

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

CRIMINAL WRIT PETITION No. 453 OF 2025.

Paras Rajendra Apte,
Aged about 24 years, Occupation
Labour, Resident of Santaji Plot,
Sankat Mochan Road, Yavatmal. ... **PETITIONER.**

VERSUS

1.The State of Maharashtra,
through its Secretary, Home
Department (Special), Mantralaya,
Mumbai.

2.The Collector/District Magistrate,
Yavatmal. ... **RESPONDENTS.**

Mr. M.N. Ali, Advocate for the Petitioner.
Ms S.S. Jachak, A.P.P. for Respondents.

CORAM : ANIL L PANSARE AND
M.M. NERLIKAR, JJ.

JUDGMENT RESERVED ON : 21.08.2025.
JUDGMENT PRONOUNCED ON : 04.09.2025.

JUDGMENT (Per M.M. Nerlikar, J).

Heard. Issue Rule, returnable forthwith. Ms S.S. Jachak, A.P.P. waives notice for Respondents. By their consent, the matter is taken up for final disposal.

2. By this petition, the petitioner has challenged the order of detention dated 09.04.2025 passed by respondent no.2 – District Magistrate, Yavatmal who by exercising the powers under Section 3[2] 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 (MPDA), ordered detention of the petitioner in District Prison, Class-1, Yavatmal Central Jail, Amravati District.

3. The facts in the present case in brief are that - the petitioner is stated to have been regularly committing offences of various kinds i.e. threatening to kill, assault, threat, robbery,

3

spreading terror with weapon, attempt to murder since 2019, and that this act on his part have created danger amongst the people and further created a sense of insecurity amongst, which is adversely affecting maintenance of public order and prejudicial to public order. There are in all total 7 cognizable offences registered against him under Chapter XVI and XVII of the Indian Penal Code and punishable under Chapter V of the Arms Act. In some cases preventive action was also taken against the petitioner from committing crime. The Authority i.e. respondent no.2 thus, passed the impugned detention order branding the petitioner as 'dangerous person', which is subject matter of this petition.

4 The petitioner has challenged this order of detention mainly on two grounds – firstly, that the conditions of bail has not been considered by the respondent no.2, though bail order dated 20.12.2024 was part of the material placed before him, and secondly, the in-camera statements recorded by the Sponsoring Authority do not satisfies the test of subjective satisfaction, and therefore, the activities which are narrated in the said statements, are not prejudicial to pubic order. In support, the learned Counsel

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for the petitioner has relied on the recent judgment of Hon'ble Supreme Court in case of **Joyi Kitty Joseph .vrs. Union of India and others - (2025) 4 SCC 476.**

5. Per contra, the learned A.P.P. has conceded that though bail order was part and parcel of the material placed before respondent no.2, respondent no.2 has not taken into consideration the grounds of bail. However, that by itself will not render the order of detention as invalid, as there are other grounds on which the order of detention can be sustained. She further submits that the order of detention is based on two criminal offences i.e. (1) Crime No.1312/2024 registered with Awdhutwadi Police Station, Yavatmal for offence punishable under Sections 109, 189[4], 190, 191[2] of Bhartiya Nyaya Sanhita and (2) Crime No.1316/2024 registered with Awdhutwadi Police Station, Yavatmal for offence punishable under Sections 4, 25 of the Arms Act and two in-camera statements of witnesses "A" and "B". She submits that the entire material was considered by respondent no.2 objectively and based on that, the respondent no.2 has subjectively satisfied himself and accordingly

passed the order of detention. She further submits that even though the detention order does not sustain on one ground, however, the order would sustain on other grounds like two in-camera statements.

6. Upon consideration of rival submissions, it appears to us that the order of detention was basically passed on the grounds i.e. two crimes and two in-camera statements. While considering the grounds of detention by the Detaining Authority in paragraph no.10, it is mentioned as under :

“10. Paragraph no.8 to 8.2 on the basis of offence and incidents as well as paragraph no.9, 9.1 and 9.2 I am satisfied from the testimony of the witnesses that we are aware that the provisions of the Maharashtra Slum Gangs, Handicrafts, Drug Offenders, Dangerous Persons and Unlicensed Exhibitors of Audio Visual Works Act, 1981 (Amendment 2015) Section 2(B-1) is a dangerous person and that your act constitutes an act which would disturb public order as per Section 2(Four-A) of the said Act you are a Dangerous Person. From the above record and I personally am fully satisfied for the above reasons that your criminal activities are disturbing to the maintenance of public order on a large scale. You are a dangerous person and your criminal activities have created a sense of fear in the mind of poor people within Police Station

Awadhutwadi. From your criminal attitude and actions which have been shown here, it is clear that you are likely to commit such acts disturbing the public order in the future as well. All the reasons given here are sufficient to satisfy me that we need to be placed in order to prevent us from committing acts which disturb public order.”

7. So far as the first ground raised by the learned Counsel for the petitioner is concerned, there is no subjective satisfaction as there is no consideration of conditions of bail. Therefore, the order would not sustain. In case of Joyi Kitty Joseph (supra), the Hon’ble Court has in paragraph nos. 32 to 35 held as under :

“32. Likewise, in the present case, we are not concerned as to whether the conditions imposed by the Magistrate would have taken care of the apprehension expressed by the detaining authority; of the detenu indulging in further smuggling activities. We are more concerned with the aspect that the detaining authority did not consider the efficacy of the conditions and enter any satisfaction, however subjective it is, as to the conditions not being sufficient to restrain the detenu from indulging in such activities.

33. Aameena Begum, noticed with approval Vijay Narain Singh v. State of Bihar and extracted paragraph 32 from the same (Vijay Narain Singh) : (SCC pp.35-36)

7

“32. It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.”

[emphasis supplied]

34. The criminal prosecution launched and the preventive detention ordered are on the very same allegations of organised smuggling activities, through a network set up, revealed on successive raids carried on at various locations, on specific information received, leading to recovery of huge cache of contraband. When bail was granted by the jurisdictional Court, that too on conditions, the detaining authority ought to have

examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention ordered.

35. The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the Magistrate while granting bail for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging in further like activities of smuggling.”

8. Thus, the Hon’ble Supreme Court has highlighted the importance of conditions of bail imposed by the concerned Court while releasing an accused on certain terms and conditions in the same offence, wherein the case of detenu for detention was also considered. In such circumstances it was imperative on the part of the Detaining Authority to consider the importance of the conditions and enter into satisfaction.

9. The Hon’ble Supreme Court while relying in the case of *Amena Begum .vrs. State of Telengana* (2023 9 SCC 587, has

observed that when a person is enlarged on bail by a competent Criminal Court, great caution should be exercised in scrutinizing the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court. Therefore, the Hon'ble Supreme Court has in clear terms held that in order to arrive at a conclusion the Detaining Authority shall subjectively satisfy himself by considering the conditions of bail. However, upon perusal of the grounds of detention by respondent no.2, we do not find that the Detaining Authority has considered the conditions of bail order dated 20.12.2024 passed in Criminal Bail Application No.581/2024 relating to Crime No.1312/2024. Even this fact is also conceded by the learned A.P.P.

10. The learned Counsel for the petitioner further pressed into service his second ground in respect of two in-camera statements and submits that even if those statements are taken as it is, the activities which are mentioned in those statements, do not led to the disturbance of public order or prejudicial to the maintenance of public order. The incidents narrated are individual in nature, and

therefore, the Detaining Authority has failed to consider the contents of statements in its true perspective and therefore, it cannot be said to be subjectively satisfied.

11. However, the learned A.P.P. vehemently submitted that due to terror of the petitioner no one is coming forward to lodge complaint/first information report against the petitioner. He further submits that these two in-camera statements discloses that, there is threat to kill witness "A" and asked him to pay money for alcohol. Further in statement of witness "B", the petitioner demanded money. He slapped this witness and also threatened to kill him, and therefore, these activities of the petitioner are sufficient to brand him as 'dangerous person', which is defined under Section 2[b-1] of the MPDA Act.

12. Having considered this second ground, it is necessary to reproduce the statements of witness "A" and "B".

गोपणीय साक्षीदार :- अ

सदर साक्षीदार यांचे बयान नोंदविण्यात आले असून, साक्षीदार हे प्र.य्या. इसम पारस राजेंद्र आपटे.

वय :- 26 वर्ष. रा. संताजी प्लॉट संकट मोचन रोड ता. जि. यवतमाळ समक्ष विचारले वरून सांगतो की, [REDACTED]

मजुरी करून माझा आणि माझ्या कुटुंबाचा उदरनिर्वाह चालतो. मी पारस राजेंद्र आपटे, वय :- 26 वर्ष, रा. संताजी प्लॉट, संकट मोचन रोड ता. जि. यवतमाळ याला 5 वर्षांपासून ओळखतो. तो काहीएक कामधंदा करीत नाही.

मी [REDACTED]

[REDACTED] पारस राजेंद्र आपटे हा दारू पिवून तेथे आला. माझ्या बरोबर इतर [REDACTED] आम्हाला त्याने दारू पिण्यासाठी पैसे मागीतले. त्यावर मी त्याला आम्ही [REDACTED] इथे आलो आहो आम्ही तुला पैसे कसे देऊ असे आम्ही बोललो. त्यावर पारस याने मला तसेच इतर [REDACTED] शिवीगाळ केली आणि जिवाने मारण्याची धमकी दिली आणि मादरचोंढ तुम्हाला इकडे काम करायच असेल तर मला दारू साठी पैसे द्यावे लागतील असे म्हणाला. त्यानंतर मी व इतर [REDACTED] आम्ही सर्व वावरून गेलो. त्यानंतर तो निघून गेला. त्याच्या विंगड्यात आम्ही तक्रार दिली, तर तो आम्हाला निघून जाऊन टाकाल, अशी आम्हाला भिती वाटत होती. संकट मोचन भागातील लोकांना पारसचा कायमचा त्रास आहे. पारसच्या दहशतीमुळे कुणी पोलीस स्टेशनला तक्रार सुद्धा देत नाहीत. पारस राजेंद्र आपटे, वय :- 26 वर्ष, रा. संताजी प्लॉट, संकट मोचन रोड ता. जि. यवतमाळ हा नेहमी संकट मोचन रोड या भागाला हत्यार सोबत ठेवून दादागिरी करीत असतो. याबाबत माझी भीती आहे. परंतु त्याच्या भितीमुळे आणि दहशतीमुळे कोणीही तक्रार देत नाही. पारसमुळे संकट मोचन रोड भागातील शांतता भंग झाला आहे.

मला कोणत्याही न्यायालयात जावे लागणार नाही किंवा आपण माझा जबाब उघड करणार नाही या अटीवर जवाब देत आहे.

Bare perusal of statements of these witnesses, it can be gathered that the act of petitioner, which are narrated by these witnesses was of individual in nature. The activities narrated in those statements cannot be said to be causing any harm to the public at large, and therefore, it cannot be in any said that the activities would led to disturbance of public order or prejudicial to the maintenance of public order.

गोपनीय साक्षीदार :- ब

सदर साक्षीदार यांचे बयान नोंदविण्यात आले असून, साक्षीदार हे प्र.स्था. ईसम पारस राजेंद्र आपटे, वय :- 26 वर्षे, रा. संताजी प्लॉट ता. जि. यवतमाळ यांना याप्रकारे ओळखतात. कोणत्याही प्रकारे नांव व पत्ता उघड न होण्याच्या अटीवर त्यांचे सांगणे की,

समक्ष विचारले बरुन सांगतां की,

असुन त्यावर माझ्या कुटुंबाचा उदरनिर्वाह चालतो. पारस राजेंद्र आपटे, वय :- 26 वर्षे, रा. संताजी प्लॉट संकट मोचन रोड ता. जि. यवतमाळ याला मी सुमारे 10 वर्षांपासून ओळखतो. तो काहीएक कामधंदा करीत नाही.

मागील वर्षाच्या त्यावेळी तेथे पारस आला. पारस हा खूप दारु पिलेला होता. ये मादरचोदा कुठे चालला, चाल मला पैसे दे तुला माहीत नाही का मी कोण आहे ते. पारस आपटे बोलते मेरेको. असे त्याने मला धमकावले मी त्याला माझ्याजवळ पैसे नाही म्हटल्यावर त्याने मला थापड मारली आणि मला जिवाणे नारतो अशी धमकी दिली. त्याच्या विरोधात मी तक्रार दिली. तर तो मला जिवाणे मारुन टाकील, अशी मला भिती वाटत होती. त्यामुळे मी पारसच्या विरोधात तक्रार दिली नाही. संकट मोचन रोड येथील नागरीकांना तसेच छोट्या मोठ्या धंदवाईक लोकांना पारसचा कांगमना त्रास आहे. त्यामुळे त्याला त्या भागातील नागरीक घाबरतात. त्याच्या दहशतीमुळे कुणी पोलीस स्टेशनला तक्रार सुध्दा देत नाहीत.

मला कोणत्याही न्यायालयात जावे लागणार नाही किंवा आपण माझा जबाब उघड करणार नाही या अटीवर जबाब देत आहे.

13. In case of **Ram Manohar Lohia .vrs. State of Bihar and another – [1996] 1 SCR 709**, the Supreme Court has discussed as regards the distinction between ‘public order’ and ‘law and order’.

Paragraph nos. 54 and 55 therein reads 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."*

14. Thus, the Supreme Court has clarified the situation which would lead to disturbance of public order. Therefore, respondent no.2 in order to brand the petitioner as dangerous

persons relied on two in-camera statements. However, both the statements referred above, do not indicate that the activities of the petitioner is prejudicial to the maintenance of public order or it leads to disturbance of public order, and therefore, the respondent no.2 while arriving at the subjective satisfaction has utterly failed to consider the activities of the petitioner. Needless to mention that the respondent no.2 ought to have considered whether the activities of petitioner are individual in nature and whether it affects the public order. However, merely observing that the petitioner is a dangerous person and his criminal activities are disturbing maintenance of public order is not sufficient. The gravity and degree of criminal activity will have to be taken into consideration, the activity must be such that it should affect community or the public at large. However, this consideration is missing in the entire impugned order.

15. We have already reproduced paragraph no.10 of the grounds of detention order which deals with subjective satisfaction. It would indicate that the respondent no.2 has not applied his mind for the simple reason that he has quoted the name of the Act

wrongly, but, also has not discussed anything either on two crimes or two in-camera statements, as to how they are sufficient to enter into a subjective satisfaction. We find that there is no application of mind, and therefore, it cannot be said that the respondent no.2 has arrived at a subjective satisfaction. Apart from this, considering the fact that there is no consideration of bail order dated 20.12.2024, and further the activities shown / narrated in in-camera statements cannot form basis for passing order of detention, as the activities are individual in nature and therefore, there is no disturbance of public order. The order impugned therefore, cannot be sustained in law and is liable to be quashed and set aside. Hence, the following order.

ORDER

- (1) Criminal Writ Petition is allowed.
- (2) The order of detention passed by the respondent no.2 – Collector/ District Magistrate, Yavatmal dated 09.04.2025 is hereby quashed and set aside.

- (3) The petitioner be released forthwith if not required in any other offence.
- (4) Rule is made absolute in aforesaid terms.

JUDGE

JUDGE