



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

CRIMINAL WRIT PETITION NO. 158 OF 2025

Manoj Devidas Kahnekar,
Aged 39 years, Occ.: Labourer,
R/o. Kumbhare Ward, Tumsar,
Dist. Bhandara.

... **PETITIONER**

...**VERSUS**...

1. State of Maharashtra,
Through Section Officer of the Home
Department (Special), Second Floor,
Main Building, Mantralaya, Mumbai.
2. Collector & District Magistrate, Bhandara,
Office of the Collector and District Magistrate,
Dist. Bhandara.

... **RESPONDENTS**

Mr. S. V. Sirpurkar, Advocate for the Petitioner.
Ms S. S. Jachak, A.P.P. for Respondent No.1/State.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 21.04.2025
JUDGMENT PRONOUNCED ON : 02.05.2025

JUDGMENT (PER : MRS. VRUSHALI V. JOSHI, J.):-

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.
2. By this writ petition, the petitioner is seeking to question the legality of the detention order passed by respondent No.2 on 14.11.2024 and confirmation order passed by respondent No.1 on 22.11.2024 under the provisions 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 (hereinafter referred to as the “MPDA Act”).

3. The facts necessary for deciding the petition are as under :

The petitioner has a history of committing seven crimes since 2017 and even seven preventive actions are taken against him. One of which is the externment ordered in the year 2024 for two years from Tumsar area.

4. In this background, since the petitioner’s activities are styled as detrimental to maintenance of public order, the detention order came to be passed by relying on Crime No.457/2024 punishable under Sections 333, 74, 75, 76, 97, 189(2), 189(3), 191(2), 191(3), 190 of the Bharatiya Nyaya Sanhita, 2023 read with Section 4 and 25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951 and two in-camera statements.

5. The grounds raised by the petitioner to challenge the detention order is that the petitioner had preferred bail application before the Sessions Judge, Bhandara, which was allowed on 07.11.2024. While releasing the detenu on bail, the Sessions Judge specifically noted that various crimes registered against the detenu are not sufficient to deem him as a habitual offender as the prosecution has failed to show a single

offence where the detenu is convicted. The said order was placed on record but the contention is not considered while passing the detention order.

6. The learned Counsel for the petitioner has relied on the following judgments :

- i] Paras s/o. Ramprasad Sahu Vs. State of Maharashtra and Anr. Reported on (2003) 3 Mh.L.J. 24,*
- ii] Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Ors. Reported in (2012) 2 SCC 72.*
- iii] Elizabeth Ranibhai Prabhudas Gaikwad Vs. State of Maharashtra and Anr. Reported in 2021 SCC OnLine Bom 206.*

7. The detaining authority is obligated not only to place the order of release of the detenu on bail on record but also deal with such order and enlist the reasons to justify detention despite the detenu being released on bail by the appropriate Court. In the case of the petitioner, a perusal of the grounds indicate that the detaining authority has completely failed to consider the order dated 07.11.2024 whereby the detenu is released on bail while passing the impugned order of detention.

8. So as to substantiate the aforesaid contentions, the petitioner has placed on record the judgment of the Hon'ble Apex Court in the matter of *Joyi Kitty Joseph Vs. Union of India and Ors.* reported in **2025 SCC OnLine SC 509**, rendered in the Special Leave Petition (Cri.)

No.16893 of 2024 decided on 06.03.2025. He would try to substantiate his contention as regards the disturbance of 'law and order' and 'public order'. According to him, the law of preventive detention is to be construed strictly.

9. As against above, the learned Additional Public Prosecutor has stated that, considering the crimes which are committed by the detenu and though he was released on bail, he has continued to commit the offences. The detaining authority has rightly passed the detention order considering the statements of witnesses which were verified by the detaining authority.

10. We have considered the rival submissions made by both the parties.

11. On perusal of the impugned order of detention it appears that only one offence and two in-camera statements of witnesses A and B are considered by the detaining authority. The offence which is relied on for the purpose of passing the detention order is Crime No.457/2024 wherein the allegations are made that the petitioner along with other group of persons went to the house of the complainant, kicked the door and after entering the house asked the complainant why she has not given the money to his brother, which she has borrowed. At that time, he misbehaved with the complainant. On the complaint lodged by the

complainant, the crime is registered. The incident narrated therein speaks of occurrence of difference between the individuals. The complainant had taken the money from the brother of the petitioner and, therefore, the detenu went there. It is nowhere demonstrated that the violent conduct of the petitioner has resulted into the people residing in the said area or whosoever were present getting frightened and leaving the place. As such, it has to be inferred that the isolated offence against the individual considered against the petitioner cannot be said to cause the disturbance of public order.

12. The Hon'ble Apex Court in ***Ameena Begum Vs. The State of Telangana & Ors [Arising out of SLP (Criminal) No.8510/2023]*** has placed reliance on the case of ***Dr. Ram Manohar Lohia*** wherein the difference between 'law and order' and 'public order' was lucidly expressed. It was observed that while assessing the detention order, the Court should consider what constitutes 'public order'. The Hon'ble Apex Court has held 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.

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.”

“38. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon’ble M. Hidayatullah, CJ. in Arun Ghosh vs. State of W.B, (1970) 1 SCC 98 is this: (SCC p. 100, para 3)

“3.....Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?”

39. Arun Ghosh vs. State of W.B, (1970) 1 SCC 98, the petitioning detenu was detained by an order of a District Magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read: the offending act) “does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order”. (Arun Ghosh case [(1970) 1 SCC 98, SCC p. 101 para 5)”

40. In the process of quashing the impugned order, the Hidayatullah, C. J.while referring to the decision in Ram Manohar Lohia vs. State of Bihar, 1965 SCC Online SC 9 also ruled: (Arun Ghosh vs. State of W.B, (1970) 1 SCC 98, SCC p. 100, para 3)

“3.... Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. ... It is always a question of degree of the harm and its affect upon the community. ...This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.”

42. Section 3(1) of the Act, the Government has to arrive at a subjective satisfaction that a goonda (as in the present case) has to be detained, in order to prevent him from acting in a manner prejudicial to the maintenance of public order. Therefore, we first direct ourselves to the examination of what constitutes “public order”. Even within the provisions of the Act, the term “public order” has, *stricto sensu*, been defined in narrow and restricted terms. An order of detention under Section 3(1) of the Act can only be issued against a detenu to prevent him “from acting in any manner prejudicial to the maintenance of public order”. “Public order” is defined in the Explanation to Section 2(a) of the Act as encompassing situations that cause “harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave wide-spread danger to life or public health”.

43. Ram Manohar Lohia, 1965 SCC OnLine SC 9 is an authority to rely upon for the proposition that if liberty of an individual can be invaded under statutory rules by the simple process of making of a certain order, he can be so deprived only if the order is in consonance with the said rule. Strict compliance with the letter of the rule, in such a case, has to be the essence of the matter since the statute has the potentiality to interfere with the personal liberty of an individual and a Court is precluded from going behind its face. Though circumstances may make it necessary for ordering a detention without trial, but it would be perfectly legitimate to require strict observance of the rules in such cases. If there is any doubt whether the rules have been strictly observed, that doubt must be resolved in favour of the detenu.”

13. In view of above observations, it is necessary to consider whether there is an application of mind or not as no public order is disturbed and the ordinary criminal law of land is sufficient to deal with the situation in which the offence is committed by the petitioner. The law of preventive detention cannot be exercised merely to curb the acts of the person involved in the criminal prosecution, as the ordinary criminal law will be sufficient enough to take within its ambit the conduct of said person.

14. In this backdrop, we are of the view that, the impugned detention order dated 14.11.2024 passed by the respondent No.2 – District Magistrate, Bhandara so also the order dated 22.11.2024 passed by the respondent No.1 – Government of Maharashtra, Home Department (Special), Mumbai, cannot be said to be sustainable in law.

15. That being so, the present criminal writ petition stands allowed.

16. The detention order dated 14.11.2024 passed by the respondent No.2 - District Magistrate, Bhandara and the approval order dated 22.11.2024 passed by the respondent No.1- Government of Maharashtra, Home Department (Special), Mumbai, are hereby quashed and set aside.

17. The petitioner be set at liberty forthwith, if not required in any other crime.

18. Rule is made absolute in aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)