



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

CRIMINAL WRIT PETITION NO.306 OF 2025

Hardil Singh Telsingh Andherele, Aged 46
years, Occup. Agricultural labour, R/o.
Kakaddara Talegaon (S.P.), Tah.Ashti, Dist.
Wardha.

Petitioner

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary, Home
Department, Mantralaya, Mumbai-32.
2. The District Magistrate and Collector, Wardha,
District Wardha.
3. The State of Maharashtra through P.S.O,
Talegaon (S.P.), Dist. Wardha.

Respondents

Mr.Mahesh Rai, Advocate for the Petitioner.
Mr.S.S.Doifode,A.P.P. for respondent Nos.1 to 3.

**CORAM : ANIL S. KILOR AND
MRS. VRUSHALI V. JOSHI, JJ.
DATE : 09/07/2025**

JUDGMENT (Per: Vrushali V. Joshi, J.)

1) **Heard. Rule.** Rule made returnable forthwith. The Criminal
Writ Petition is heard finally with the consent of the learned counsel
appearing for the parties.

2) The petitioner has been detained by the order dated
28.01.2025 passed by the respondent No.2 - District Magistrate and
Collector, Wardha, under Section 3(2) 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”). This order is under challenge before this Court, which was thereupon confirmed by respondent no.1 on 06.03.2025.

3) The record of proposal initiated against the detenu for the purpose of his detention as a “Bootlegger” was produced before respondent no.2 by the Assistant Police Inspector, Police Station, Talegaon (S.P), Distt. Wardha, showing offences registered against him since May 2016 to December 2021, wherein 12 offences have been put up, highlighting his criminal antecedents. In addition to which since the year August 2022 to September 2024, 8 offences have been registered against the petitioner/detenu.

4) Out of them, the detention order is relied upon two offences of last six months under the MPDA Act, 1949 which are as under:-

(i) C.R. no.553/2024, under Sections 65(e), 77(a) of the Maharashtra Prohibition Act, 1949, dated 15.09.2024, filed at the Police Station Talegaon (S.P.), Wardha.

(ii) C.R. No. 460/2024, u/s 65(e), 77(a) of Maharashtra Prohibition Act, 1949, dated 21.08.2024, registered at the Police Station Talegaon (S.P.), Wardha.

5) In the first offence, i.e., C.R. no. 553/2024, country liquor of Bobby Orange company worth Rs. 600/- was seized. While, in C.R. no. 460/2024, country liquor of Rs. 960/- was found. In both the offences, the detenu was released on notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023. The chemical analysis report received in the said crimes indicate that the samples contained 42.28% and 42.64% of ethyl alcohol respectively. Both the offences are under trial before the concerned Court.

6) Learned counsel for the petitioner, Mr. Rai, has highlighted the grounds on which the detention order has been passed which constitutes of as under:-

(a) Plea of consideration of bail orders, when the petitioner has been released upon service of notice under Section 35(3) of BNSS, 2023.

(b) Delay of about 135 days in passing the detention order from the date of commission of the last offence, snapping the live-link

between the last prejudicial activity and passing of the detention order.

(c) Endorsement on the in-camera statements of witnesses “A” and “B” that, whether the SDPO verified the said statements in the presence of the detaining authority, or not.

7) Learned advocate of the petitioner, Mr. Rai, submitted that in the incident narrated in statement of witness “A”, there is no reason to accost the person involved in the dispute as he has not stated the place where the said person was laying on the public road and thus, the said incident does not show that the petitioner has caused terror in the society. It is the contention of the learned advocate that the report of Assistant Professor, Government Medical College, Akola, opined that consumption of ethyl alcohol badly affects the life of people and thus, causes danger to the public health. However, there is no single report which shows that any person has died in the vicinity where the petitioner resides or in the village due to the same.

8) The main argument here pertains to non-verification of the genuineness and authenticity of the in-camera statements by the detaining authority.

9) Learned APP, Mr. Doifode, vehemently opposed the arguments advanced by the petitioner, placing reliance on the affidavit-

in-reply filed on behalf of the respondents.

10) Learned APP, Mr. Doifode, with respect to the service of notice to the detenu under Section 35(3) of the BNSS, 2023, placed reliance in the matter of **Hirabai Kondiba Kale Vs. State of Maharashtra** observed that “True it is that the petitioner cannot be allowed to take a stand that the investigating officers having merely served her a notice under Section 41-A of the Code of Criminal Procedure and did not find it necessary to arrest her could have any bearing albeit”, this Court has resorted to such a reasoning in the matters of **Prashant Bharat Datar Vs. State of Maharashtra and anr.**(Criminal Writ Petition No.914 of 2021 of this Court, **Devidas Lalji Ade Vs.State of Maharashtra and others** (Criminal Writ Petition No.469 of 2022) of the Bench at **Aurangabad** .

11) He further stated that the proposal on 13.01.2025 of Police Station, Talegaon, through the recommendation letter dated 14.1.2025 of SDPO Arvi and with strong recommendation dated 17.1.2005 of Superintendent of Police, Wardha, was sent to the detaining authority. It is submitted that on 28.1.2025 the detaining authority SDPO Arvi verified the statements and after being satisfied with the contents, issued detention order on the same day i.e., on 28.1.2025 and thus there

is no delay in issuing the detention order. And hence, this technical time cannot be referred as delay. Moreover 2-3 months are permissible in such matter. Hence the contents are not accepted. It is the argument of the learned APP that as per the opinion of the medical officer which resulted into the production of toxicology report, the administration cannot wait for taking action against the petitioner after the death of the citizens.

12) On the ground with regards to the in-camera statements of confidential witnesses “A” and “B”, learned advocate submitted that upon perusal of the confidential statements, it could be very clearly seen that an endorsement has been put up by the detaining authority on both the statements as, “Personally verified by SDPO, Arvi, in front of me.”

13) Heard both the learned counsel.

14) The main grounds along with other grounds in which the petitioner has raised challenge are as under:-

(i) The petitioner was released on notice under Section 35(3) Bharatiya Nagarik Suraksha Sanhita, 2023 (for short BNSS). It is observed by the detaining authority in the detention order that he has considered the bail application and conditions in the bail application

and has passed the order. As the petitioner has violated conditions of bail bonds, considering all these aspects has passed the order.

15) The another issue which the petitioner has raised is about the verification for the statements of the confidential witnesses. According to him it is not properly verified. The authority has not verified it and therefore, the order stands vitiated.

16) We have gone through the record with the help of both the counsels. On perusal of the order it appears that two offences within a period of six months are considered for passing the detention order. Crime No.553 of 2024 for the offence punishable under Section 65(e), 77(a) of the Maharashtra Prohibition Act 1949 and Crime No.460 of 2024 for the offence under Section 65(e) and 77(a) of Maharashtra Prohibition Act,1949 are considered along with two confidential statements of the witnesses.

17) On going through the detention order, it appears that in paragraph No.15 it is mentioned by the detaining authority that the bail orders are considered while passing the detention order and it is specifically mentioned that, the petitioner has violated the conditions of bail. Notice has been given under Section 41-A of the Code of Criminal Procedure or under Section 35(3) of the BNSS, 2023. Even after

executing the bail bonds, the petitioner committed the offence. It clearly shows that the order is passed mechanically. The petitioner was released on issuance of notice. The procedure of violating the bonds if executed is prescribed under the Act. For violation of bond there is provision to recover the bond amount, the said provision is not followed and without considering whether he was on bail or not mechanical observations were made that the detaining authority has gone through the bail orders. The petitioner has relied on the judgment of this Court in support of his argument about passing such mechanical order passed by this Court in **Writ Petition No.937 of 2024 (Santosh Bhimrao Parise Vs. The State of Maharashtra and ors.)** dated 08.04.2025 and the judgment of the Hon'ble Apex Court in the matter of **Criminal Appeal No.2897 of 2025 Dhanyam ..Vs. State of Kerala and ors.**

18) The another ground which was raised by the petitioner is about the verification of the statements of confidential witnesses. The detaining authority has considered the confidential statements for passing the detention order. The verification of confidential statements is necessary if the order is passed on the basis of said statements. On perusal of the statements, it appears that they were recorded on 12.01.2025. The person who has recorded it, has not verified it by

reading over it to the said witnesses. The SDPO has stated that he has verified it personally at his office on 18.01.2025 and he was satisfied with the statements given by the secret witnesses. The purpose of verification is that the person who has given the statement, it was read over to said person and he has stated that whatever he has stated in his statement is correct. Such type of verification is not there. It is the satisfaction of the SDPO according to him who has verified the said witnesses. Thereafter, on 28/07/2025, the detaining authority has stated that in his presence the SDPO he has personally verified the said statement which creates doubt about the verification of the statements of witnesses.

19) The learned counsel for the petitioner has relied on the judgment of this Court in Criminal Writ Petition No.873 of 2022, wherein this Court has observed that the detaining authority had in fact interacted either with the witnesses or discussed it with the authority who verified such statements and thus, the order of detention stands vitiated.

20) The learned APP has relied on the judgment of this Court in support of his argument that there is no specific format of verification. He has relied on the following judgments:-

1. **Vinod Dhannulal Jaiswal Vs. District Magistrate Aurangabad reported in 2024 ALL MR (Cri.)680.**
2. **Phulwari Jagdambaprasad Pathak Vs. R.H. Mendonca and ors. reported in 2000 ALL MR (Cri.)1503.**
3. **Badal Manoj Sahare Vs. State of Maharashtra and ors. reported in 2024 ALL MR (Cri.)102.**
4. **Saraswati Santosh Rathod Vs. Commissioner of Police, Pune City reported in 2024 ALL MR (Cri.)2764.**
5. **Rohit @ Karan Purshottam Naukariya Vs. State of Maharashtra and ors reported in 2022 ALL MR (Cri.), 3758.**
6. **Saket Vikas Panase Vs.State of Maharashtra and anr. Rerported in 2022 ALL MR (Cri) 3760.**
7. **Harish Patil Vs.The State of Maharashtra and ors. reported in 2016 ALL MR (Cri.) 5155.**

21) We have considered the authorities cited by the learned APP. As the procedure of verification of the statements is not followed, which creates doubt about its verification only because the authority has stated that it is verified in his presence is not sufficient to consider said statements for passing the detention order.

22) One more aspect is there, to see whether the offences, which are considered by the detaining authority come under the purview of

the disturbance of public order. The observation made by the learned Apex Court in *Arjun Ratan Gaikwad Vs. The State of Maharashtra and ors.* reported in *Criminal Appeal arising out of SLP (Cri.) No.12516 of 2024* is as under :-

15. As to whether a case would amount to threat to the public order or as to whether it would be such which can be dealt with by the ordinary machinery in exercise of its powers of maintaining law and order would depend upon the facts and circumstances of each case. For example, if somebody commits a brutal murder within the four corners of a house, it will not be amounting to a threat to the public order. As against this, if a person in a public space where a number of people are present creates a ruckus by his behaviour and continues with such activities, in a manner to create a terror in the minds of the public at large, it would amount to a threat to public order. Though, in a given case there may not be even a physical attack.

23) In the recent judgment of Hon'ble Apex Court in *Criminal Appeal N0.2897 of 2015 Dhanyam Vs. State of Kerala and ors.*, the Hon'ble Apex Court has observed as under:-

19. In consonance with the above expositions of law, in our view, the attending facts and circumstances do not fall under the category of a public order situation. The observations made in the detention order do not ascribe any reason as to how the actions of the detenu are against the public order of the State. As discussed above, given the extraordinary nature of the power of preventive detention, no reasons are assigned by the detaining authority, as to why and how the

actions of the detenu warrant the exercise of such an exceptional power.

24) By considering the above said judgments, the Hon'ble Apex Court has come to the conclusion that every offence does not fall in the category of public order situation.

25) On perusal of the offences which are considered for passing the detention order, the petitioner was not even arrested. Considering the above said circumstances, we are of the view that the order passed by the detaining authority is required to be quashed and set aside.

26) In view of the above mentioned observations, the impugned order passed by the detaining authority is hereby quashed and set aside. Hence, we pass the following order.

27) The Writ Petition is allowed in terms of it's prayer clause (i) The petitioner be set at liberty forthwith, if not required in any other crime.

28) Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J)

(ANIL S. KILOR, J)