

(2025) 03 BOM CK 0279

In the Bombay High Court

Case No : Criminal Writ Petition No. 707 Of 2025

Mohammad Yusuf

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 21-03-2025

Acts Referred:

Constitution of India, 1950 — Article 22(5)

Code of Criminal Procedure, 1973 — Section 110

Indian Penal Code, 1860 — Section 143, 147, 323, 324, 395, 506

Citation : (2025) 03 BOM CK 0279

Hon'ble Judges : Sarang V. Kotwal, J; S.M. Modak, J

Bench : Division Bench

Advocate : Aisha Z. Ansari, S. V. Gavand

Final Decision : Disposed Of

Judgement

Sarang V. Kotwal, J

1. This is a petition filed by the father of the detainee-Shahabaz Ahmed Mohammad Yusuf @ Commando challenging the detention order bearing no. Desk-1/POL-1/MPDA/2024 dated 30.07.2024 issued by the Respondent No. 2-the District Magistrate, Nashik.

2. The detention order is passed under the provisions of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-marketing Essential Commodities Act, 1981(for short M.P.D.A.). The date of the detention is 30th July 2024. Vide a separate committal order the Petitioner was directed to be detained in Nashik Central Prison Nashik.

3. Heard Shri Ansari learned Advocate for the Petitioner and learned APP Shri Gavand for the Respondent No. 1-State.

4. The detainee was served with the grounds of detention dated 30.07.2024. There was a list of nine registered offences at Pawarwadi Police Station,

Ramjanpura City Police Station, Azad Nagar Police Station, Malegaon City Police Station and Malegaon Camp Police Station between the year 2018 to 2020. There was reference of two preventive actions in the grounds. The first was an externment proceeding and the other was a chapter case under Section 110 of the Criminal Procedure Code. However, the detention order was based on CR No. 24 of 2024 registered at Ayesha Nagar Police Station under Sections 395, 143, 147, 323, 324, 506 of the Indian Penal Code and two in-camera statements of the Witnesses-A and B.

5. The C.R. No. 24 of 2024 of the Ayesha Nagar Police Station pertains to the incident dated 03.03.2024 which had taken place at around 5.00 p.m.. In that incident the detainee and his accomplices stopped the informant and witnesses on Kusamba Road and assaulted them. The Complainant's mobile phone and Rs. 20,000/- were snatched.

6. In-camera statement of the Witness-A refers to the incident which had taken place in third week of January at around 10.30 p.m.. In that incident the detainee had forcibly removed Rs. 250/- from his pant pocket.

7. In-camera statement of Witness B refers to the incident dated 05th February which had taken place at about 9.30 p.m.. At that time, that witness was assaulted by the detainee and his accomplices.

8. Based on these materials, the detaining authority recorded his subjective satisfaction that the detainee was a Dangerous person within the meaning of the M.P.D.A. Act and he needed to be detained.

9. Accordingly, the detention order was passed. Though learned Counsel for the Petitioner has raised many grounds, but she placed reliance on two particular grounds. First ground was that the detention order was not passed promptly. No urgency was shown by the Detaining authority or the Sponsoring authority in initiating this action. That would indicate that detaining him after the lapse of unreasonable period from the last activity was not needed at all. The second ground was raised by her was that the detainee was not served with the in-camera statements at all.

10. Learned APP Shri Gavand relied on the affidavit-in-reply to oppose those submissions. We have perused the affidavit of the detaining authority. The submissions regarding delay in passing the order was referred to in paragraph no. 7 of the affidavit-in-reply. But we find that there was mere denial of the submissions in that behalf raised by the detainee. No particulars were provided as to what happened between the period of the last activity and passing of the detention order. In-camera statements were recorded on 15.03.2024 and 17.03.2024 respectively. These statements were verified on 20.03.2024 and 21.03.2024. After that the detention order was passed on 30.07.2024.

11. The affidavit mentions that due to continuous and dangerous criminal activities of the detainee, on 08.04.2024, the sponsoring authority i.e. Senior PI

of Ayesha Nagar Police Station had forwarded a proposal under MPDA Act to Additional S.P., Malegaon, Nashik (Rural), who carefully went through all the papers and the proposal was forwarded to the Superintendent of Police, Nashik (Rural) on 13.04.2024. On 23.04.2024, Superintendent of Police, Nashik (Rural) forwarded the proposal to the detaining authority who received it on 25.04.2024. From that point onwards, till passing of the detention order on 30.07.2024, the affidavit is completely silent. Nothing was explained as to what transpired between 25.04.2024 upto 29.07.2024.

12. Thus, there is force in the submission of learned Counsel for the Petitioner that the authorities had not shown urgency in passing the detention order, if the detainee's prejudicial activities were so dangerous for the society at large that it affected the public order.

13. It is not every delay which by itself vitiates the detention order but unexplained and unreasonable delay certainly can be looked into for considering the sustainability of the detention order.

14. In this regard we find that in this particular case, the Authorities have failed to explain as to why the detention order was not passed expeditiously showing sufficient urgency.

15. Learned Counsel for the Petitioner has raised another ground that in-camera statements of the witnesses A and B were not furnished to the detainee. In this behalf learned APP Shri Gavand submitted that the record shows the original Marathi in-camera statements were furnished to him and there was signature of the detainee showing that those statements were furnished. However, he conceded that those Marathi statements were not translated into Urdu. Thus, the detainee was not furnished with in-camera statements in Urdu language with which he was conversant.

16. The Petitioner has stated in the petition, i.e. in paragraph no. 4 that the detainee is conversant only with Urdu language. This fact is also accepted by the detaining authority; as Urdu translation of the detention order itself and the grounds of the detention translated into Urdu were served on the detainee.

17. In this background, it was equally important for the detaining authority to have served the detainee with the Urdu translation of the Marathi in-camera statements. That was not done. Therefore, the detainee is deprived of making the earliest effective representation challenging the order of the detention, thereby affecting his valuable right under Article 22(5) of the Constitution of the India.

18. Thus, on all these counts the detention order is liable to be set aside. Hence, the following order:-

ORDER

(i) The order of Detention bearing No. DESK-1/POL-1/MPDA/ 02/2024, dated 30.07.2024 is quashed and set aside.

- (ii) The rule is made absolute in the aforesaid terms.
- (iii) The detinue shall be released forthwith if not required in any other case.
- (iv) The Writ Petition is disposed of.