



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

CRIMINAL WRIT PETITION NO. 189 OF 2025

Ramesh s/o. Gopal Dikyav,
Aged about 50 years,
Occupation : Labourer,
R/o. House No.40, Postman Colony,
Amravati, Tq. and Dist. Amravati.
(Father of detenu) (ON RA)

... **PETITIONER**

...**VERSUS**...

1. State of Maharashtra
Through Secretary, Preventive Detention,
Home Department (SPL),
Mantralaya, Mumbai – 32. (ON RA)

2. Commissioner of Police,
Amravati City, Amravati,
Tq. and Dist. Amravati. (ON RA)

... **RESPONDENTS**

Mr. J. B. Kasat, Advocate for the Petitioner.
Mr. N. S. Rao, A.P.P. for Respondents/State.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 24.03.2025
JUDGMENT PRONOUNCED ON : 02.04.2025.

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. This is a writ petition filed by the father of the detenu under Article 226 of the Constitution of India which impugns the order bearing No.CB/DET/MPDA/AMT/07/2024 dated 14.09.2024 passed by the respondent No.2 - Commissioner of Police, Amravati City in exercise of powers conferred by Sub-Section (1) of 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, (for short 'the Act'), ordering the detention and its subsequent approval by respondent No.1 under Section 3(3) of the Act on 24.09.2024.

3. The primary grounds on which the detention is based are following:

(A) The registration of Crime Nos.318/2024, 436/2024 and 497/2024 dated 1.06.2024, 21.07.2024 and 24.08.2024 were respectively considered for ordering detention and the respondent No.2 was aware about the detenu being already released on bail in the said crimes.

(B) That, the vital documents which form a part of the grounds of detention are illegible viz. Page Nos. 65-70. It is practically impossible to read and understand those documents.

(C) That the in-camera statements are false and it has been fabricated viz. documents prepared afterwards and they are neither true and genuine nor have been lawfully and factually verified by the authority as required under the law.

4. It is the submission of the learned Counsel for the Petitioner that there was a failure to make a representation before the Advisory Board as no knowledge or any assistance was provided to the detenu.

It is further submitted that the detaining authority has considered the past history recorded in paragraph 3 – 9 of the grounds of detention while reaching the conclusion that the detenu is a dangerous person, however no material as regards to paragraph 3 – 9 was supplied to the detenu and, therefore, due to non-supply of the copies of the said material, his right to make an effective representation under Article 22(5) of the Constitution of India is hampered.

5. Learned Counsel for the petitioner further argued that, the two in-camera statements of the witnesses relied upon by the detaining authority have not been lawfully verified by the Assistant Commissioner of Police, furthermore, the detaining authority has mechanically reached at the subjective satisfaction without application of mind.

6. The Respondents have relied upon the facts by filing an affidavit-in-reply.

It is submitted by the learned A.P.P. that the in-camera statements of two witnesses, “A” and “B” were recorded on 20.08.2024 and 22.08.2024 respectively. The petitioner committed three crimes within a span of two and half months, was arrested and subsequently released on bail. If a detenu is enlarged on bail that does not mean that the detaining authority cannot consider the crimes registered against the detenu. The detenu has continued with his illegal activities despite being

released on bail which is sufficient for the detaining authority to pass the detention order.

7. Furthermore, it is submitted by the Learned A.P.P. that the detaining authority has supplied all the relevant documents including the detention order in English and Marathi language. The detaining authority has placed on record a school certificate issued by Sant Kavarram Vidyalaya, Amravati depicting that the detenu appeared in 10th standard examination and his subjects were English, Hindi and Marathi evidencing that the detenu is well aware of all the three languages.

8. The proposed detenu has personally committed many serious offences and was continuously involved in criminal activities due to which there is a breach of public order of the society and apprehension of danger is created to the general public and their property.

9. We have heard both the learned Counsel appearing for the parties.

10. Considering the grounds for challenging the order of detention, it is necessary to consider the mandatory requirement of disturbing the public order or whether the ordinary law is sufficient in a given situation. The Hon'ble Apex Court in ***Ameena Begum Vs. The State of Telangana & Ors.*** reported in ***(2023) 9SCC 587*** has held in para No.18 as under :

“This Court was concerned with the true distinction between a threat to “law and order” and acts “prejudicial to public order”, which was not to be determined merely by the nature or quality of the act complained of, but was held to lie, in the proper degree and extent of its impact on the society. It was held that there could be instances where “disturbance of public order” would not be attracted but still, would fall within the scope of maintenance of “law and order”. It was held that:- “preventive detention laws- an exceptional measure reserved for tackling emergent situations-ought not to have been invoked in this case as a tool for enforcement of “law and order” (sic para 47), especially when the existing legal framework to maintain law and order is sufficient to address the offences under consideration.”

11. On considering the nature of the offences which are considered by the detaining authority for passing the detention order, it appears that in all the offences, the petitioner along with his friends has tried to create terror by showing the revolver or other deadly weapons.

12. In first offence vide Crime No.318/2024, the petitioner went to the hotel of the complainant and when the complainant's son asked money for beer, the petitioner showed the revolver to the son of the complainant and thereafter threatened to kill him and left the hotel with his accomplice. In another offence i.e. Crime No.436/2024, the petitioner had pelted stones on the house of the complainant as he was under impression that because of complainant's husband his brother was punished. It appears that in all the offences the petitioner has given threats and crimes were registered. In all the three offences, the

petitioner was arrested and released on bail. The main ground of the petitioner is that though the petitioner was released on bail, the detaining authority has not considered the conditions imposed in bail orders which negates the subjective satisfaction recorded by the detaining authority.

13. The learned Counsel for the petitioner has relied on the judgment of the Hon'ble Apex Court in the case of ***Joyi Kitty Joseph Vs. Union of India and Ors.*** reported in ***2025 SCC OnLine SC 509*** wherein the Hon'ble Apex Court has observed in para No.15 and 16 as under :

“15. We are not examining the conditions imposed by the Magistrate since it was for the detaining authority to look into it and enter into a subjective satisfaction as to whether the same was sufficient to avoid a preventive detention or otherwise, insufficient to restrain him from further involvement in similar smuggling activities. As has been held in Rameshwar Lal Patwari v. State of Bihar.

16. If there is a consideration, then the reasonableness of the consideration could not have been scrutinised by us in judicial review, since we are not sitting in appeal and the provision for preventive detention provide for such a subjective satisfaction to be left untouched by the Courts. However, when there is no such consideration then we have to interfere.”

14. It appears from the record that though the petitioner was released on bail in all the offences, the conditions in bail order are not considered which were imposed by the Trial Court to record satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging into any further like activities. From the nature of the crime it appears that the ordinary law of the land is sufficient to deal with such situations. The statements which are recorded by the authority are

also not sufficient to pass the detention order. Considering the law laid down by the Hon'ble Apex Court about consideration of contents of the bail orders, the subjective satisfaction is not arrived at by the detaining authority. Hence, the petition is allowed.

15. The detention order dated 14.09.2024 passed by the respondent No.2 and the approval order dated 24.09.2024 passed by the respondent No.1 is hereby quashed and set aside.

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

17. Rule is made absolute in the aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)