

(2025) 10 BOM CK 1098
In the Bombay High Court
Case No : Writ Petition No. 839 Of 2025

Sangita Nandu Toradmal

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-10-2025

Acts Referred:

Constitution Of India, 1950 — Article 22(5), 226

Maharashtra Prevention of Dangerous Activities, 1981 — Section 3(2), 8(1), 135, 142

Bharatiya Nyaya Sanhita, 2023 — Section 109, 351(3), 352

Citation : (2025) 10 BOM CK 1098

Hon'ble Judges : A. S. Gadkari, J;Ranjitsinha Raja Bhonsale, J

Bench : Division Bench

Advocate : A.M.Z. Ansari, Nasreen Ayubi, Madhavi H. Mhatre

Final Decision : Dismissed

Judgement

A. S. Gadkari, J

1) Petitioner, i.e. mother of detainee, namely Sanket @ Khoonkhar Dadya Nandu Toradmal, has invoked jurisdiction of this Court under Article 226 of the Constitution of India, impugning the Detention Order dated 11th November 2024, bearing No. D.O.2024/MPDA/DET-14/CB-395, issued by the Respondent No.2, the Commissioner of Police, Nashik (City), Nashik, 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 (Maha.Act No.LV of 1981) (Amendment-1996, 2009 and 2015) (for short "MPDA Act"). The Respondent No.2 has also passed Committal Order of even date, directing the detainee to be detained in Central Prison, Nashik Road, Nashik.

2) Heard Smt. Ansari, learned Advocate for Petitioner and Smt. Mhatre, learned APP for Respondent, State. Perused entire record produced before us and the Affidavits of the Respondents/Authorities.

3) Smt. Ansari, learned Advocate for Petitioner assailed the Detention Order dated 11th November 2024 on the following three grounds :

(i) That, the Detention Order along with Committal Order of even date was served upon the Petitioner on 12th November 2024 in jail. That, on 13th November 2024, the Petitioner was served with the Grounds of Detention along with compilation of documents relied upon in English as well as Marathi language. At the time when the Petitioner was taken into detention, he was not communicated by the Detaining Authority i.e. Respondent No.2, the reasons for his detention and therefore the Detention Order is vitiated on the said count.

(ii) That, though the Respondent No.2, the detaining Authority has shown its awareness that, at the time of issuance of Detention Order, the Petitioner was in judicial custody, yet the detaining Authority has failed to bear in his mind and had failed to have recorded his satisfaction to the effect, as to whether any reliable material was placed before him and there was an imminent likelihood of the Petitioner being released on bail.

(iii) That, the medical certificate of the victim in C.R. No. 273 of 2024, dated 15th September 2024, registered with Mumbai Naka Police Station, Nashik, was not placed before the Respondent No.2 i.e. detaining Authority, before passing the Order of detention and therefore the satisfaction reached by the detaining Authority regarding veracity of the statement of injured therein that, he suffered injury on his forehead due to the assault of knife by the Petitioner is based on non application of mind. That, the said injury certificate has not been supplied to the Petitioner with the compilation of documents and therefore the right of the Petitioner to make an effective representation with the competent Authority, is impaired and therefore also the Order of detention is vitiated.

4) As far as the first point i.e. non supply of the Grounds of Detention along with relied upon documents in English as well as Marathi language upon the Petitioner on 12th November 2024 is concerned, Section 8(1) of the MPDA Act states that, when a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

4.1) In the present case, admittedly the Order of Detention was served upon the Petitioner on 12th November 2024, when he was in judicial custody in C.R. No. 273 of 2024, registered with Mumbai Naka Police Station, Nashik and the Grounds of Detention along with compilation of documents relied upon are served on him on 13th November 2024. The said fact has been admitted by the Petitioner in para No. 5(x) i.e. clause of Grounds in the Petition. The Hon'ble Supreme Court in the case of Union of India and Anr. Vs. Dimple Happy Dhakad, reported in AIR 2019 SC 3428, in para No. 22 has held as under :

"22. There is no statutory obligation on the part of the detaining authority to serve the grounds of detention and relied upon documents on the very same day; more so, when there is nothing to show that the detaining authority was guilty of inaction or negligence. The principle laid down by the Supreme Court in Mehdi Mohamed Joudi v. State of Maharashtra and others (1981) 2 SCC 358 : (AIR 1981 SC 1752) that non-supply of documents and material pari passu would vitiate the detention order must be understood in the context of Section 3(3) of the COFEPOSA Act. Serving of detention order, grounds of detention and supply of documents must be contemporaneous as mandated within the time limit of five days stipulated under Section 3(3) of the COFEPOSA Act and Article 22(5) of the Constitution of India."

4.2) The Petitioner has not shown anything to infer that, the detaining Authority was guilty of inaction or negligence. It is thus clear that, the Order of Detention passed by the detaining Authority will not be said to have been vitiated on this count. In view thereof, the reliance placed by the learned Advocate for the Petitioner on the decision of this Court in the case of Smt. Fulvanti Tejraj Doshi Vs. The Union of India & Ors., passed in Writ Petition No. 350 of 1988, dated 1st July 1988, is of no avail to her.

4.3) As far as the second point raised by the learned Advocate for the Petitioner is concerned, the impugned Detention Order is passed on the premise of one crime lodged against the Petitioner i.e. C.R. No. 273 of 2024, registered with Mumbai Naka Police Station, Nashik, dated 15th September 2024, under Sections 109, 352, 351(3) of the BNS read with Section 135 and 142 of the MP Act and two in camera statements of witnesses 'A' and 'B'. In the said crime, the Petitioner was arrested on 27th September 2024. The Petitioner was initially remanded to police custody and subsequently to magisterial custody by the jurisdictional Magistrate. The Petitioner thereafter filed an Application for bail on 21st October 2024, bearing Criminal Application No. 2195 of 2024. The said Application was pending for hearing before the trial Court. The in camera statements of witnesses 'A' and 'B' came to be recorded on 23rd October 2024 and immediately verified by the concerned Assistant Commissioner of Police on 25th October 2024. The detaining Authority after perusing the record forwarded to it, by the sponsoring Authority through proper channel, reached to the conclusion and its subjective satisfaction that, the criminal activities of the Petitioner are adversely affecting the public Order. As the offence committed by the Petitioner was not punishable with life or death imprisonment, there was every likelihood that the Petitioner would be released on bail in the said offence by the competent Court.

4.4) Taking into consideration the propensity of the Petitioner towards criminality, there was imminent possibility that, the Petitioner would revert to similar activities, prejudicial the maintenance of public Order in future, the detaining Authority after recording its subjective satisfaction, passed the impugned Detention Order dated 11th November 2024. Record clearly indicates that, as

soon as the Detention Order was served upon the Petitioner on 12th November 2024, he withdrew his said Application for bail from the trial Court and according to us, to defeat the purpose of issuing the Detention Order against him. The Hon'ble Supreme Court in the case of Kamarunnissa Vs. Union of India and Anr., reported in AIR 1991 SC 1640 = 1991 AIR SCW 1630, in para No. 13 has held as under :

"13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court. What this court stated in the case of Ramesh Yadav, (AIR 1986 SC 315) (supra) was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This stems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody."

4.5) The Hon'ble Supreme Court in the case of Union of India and Anr. Vs. Dimple Happy Dhakad (supra), in para Nos. 30, 34, 36 and 37, has held as under :

"30. It is well-settled that the order of detention can be validly passed against a person in custody and for that purpose, it is necessary that the grounds of detention must show that the detaining authority was aware of the fact that the detenu was already in custody. The detaining authority must be further satisfied that the detenu is likely to be released from custody and the nature of activities of the detenu indicate that if he is released, he is likely to indulge in such prejudicial activities and therefore, it is necessary to detain him in order to prevent him from engaging in such activities.

34. In Veeramani v. State of T.N. (1994) 2 SCC 337 : (1995 AIR SCW 1730) in para (6), the Supreme Court held as under:-

"6. From the catena of decisions of this Court it is clear that even in the case of a

person in custody, a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in custody; if he has reason to believe on the basis of the reliable material that there is a possibility of his being released on bail and that on being so released, the detenu would in all probabilities indulge in prejudicial activities and if the authority passes an order after recording his satisfaction the same cannot be struck down."

36. The satisfaction of the detaining authority that the detenu is already in custody and he is likely to be released on bail and on being released, he is likely to indulge in the same prejudicial activities is the subjective satisfaction of the detaining authority. In *Senthamilselvi v. State of T.N. and another* (2006) 5 SCC 676 : (2006 AIR SCW 4648), the Supreme Court held that the satisfaction of the authority coming to the conclusion that there is likelihood of the detenu being released on bail is the "subjective satisfaction" based on the materials and normally the subjective satisfaction is not to be interfered with.

37. The satisfaction of the detaining authority that the detenu may be released on bail cannot be ipse dixit of the detaining authority. On the facts and circumstances of the present case, the subjective satisfaction of the detaining authority that the detenu is likely to be released on bail is based on the materials. A reading of the grounds of detention clearly indicates that detenu Nisar Aliyar has been indulging in smuggling gold and operating syndicate in coordination with others and habitually committing the same unmindful of the revenue loss and the impact on the economy of the nation. Likewise, the detention order qua detenu Happy Dhakad refers to the role played by him in receiving the gold and disposing of the foreign origin smuggled gold through his multiple jewellery outlets and his relatives. The High Court, in our view, erred in quashing the detention orders merely on the ground that the detaining authority has not expressly recorded the finding that there was real possibility of the detenues being released on bail which is in violation of the principles laid down in *Kamarunnisa* (AIR 1991 SC 1640) and other judgments and Guidelines No.24. The order of the High Court quashing the detention orders on those grounds cannot be sustained."

4.6) After applying the principles of law enunciated by the Hon'ble Supreme Court in the aforesaid two decisions, we are of the considered opinion that, the detaining Authority has not committed any error while passing the impugned Detention Order when the Petitioner was in custody.

4.7) As far as, the third ground raised by the learned Advocate for the Petitioner, as noted above is concerned, the investigating agency while producing the Petitioner before the learned Magistrate for first remand had infact produced all the necessary documents and thereafter under the orders of Court the Petitioner was remanded to police custody. After perusing the entire record, we are of the view that, the said document i.e. the injury certificate of the victim in C.R. No. 273 of 2024, is not a vital document and its non supply to the Petitioner in no way affected his right to make an effective representation with the competent

Authority and his right under Article 22(5) of the Constitution of India, to make the said representation is neither impaired nor violated due to non supply of the said document to him. Record clearly indicates that, the detaining Authority has rationally applied its mind and has reached to its subjective satisfaction while issuing the impugned Detention Order.

4.8) The aforestated discussion leads us to hold that, there are no merits in the Petition. There is no legal infirmity in passing the Detention Order dated 11th November 2024 and the Committal Order of even date by the Respondent No.2.

4.9) The Petition being dehors of merits and is accordingly dismissed.