

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.4766 OF 2025

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Abhijit Alias Pandurang Chandar Davari

... Petitioner

Versus

The State of Maharashtra & Ors.

... Respondents

.....

Mr. Harshvardhan Suryavanshi for the Petitioner.
Mrs. S.N. Deshmukh, APP for the Respondent - State.
Mr. Shankar S. Amberkar, Inspector of State Excise, Kagal present

.....

**CORAM : R.G. AVACHAT AND
AJIT B. KADETHANKAR, JJ.**

DATE : 20th FEBRUARY, 2026.

ORAL JUDGMENT : (Per Ajit B. Kadethankar, J.)

1. SUBJECT-MATTER : Claiming protection of his constitutional right under Article 21 r/w Article 22(5) of the Indian Constitution, the petitioner has preferred this Writ Petition under Article 226 of the Constitution of India. The petitioner challenges the detention order dated 27th October 2025 imposed by the respondent No.2 under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of

Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (MPDA Act).

2. Issues discussed:-

- (i) 'Detention Order' and 'effect of non-supply of document forming part of Detention Order and Grounds for Detention, to the detenu'.
- (ii) What is "Vital" document of which, non service on detenu results into departure to Article 22(5) of the Indian Constitution.

Rule. Rule made returnable forthwith. By consent of parties, petition is heard finally.

Facts in brief:

3. The proposal for detention of the petitioner was moved by the Inspector, State Excise, Kagal, Kolhapur vide communication dated 3rd October 2025 that was addressed to the respondent No.2.

4. The report reveals that some in-camera Statement A and B were obtained on 8th September 2025 and 9th September 2025. The said documents as also other documents pertaining to the criminal antecedents of the Petitioner were attached to the proposal.

5. Consequently, the impugned detention order was passed by the respondent No.2 on 27th October 2025. On 28th October 2025, the petitioner was taken into the custody. Subsequently, the matter was referred to the Advisory Board and the Advisory Board approved the order of detention, and the matter was then referred to the State

Government for confirmation. The State Government confirmed the detention order.

Petitioner's arguments:

6. Mr. Suryavanshi, learned counsel for the petitioner put-forth objection that the petitioner was not served with each and every document that was relied on by the authority while passing the detention order. He would submit that the very vital document i.e. a Chemical Analyzer's Report (C.A. report) was never supplied to him.

7. He would submit that looking to the entire story raised by the prosecution on the respondents' side, the CA report has vital role to play while bringing the detaining authority to the conclusion that the petitioner was liable to be detained under the provisions of the Act.

8. MR. Suryavanshi, learned Counsel has produced on record set of documents that was supplied to him by the respondent authority. He would rely on the judgment and order passed by the Hon'ble Supreme Court in case of ***Union of India Vs. Ranu Bhandari (2008) 17 SCC 348***. He would also rely on another judgment and order passed by the Hon'ble Supreme Court in the case of ***Ameena Begum Vs. The State of Telangana & Ors. 2023 (arising out of SLP (Criminal) No. 8510 of 2023)***.

9. Learned counsel for the petitioner would submit that referring to the right under Article 22(5) of the Constitution of India, the

petitioner had right to effective representation against those documents. He would submit that since the petitioner was not supplied with all the vital documents, which brought the authority to the conclusion that an action was necessary to be taken against him for his detention, the detention order cannot be sustained for want of supply of such documents. As such, he prays to allow the petition and seeks to set aside the impugned detention order.

Respondents' arguments:

10. Mrs. Deshmukh, learned Assistant Public Prosecutor with the able assistance of Inspector of State Excise, opposes the petition filed by the petitioner. She would submit that the petitioner's contention as regards some documents are not served on him, is factually incorrect.

11. To substantiate her stand, Mrs. Deshmukh has produced on record the office documents. She would submit that there was no reason for non-supply of only the CA report to the petitioner. Then, she refers to the affidavits filed by the Inspector of State Excise, in particular para 40 of the affidavit, wherein a statement is made that all the documents were supplied to the petitioner together with the detention order. Learned Assistant Public Prosecutor Mrs. Deshmukh would rely on an affidavit filed under the signature of Mr. Amol Yedge, District Magistrate, Kolhapur. She would submit that the

communication to the petitioner dated 28th October 2025 show his signature whereby it is endorsed that "*Aadeshacha Sanch Milala*". She would further submit that there is sufficient material on the record to show that the petitioner's contention is factually incorrect that he was not served with each and every document, particularly the CA Report. Learned APP would submit that the petition cannot be allowed on the very ground that vital documents were not supplied to the petitioner.

12. Mrs. Deshmukh, learned APP was at pains to urge before us by inviting our attention to another communication dated 28th October 2025, which is in the form of a Certificate issued by the Jail Officer, Yerawada Jail, Pune. Learned Assistant Public Prosecutor attempted to convince us that the said certificate clarify that the entire documents were handed over to the petitioner.

13. Mrs. Deshmukh would advance alternate argument that in view of a judgment rendered by this court in ***Gobibai V. Ghanavat Vs. State and Ors. (2003) SCC OnLine Bom 92***, even otherwise failure to supply the C.A. report can not be fatal to the detention order.

Consideration:

14. We took note that Mr. Suryavanshi, learned Counsel for the Petitioner has harped on impugned order with objection to non supply of the Chemical Analysis Report. His entire endeavor is to convince us

that the said documents were never supplied to the Petitioner. His argument is that due to non supply of the vital documents, principles of natural justice are seriously violated, and Petitioner's personal and physical liberty can not be put to stake that way.

15. On the contrary, learned Assistant Public Prosecutor has attempted to demonstrate that Petitioner's objection is factually incorrect. She relies upon the her office record and the original file brought before us by the concerned authority.

16. With able assistance of the learned Advocates for the respective sides we have gone through the material placed before us.

17. Firstly, we deal with the certificate issued by the Jailor, Yerwada Jail. We fail to understand by mentioning this document, what the respondent side wants to establish. This is mere a Certificate given by the Jail Authority. The Certificate given by the Jail Authority does not itself makes out a case that the petitioner was served with each and every document as contended by learned APP. As such, we find that this certificate would not come to help to the learned APP.

18. Considering the explanation given by the learned Assistant Public Prosecutor, we straightway go to the communication dated 28th October 2025 addressed by the Inspector, State Excise Department to the petitioner. The said documents show the signature, date and time with an endorsement that "*Aadeshcha Sancha Milala*".

19. Mrs. Deshmukh, learned Assistant Public Prosecutor, while referring to some set of documents and also the set of documents that has been produced by the petitioner, would submit that the petitioner has in unequivocal terms has accepted that "*Aadeshcha Sanch Milala*" means all the documents were received by the petitioner.

20. However, while comparing the documents with the documents that were offered by the petitioner, we find that it nowhere discloses specifically that the said contains copy of C.A. report. As such, the endorsement seems to be omnibus acknowledgment.

21. We also observe that there is certain overwriting in the index of the documents, which the learned Assistant Public Prosecutor wants to believe this Court to have been supplied to the petitioner. Even, it is noticeable that the documents which were given to the petitioner also contains corrections in paging and particularly the CA report is missing from the set of documents supplied to the petitioner.

22. Learned Assistant Public Prosecutor sought to explain the overwriting by contending that the overwriting or the corrections in the paging is in the office letter of Inspector himself and factually all the documents were supplied to the petitioner. In this context, we observe that it was for the respondent – authorities to secure signature and acknowledgment of the petitioner on each and every document to avoid this controversy and to demonstrate that the

principles of natural justice were fully observed by providing each and every document to the petitioner.

23. Under these circumstances, we are in agreement with the contention of Mr. Suryavanshi that at least the endorsement on the communication dated 28th October 2025 should have disclosed that it was for certain page numbered documents, on which reliance has been placed by the learned Assistant Public Prosecutor.

24. We now make a profitable reference to the judgment and order passed by the Hon'ble Supreme Court in the case of *Ameena Begum* (supra). The relevant observations made in paragraph 77 reads thus :-

"77. Having held thus, we are not unmindful of the decision in Vijay Kumar v. Union of India⁴² where this Court rejected the contention that the Government had not applied its mind while confirming the detention of the appellant for the maximum period of 1 (one) year from the date of detention as prescribed in Section 10 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Dealing with the contention that some reason should have been given why the maximum period of detention was imposed and while holding it to be without merit, the main judgment of the Presiding Judge of the Bench reasoned that Section 10 does not provide that any reason has to be given in imposing the maximum period of detention and that in confirming the order of detention it may be reasonably presumed that the Government has applied its mind to all relevant facts; thus, if the maximum period of detention has been imposed, it cannot be said that the Government did not apply its mind to the period of detention. It was also held that in any event Section 11 enables revocation and/or modification of the order by the Government at any time and in the circumstances, the appellant was in the least

prejudiced. The concurring judgment also took the same view that the authority is not required to give any special reason either for fixing a shorter period or for fixing the maximum period prescribed under Section 10.”

25. The Hon’ble Supreme Court in case of *Ranu Bhandari* (surpa) has observed thus :-

“32. We are inclined to agree with the submissions made on behalf of the respondent that, notwithstanding the nature of the allegations made, he was entitled to the assurance that at the time when the detention order was passed all the material, both for and against him, had been placed for the consideration of the detaining authority and had been considered by it before the detention order was passed, having particular regard to the orders passed by the Settlement Commission appointed under the provisions of the Customs Act, 1962, which absolved the detenu from all criminal prosecution.

33. In the instant case, as some of the vital documents which have a direct bearing on the detention order, had not been placed before the detaining authority, there was sufficient ground for the detenu to question such omission. We are also of the view that on account of the non-supply of the documents mentioned hereinbefore, the detenu was prevented from making an effective representation against his detention.”

26. As such, the issue No.1 (supra) has predominantly arisen with reference to Article 22(5) of the Indian Constitution. At the conclusion over Issue No.1 (supra), we find that the prosecution could not convince us that the C.A. Report was indeed served upon the Petitioner. As such, non-supply of the vital document i.e. the C.A.

report would vitiate the detention order.

27. We appreciate the sincere oppose by the learned Assistant Public Prosecutor who relied upon a decision of this Court in the case of ***Gobibai V. Ghanavat (supra)***. Reliance placed on Gobabai's case (supra), and her alternate argument invited us to formulate the Issue No.2 (supra) to answer.

28. In the case of *Gobibai Ghanavat (supra)*, prosecution's case was that the C.A. report was not received by the Detaining Authority till the date of issuance of the detention order. This Court further observed that since the Detaining Authority in the said case has not given even passing reference to the C.A. Report, under the peculiar circumstances the C.A. Report can not be said to be vital document. As such, this court in Gobibai's case (Supra), discarded the objection of non supplying C.A. Report to the Detenu.

29. For ready reference, Paragraph No.14 of the Gobibai's judgment is reproduced as follows:-

"14. Mr. Tripathi also relied on another judgment of the other Division Bench of this Court (Coram: Ashok Agarwal & Moorthy, JJ.) delivered on 20th June 1995 in Criminal Writ Petition No. 1408 of 1995 in the case of Smt. Shubhangi Jalgaonkar v. Shri Satish Sahney and Anr. In that case, as in the present case, no report of the chemical analyser had been produced to show that the liquor with which the detainee was dealing was harmful to public life or health. Following the ratio of the decision of this Court in Pandu Shettys case (supra) the Bench held that the satisfaction of the detaining authority that the activities of the

detinue had become perpetual and potential danger to the health of people is without any basis in the absence of CA report which was not relied on in the grounds of detention. On the contrary in the reply affidavit dated 5th October 2002 it has been categorically stated that the report of the chemical analyser was not received by the sponsoring authority till the issuance of the order of detention and hence there was no question of furnishing a copy of the said report to the detenu. It is further stated that the detaining authority had not relied upon the chemical analysers report for issuing the order of detention nor he has made a passing reference to the report while issuing the order of detention and, therefore, it was not a vital document of which copy ought to have been given to the detinue. Thus the subjective satisfaction of the detaining authority that the activities of the detinue posed a perpetual and potential danger to the health of people is illusory and cannot sustain in law. Consequently the said ground also fails."

30. We find that facts of case in hand are altogether different than the case of *Gobibai Ghanvat* (Supra). Its not nowhere pleaded nor has been pointed out that the C.A. Report was not received by the Detaining Authority till the date of issuance of the detention order. On the contrary, the Grounds for Detention clearly demonstrate that the Detaining Authority in so many words significantly relied upon and referred to the Chemical Analyzer's report.

As such, we hold that the observations made by this court in *Gobibais'* case (supra) won't help the respondent authorities.

31. Issue No. 2 (supra) is answered thus observing that each document on which the Detaining Authority has placed reliance; and/or even referred to in the Detention procedure, forms to be a 'Vital' document for the purpose of protection of constitutional right under

Article 22(5) of the Indian Constitution.

32. Thus, it is clear that respondent authorities were under legal obligation to supply copy of each and every document to the petitioner, which formed part of the entire detention procedure. It is clear that even in the cases where there is doubt whether the vital documents were supplied to the detenu or not, the Hon'ble Supreme Court has expressed that to protect the right of freedom of the petitioner with reference to Article 22(5) of the Indian Constitution, the detention order has to be set aside. In fact, to remove any cloud on the transparency in the detention procedure as also to ensure protection of Article 22(5) of the Constitution of India, the Detaining Authorities could have secured acknowledgment of the detenu on every document that form part of the detention procedure.

33. In view of above, we are satisfied that the petitioner has made out a case for our interference under Article 226 of the Constitution of India. Hence, we pass the following order.

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned detention order dated 27th October, 2025 passed by Respondent No.2 - District Magistrate, Kolhapur is hereby quashed and set aside.

(iii) The petitioner be released from Yerawada Central Jail forthwith.

34. Rule is made absolute in the above terms.

[AJIT B. KADETHANKAR, J.]

[R.G. AVACHAT, J.]