



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

CRIMINAL WRIT PETITION NO.236 OF 2025

Pushpa w/o. Gautam Kamble,
Aged about -- years, Occupation–Housewife,
R/o. Waghapur Naka, Bangar Nagar,
Yavatmal, Tah. and District – Yavatmal. ... **PETITIONER**

Vivek @ Sanki s/o. Gautam Kamble,
Aged about 23 years,
R/o. Waghapur Naka, Bangar Nagar,
Yavatmal, Tah. and District – Yavatmal.
At Present : Central Prison, Wardha. ... **DETENU**

...VERSUS...

1. State of Maharashtra,
Through Home Department (Special),
2nd Floor, Mantralaya, Mumbai-400 032.
2. District Magistrate,
Yavatmal, Tah. and District- Yavatmal. ... **RESPONDENTS**

Mr. P. V. Navlani, Advocate for the Petitioner.
Mr. S. S. Hulke, A.P.P. for Respondents/State.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 02.05.2025
JUDGMENT PRONOUNCED ON : 08.05.2025

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. The petitioner, who is the mother of the detenu detained 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”), is challenging the order of detention dated 18.11.2024 passed by respondent No.2 - District Magistrate, Wardha and confirmed by respondent No.1 further on 10.01.2025, detaining him under the definition of a ‘Dangerous Person’.

3. The detaining authority has considered recent three crimes committed within six months of the year 2024, which are different from the contents of the criminal history in the crime chart. The grounds of the detention have been provided in both the languages i.e. English and Marathi. The offences which are relied upon for issuing the order of detention are as under :-

(i) Crime No.508/2024 registered at Police Station, Yavatmal City for the offences under Section 142 of the Maharashtra Police Act.

(ii) Crime No.788/2024 registered at Police Station, Yavatmal City for the offences punishable under Sections 309(6), 3(5) of the Bhartiya Nyaya Sanhita, 2023.

(iii) Crime No.801/2024 registered at Police Station, Yavatmal City for the offences punishable under Sections 118(1), 351(2), 351(3), 3(5) of the Bhartiya Nyaya Sanhita, 2023.

4. The present petition has been assailed mainly on the grounds as under :-

(a) That, the sponsoring authority and the detaining authority have unnecessarily placed reliance on stale material which renders the detention order as invalid.

(b) Non-supply of vital documents along with illegible, incomplete copies which forms a part of the compilation having proposal, grounds of detention and other relevant material taken into account for passing the detention order.

(c) The detaining authority was unaware of the fact whether the detenu has been released on bail or not. The bail orders in some crimes were not placed before the detaining authority.

(d) The incidents mentioned in the in-camera statements pertain to individual acts. There is no whisper in the detention order about the aspect of unwillingness of the confidential witnesses to come forward and depose against the petitioner. The requirement of subjective satisfaction here remains unfulfilled.

5. The learned Counsel for the petitioner Mr. Navlani submitted that the material placed before the detaining authority in terms of the crime chart starts from the year 2022 till 2024. It is submitted that the first Crime No.508/2024 ought not to have been taken

into consideration for passing the detention order as the said crime does not fall under Chapter XVI, XVII of the Indian Penal Code and Arms Act.

6. The learned Counsel further submitted that the case papers in the second Crime i.e. Crime No.788/2024 do not mention that the detenu has been released on bail or not. The learned Counsel further argued that non-furnishing of the complete documents or translated copies mentioned, required to be served upon the petitioner, deprived him of making effective representation against the order of the detention.

7. Learned A.P.P., on the other hand, pressed on to the findings in the affidavit-in-reply filed on behalf of the Respondents.

He submitted that respondent No.2 - detaining authority, while passing the detention order dated 18.11.2024, of the detenu, has properly considered recent three criminal offences registered against him as mentioned in the paragraph 8 of the grounds of detention. Therefore, the detaining authority has not placed reliance upon the stale material.

He further argued that in Crime No.508/2024, the petitioner was released on notice under Section 41A(1) of the Code of Criminal Procedure while in the second Crime i.e. Crime No.788/2024, the detenu after release on bail continued his criminal activities and he has no respect for the law of the land. Therefore, preventive action was necessary for the security of the citizens and to maintain public order in

the city, therefore the detention order passed by the respondent No.2 is legal and proper.

8. Heard both the learned Counsel for the parties. Considered the arguments canvassed by both the learned Counsel.

9. On perusal of the detention order, it appears that three offences committed during the period of six months and two in-camera statements were considered for passing the detention order. While passing the detention order, it is necessary to consider whether the offences which are committed and considered for passing the detention order come under the purview of the disturbance of public order. The petitioner is detained as a dangerous person. Section 2(a)(i)(iv) 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 reads thus :

“2. In this Act, unless the context otherwise requires,—

(a) “acting in any manner prejudicial to the maintenance of public order” means—

(i) in the case of a slumlord, when he is engaged, or is making preparations for engaging, in any of his activities as a slumlord, which affect adversely, or are likely to affect adversely, the maintenance of public order ;

(ii) -----

(iii) -----

[(iv) in the case of a dangerous person, when he is engaged, or is making preparations for engaging, in any of his

activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order].”

10. The expression “disturbance of public order” is lucidly discussed in the latest judgment of the Hon’ble Apex Court in ***Ameena Begum Vs. The State of Telangana & Ors [Arising out of SLP (Criminal) No.8510/2023]*** wherein the Hon’ble Court has considered the case of ***Dr. Ram Manohar Lohia*** wherein the difference between ‘law and order’ and ‘public order’ was nicely 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.”

11. In view of the aforesaid observations if we peruse the nature of the offences which are considered for passing the detention order, it appears that in Crime No.508/2024 registered for the offence punishable under Section 142 of the Maharashtra Police Act, 1951 viz. he has flouted the externment order. The petitioner was found at his house during his externment period and, therefore, the action was taken. Thus, it cannot come under the purview of disturbance of the public order.

12. In another offence vide Crime No.788/2024 registered for the offences punishable under Sections 309(6), 3(5) of the Bhartiya Nyaya Sanhita, 2023, the petitioner has extorted money from the complainant by beating him and giving threats of committing murder. In this offence though he was taken into the custody, it is not mentioned whether he was released on bail or the bail order is not produced on record. From the contents of the First Information Report, it does not reveal that it affects the public order.

13. The next offence is Crime No.801/2024 registered for the offence punishable under Sections 118(1), 351(2), 351(3), 3(5) of the Bharatiya Nyaya Sanhita, 2023. In this offence, there was a scuffle between two persons and at that time, the petitioner had given threats to the complainant. Considering the nature of the offence, the activities of the petitioner can be curbed by imposing the ordinary law. Even the law and order situation does not arise considering the offences committed by the petitioner. No public order is disturbed because of the offences which are considered for passing the detention order.

14. On perusal of the in-camera statements, it appears that the incident mentioned in the said statements are about extortion of money and giving threats. The said statements are verified by the Police Inspector, Yavatmal and seen by the Authority.

15. The learned Counsel for the petitioner has challenged the order on the ground that extraneous material is considered by the detaining authority. The bail orders of the earlier offences are placed before the detaining authority and the said orders and the First Information Reports are considered by the authority while passing the detention order, which influenced the mind of the detaining authority.

16. The petitioner has relied on the judgment of the Hon'ble Apex Court in the Case of ***Khaja Bilal Ahmed Vs. State of Telangana and Ors.*** reported in ***(2020) 13 SCC 632***, wherein the Hon'ble Apex Court has observed in para 23 as under :

*“23.....The order of detention may refer to the previous criminal antecedents **only** if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.”*

17. As the bail orders in earlier offences are placed before the detaining authority, it could affect the mind of detaining authority.

18. The petitioner has also stated that the proposal for detention which is attached with the grounds of the detention is not in Marathi

language and it is in English language. The translated copy is not served to the petitioner and, therefore, it vitiates the detention order.

19. As the mandatory requirement for passing the detention order is not fulfilled and even the statements are not sufficient to pass the detention order against the petitioner, the extraneous material i.e. the bail orders in the earlier offences are placed before the detaining authority is also one of the reasons to vitiate the detention order. Hence, the order passed by the detaining authority is required to be set aside.

20. In view of the above said reasons, the petition is allowed.

21. The detention order dated 18.11.2024 passed by the respondent No.2 and the approval order dated 10.01.2025 passed by the respondent No.1 is hereby quashed and set aside.

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

23. Rule is made absolute in aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)