



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

CRIMINAL WRIT PETITION NO. 638 OF 2025

(Mohammad Salim Mohammad Ismail Vs. State of Maharashtra & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Anshuman Deshmukh (through VC) with Mr. Abuzain
Shaikh, Counsel for the petitioner.
Mr. A.B. Badar, A.P.P for the respondents/State.

.....

**CORAM : ANIL L. PANSARE AND
RAJ D. WAKODE, JJ.**

ARGUMENTS WERE HEARD ON : 11/11/2025

ORDER IS PRONOUNCED ON : 14/11/2025

Heard.

2] The question that falls for our consideration is, whether detenu is entitled to challenge detention order without he being arrested or without he submitting or surrendering for it ?

3] The Counsel for the petitioner has relied upon a judgment of the Division Bench of this Court at Principal Seat in the case of *Arun Mahajan Vs. State of Maharashtra [Criminal Writ Petition No. 1823/2024]* decided on 14/12/2024, wherein, the Court held that the order of detention can be entertained at pre-execution stage. The Division Bench was dealing with the order passed by the Government of Maharashtra in exercise of its powers under Section 3(1) of The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "COFEPOSA").

4] The learned A.P.P. submits that the judgment of the Hon'ble Supreme Court in the case of *Union of*

India And Others Vs. Vidya Bagaria [(2004) 5 SCC 577] was not brought to the notice of the Division Bench. The Supreme Court also dealt with challenge to the order of detention, which was passed under Section 3(1) of the COFEPOSA. The Supreme Court referred to various judgments, which includes judgment in the case of i] *Additional Secretary To The Government of India And Another Vs. Smt Alka Subhash Gadia And Another [1992 SCC (Cri) 301]*; ii] *Sayed Taher Bawamiya Vs. Joint Secretary To The Govt. Of India And Others [(2000) 8 SCC 630]*; iii] *Union of India And Others Vs. Parasmal Rampuria [(1998) 8 SCC 402]*; and iv] *Sunil Fulchand Shah Vs. Union of India And Others [(2000) 3 SCC 409]*.

5] The Supreme Court, in *Alka Subhash Gadia's* case, held that equitable jurisdiction under Articles 226 and 32 of the Constitution of India, which are discretionary in nature, would not be exercised in a case, where the proposed detenu successfully evades service of the order. The Court, however, noted that the High Courts have the necessary power, in appropriate cases, to interfere with the detention order at the pre-execution stage, but the scope of interference is very limited. It was held that the Courts will interfere at the pre-execution stage with the detention orders only after they are *prima facie* satisfied;

i] that the impugned order is not passed under the Act under which it is purported to have been passed;

ii] that it is sought to be executed against a wrong person;

iii] that it is passed for a wrong purpose;

iv] that it is passed on vague, extraneous and irrelevant grounds; or

v] that the authority, which passed it, had no authority to do so.

6] Thus, there is extremely limited scope to interfere with the detention order at pre-execution stage, viz., only where glaring illegality is found.

7] In the present case, the petitioner is evading service of order. The order of detention doesn't fall in the category mentioned above.

8] That being so, merely because the Division Bench of this Court has held that the detention order could be questioned at pre-execution stage by itself will not be a ground to set aside the order of detention.

9] Thus, we do not find merit in the petition. The petition is accordingly dismissed.

(JUDGE)

(JUDGE)

Sumit