Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3071 OF 2025

Haridas Shankar Gaikwad]
Age 52 years,]
R/o. H. No.162, Manjunath]
Nagar, Limaewadi, Solapur] Petitioner

Versus

1. Commissioner of Police]
Solapur

2. The State of Maharashtra]
(Through the Secretary Home]
Department (Spl)]
Mantralaya, Mumbai.]

3. The Superintendent]
Yerwada Central Prison]
Pune] Respondents

[Petitioner is presently detained at]
Yerwada Central Prison, Pune).]

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Ms. Jayashree Tripathi, for Petitioner.

Ms. S.N. Deshmukh, A.P.P, for Respondent – State.

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CORAM : M.S. KARNIK &
AJIT B. KADETHANKAR, JJ

DATE : 11th NOVEMBER, 2025.

ORAL JUDGMENT: [PER M.S. KARNIK, J.]:

1. The challenge in this petition is to the order of detention bearing D.O. No. 04/CB/BM-EC/2025 dated 14th April, 2025 issued under section 3 of the Maharashtra Prevention of Dangerous Activities Act, 1981 (for short "MPDA Act") by respondent No.1 – Commissioner of Police, Solapur.

2. The facts of the case in brief are that Senior Inspector of Police, Salgarwasti Police Station, Solapur submitted a proposal on 10th March, 2025 for detention of petitioner - Haridas Shankar Gaikwad under the MPDA Act to the Commissioner of Police, Solapur. Respondent No.1 – Commissioner of Police, Solapur and the Detaining Authority carefully considered and scrutinized the material placed before it and was subjectively satisfied that the activities of the petitioner were prejudicial to the maintenance of the public order. Respondent No.1 was satisfied that the petitioner is a dangerous person within the meaning of the MPDA Act. The respondent No.1 was further satisfied that the petitioner was acting in a manner prejudicial to the maintenance of the public order and it was necessary to detain him under the MPDA Act with a view to prevent him from acting in such manner in future. Respondent No.1 – Detaining Authority was satisfied from the material on which reliance is placed by him that the detention order needs to be made. The said material included the statements of in camera witnesses. The detention order was issued against the detenu on 14th April, 2025. The detention order

was served on the detenu on 14th April, 2025. A report under sub-section (3) of Section 3 of the MPDA Act was sent to the Government of Maharashtra on 15th April, 2025 by email. The State Government approved the order of detention on 23rd April, 2025 and confirmed the said order of detention on 22nd May, 2025.

3. Learned Counsel for the petitioner relied upon the grounds (e) and (f) of the memo of petition in support of her submission. The said grounds read as under;

> *"(e) The petitioner says and submits that criminal prosecution and the basis of detention order is C.R no.67/2025 u/Sec. 287, 288 IPC r/w Sec 3, 7 of Essential Commodities Act 1955 dated 03.02.2025. The petitioner was arrested and granted bail by the Competent Court of law after considering the facts and circumstances of the said case, and on certain terms and conditions on the same day I.e on 07.03.2025. The petitioner further submits that the detaining authority ought to have examined whether the said conditions granting bail were sufficient or not to curb further indulgence of the petitioner in his prejudicial activities, the order of detention is completely silent on this aspect. And secondly, the detaining authority has failed to record his subjective satisfaction as to why the said terms and conditions on which the petitioner was granted bail, were sufficient or not to restrain the him from indulging in further prejudicial activities, and therefore the issuance of a detention order against the petitioner. This particular view is taken by the Hon'ble Apex Court in @ Special Leave Petition (Crl.) No.16893 of 2024) Joyi Kitty Joseph Vs. UOI & Ors at Para 21 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. 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 petitioner from indulging in further like activities of smuggling. Para 22. We, hence, allow the appeal and set aside the order of detention. The petitioner shall be released forthwith, if still in custody". Hence, the detention order is vitiated on this ground alone. The order of detention is illegal and bad in law liable to be quashed and set aside.

*f. The petitioner says and submits that the petitioner was granted bail by the competent Court of law on 07.03.2025 in relied on C.R. No.67/2025, and thereafter there are no prejudicial activities of the petitioner. In the bail order dated 07.03.2025 there are a number of conditions on which the petitioner was granted bail. Wherein, after enumerating 5 important conditions the Ld. J.M.F.C (Court No.3) Solapur clearly states that "**Breach of any bail conditions, shall entail for cancellation of bail**". It is pertinent to note that the authorities have recorded four in camera statements A, B, C,D which are narrating incidents of the month of February 2025 i.e. prior to the petitioner's release on bail. It is pertinent to note that after the petitioner's release on bail, there are no prejudicial activities of the petitioner recorded. If at all the petitioner engaged in similar activity of black marketing, then the authorities could have moved in for cancellation of bail, as it was an effective remedy available with them, moreover it was also stated in the bail order dated 07.03.2025. The authorities have rather passed detention order on 14.04.2025. This shows arbitrary action on the part of the detaining authority to pass detention order. The order of detention is illegal and bad in law liable to be quashed and set aside. The petitioner further submits that the Hon'ble Apex Court in the case of 2022 Live Law (SC) 559, Shaik Nazneen Vs State of Telangana Wherein the Hon'ble*

> *Apex Court has reiterated in para 17 "in any case, the State is not without a remedy, and in case the petitioner is much a menace to the society as is being alleged then the prosecution should seek for cancellation of his bail and/or move an appeal to the Higher Court, but definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case".*

4. Learned A.P.P invited our attention to the affidavit-in-reply filed on behalf of the Detaining Authority. It is submitted that as many as four in camera statements of witnesses were recorded. It is submitted that detention order was passed within the frame work of the MPDA Act and also protected the rights of the detenu as guaranteed under Article 22 (5) of the Constitution of India. According to the learned A.P.P, materials on record clearly indicate that the petitioner is engaged in illegal refilling of domestic liquefied petroleum gas (LPG) into auto rickshaw for gaining undue economic advantage and thus committed offences in contravention of sections 3 and 7 of The Essential Commodities Act, 1955 which affects adversely to the maintenance of public order. In camera statements 'A' was verified on 25th February, 2025; in camera statement "B" was verified on 1st March, 2025; in camera statement "C" was verified on 4th March, 2025 and in camera statement "D" was verified on 6th March, 2025 by Shri Yashwant Gavari, A.C.P, Division -2, Solapur who is a superior senior officer.

5. Learned A.P.P submitted that from the in camera statements of the witnesses, it is clear that the petitioner's activities in relation to those incidents

are prejudicial to the maintenance of supplies of the commodities essential to the community (i.e supply of domestic L.P.G cylinder) which affects adversely the maintenance of public order. It is submitted that petitioner's criminal activities affected not only the witnesses but also affected auto rickshaw drivers, local people, nearby shopkeepers, customers, passersby and gathered people.

6. Learned A.P.P further submitted that the petitioner is indulging in criminal activities since the year 2023 and two serious offences were registered against him in contravention of sections 3 and 7 of the Essential Commodities Act, 1995. Learned A.P.P submits that preventive action was taken against the petitioner under section 129 of the Bhartiya Nagrik Suraksha Sanhita, 2023 in the year 2024 in which a final bond was taken for good behaviour. Apart from this, in the year 2025, petitioner has committed two offences in contravention of sections 3 and 7 of The Essential Commodities Act, 1995 as mentioned in paragraph No.5 of the grounds of detention.

7. Heard learned Counsel. We have carefully perused the materials on record. From the detention order, it is seen that respondent No.1 had relied upon in-camera statements of the witnesses from which he formed an opinion that petitioner's activities in relation to those incidents are prejudicial to the maintenance of supplies of the commodities essential to the community (i.e supply of domestic L.P.G cylinder) which affects adversely the maintenance of public order.

8. The Detaining Authority relied on C.R. No.32 of 2025 registered with Salgar Wasti Police Station under Sections 287, 288 of BNS, 2023 r/w sections 3 and 7 of the Essential Commodities Act, 1955. Further, Detaining Authority relied on C.R. No.67 of 2025 registered with Salgar Wasti Police Station under sections 287, 288 of the BNS, 2023 r/w sections 3 and 7 of The Essential Commodities Act, 1955. The Detaining Authority records that in respect of C.R. No.32 of 2025, a notice was issued to the petitioner as per section 35 (3) of the BNSS. 2023 as mentioned in paragraph 5-1 of the grounds of detention. The Detaining Authority says that the petitioner was released on bail in C.R. No.67 of 2025 as mentioned in paragraph 5-2 of the grounds of detention. The Detaining Authority observed that the petitioner was a free person and taking into consideration his propensity towards criminality, there was an imminent possibility that he is likely to revert to the similar activities which are prejudicial to the maintenance of supplies of the commodities essential to the community (i.e domestic LPG cylinder) which is likely to affect adversely, the maintenance of public order in future.

9. It is significant to note that by an order dated 7th March, 2025, the petitioner was released on bail in respect of C.R. No.67 of 2025 on the following terms and conditions;

> *"1. The application is allowed.*
>
> *2. The Accused, namely, Haridas Shankar Gaikwad be released on P.B and S.B. of Rs.25,000/-.*

3. He shall not tamper with any prosecution witnesses and evidence in any manner.

4. He shall attend Salgar Wasti Police Station on every Monday between 10.00 a.m to 01.00 p.m. till filing of the charge-sheet or until earlier order.

5. He shall co-operate with the Investigating Officer as and when required by him.

6. He shall not misuse the liberty granted to him by indulging himself in similar offences.

7. This order be communicated with the Jail Authority by e-mail.

Breach of any bail condition shall entail cancellation of bail".

10. At this stage, it is important to refer to the decision of the Hon'ble Supreme Court in case of **Joyi Kitty Joseph Versus Union of India and others**, [1]. Their Lordships in paragraphs 32 to 35 have observed thus;

"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. Ameena Begum vs. State of Telangana, (2023) 9 Supreme Court Cases, 587, noticed with approval Vijay Narain Singh v. State of Bihar (1984) 3 Supreme Court Cases 14 and extracted paragraph 32 from the same (Vijay Narain Singh) : (SCC pp.35-36).

1 (2025) 4 Supreme Court Cases 476

> *"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 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."*
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> *(emphasis supplied)*
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> *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".*

11. We may also profitably refer to the decision of the Hon'ble Supreme Court in the case of **Shaik Nazneen Versus State of Telangana and others**[2],

2 (2023) 9 Supreme Court Cases 633

Their Lordships in paragraph 19 observed thus;

> *"19. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case".*

12. It is pertinent to note that in the present case, the Detaining Authority has not considered the efficacy of the conditions imposed by the jurisdictional Court while enlarging the petitioner on bail and enter any satisfaction, however subjective it is, as to the conditions not being sufficient to restrain the detenu from indulging in such activities. In the light of law laid down by the Hon'ble Supreme Court, it is to be borne in mind that when a person is enlarged on bail by 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. The order of releasing the petitioner on bail is dated 7th March, 2025. Detention order is passed on 14th April, 2025. In-camera statements were recorded prior to the enlargement of the detenu on bail. There is nothing on record to indicate that after enlargement on bail, the petitioner has indulged in any criminal activities or for that matter, the prosecution has moved any application for cancellation of bail.

13. When the 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 order. The State is not without a remedy. In case the detenu is such a menace to the society as alleged then prosecution should seek cancellation of bail and/or move appeal to the higher Court. But definitely seeking shelter under the Preventive Detention Law is not the proper remedy under the facts and circumstances of the present case.

14. We, therefore, have no hesitation in setting aside the order of detention as the order of detention calls for interference in exercise of jurisdiction of this Court under Article 226 of the Constitution of India. The order of detention is quashed and set aside. The petitioner is directed to be set at liberty forthwith.

15. The petition is disposed of.

[AJIT B. KADETHANKAR, J.] [M.S. KARNIK, J.]