragraph 18 and 19 as under:-

“(18) First of all, it is observed that the grounds of detention nowhere discloses that the detaining authority interacted with the witnesses A and B so as to satisfy itself that the statements of

these witnesses and genuine to be true and or instances which they disclosed were correct. There is no interaction by the detaining authority with the Assistant Superintendent of Police, who verified such statements. The copies of statements of witnesses A and attached to the petition and provided to the detenie, nowhere show any endorsement of the detaining authority so as to confirm that such statements were perused by the detaining authority and said authority considered that the witnesses were depicting true events. There is absolutely no whisper in the grounds of detention as to on what count the detaining authority found itself satisfied about the truthfulness or genuineness of such statements made by the witnesses.

(19) This Court in the case of Shahjahan w/o Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra & Anr. 2016 ALL MR (cri) 4233 (supra), observed in para 5 that, in the absence of any record of the statements being seen by the Commissioner of the Police thereby affecting his subjective satisfaction, the petitioner is entitled to succeed in the petition. These observations are clearly attracted to the matter in hand. There is no contemporaneous material placed before us to show that the detaining authority had in fact verified the statements and had any interaction with the Assistant Superintendent of Police, who recorded his report. Similarly, by reproducing the contents of statements of witness A and B in the grounds of detention without the material to show that the detaining authority had in fact interacted either with the witnesses or discussed it with the authority, who verified such statements, the order of detention stands vitiated.”

15. Considering the above said legal position as the detaining authority has not followed the procedure before passing the detention order, reliance is placed on the statements which were not properly verified, the offences which are considered do not create any situation of public order and though the detenue was released on notices, mechanically it is observed by the detaining authority that the bail orders are considered.

16. For the aforesaid reasons, the impugned detention order needs to be quashed and set aside. Accordingly, it is quashed and set aside. The petitioner be set at liberty forthwith if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(ANIL S. KILOR, J.)