

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO.4726 OF 2025**

XYZ

... Petitioner

versus

State of Maharashtra

... Respondent

Mr. Abhijeet V. Jangale with Ms. Nikita Bordepatal, for Petitioner.
Mrs. R.S.Tendulkar, APP for State.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 13 JANUARY 2026
PRONOUNCED ON : 16 JANUARY 2026

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
2. The Petitioner (hereinafter referred to as the Victim No.3) takes exception to a judgment and order dated 24 June 2025 passed by the learned Additional Sessions Judge, Yeola, in Criminal Revision Application No.11 of 2025, whereby the application preferred by the Victim No.3 and other victims against an order dated 19 April 2025 passed by the learned Magistrate, Yeola under Section 17(4) of the Immoral Traffic (Prevention) Act, 1956 (PITA 1956), thereby ordering the detention of Victim No.3 and other victims in a protective home for a period of one year, came to be dismissed by affirming the said

order passed by the learned Magistrate.

3. Shorn of unnecessary details, the background facts can be stated, in brief, as under :

3.1 Pursuant to an information, Yeola Police conducted a raid at Hotel Vijay Lodging, Yeola. In the said raid, victim No.3 and other four victims were rescued. Two persons were arrested and a crime, vide C.R.No.116 of 2025 for the offences punishable under Sections 3, 4, 5 and 6 of the PITA, 1956, came to be registered against those persons.

3.2 The learned Magistrate, Yeola, conducted an inquiry under Section 17(2) of the PITA, 1956. After appraisal of the report submitted by the Probation Officer, medical examination report of the victims and the statements of the victims, learned Magistrate was persuaded to direct that Victim No.3 be kept in Vatsalya Mahila Vastigrah, Ashok Stambh, Nashik, for a period of one year.

3.3 Noting the facts that Victim No.3 had no relatives, who could take care of the Victim No.3, and, she had no source of income, learned Magistrate reasoned that, if the Victim No.3 was enlarged on personal bond, there was a strong possibility of the Victim No.3 again indulging in immoral activities. Thus, Victim No.3 was directed to be kept in the protective home i.e. Vatsalya Mahila Vastigrah, Nashik, for a period of one year. Victim Nos.1 and 2 were also directed to be kept in the protective home.

3.4 Being aggrieved, Victim Nos.1 to 3 preferred a Revision before the learned Sessions Judge, being Revision Application No.11 of 2025. By the impugned order, learned Additional Sessions Judge dismissed the Revision Application, holding, *inter alia*, that the victims were subjected to exploitation for commercial sex work, and having regard to the situation in life of the victims, the order passed by the learned Magistrate was sustainable.

3.5 Being further aggrieved, Victim No.3 has invoked the writ jurisdiction.

4. I have heard Mr. Jangale, learned Counsel for the Petitioner, and, Mrs. Tendulkar, learned APP for the State. Learned Counsel took the Court through the documents and the material on record.

5. Mr. Jangale, learned Counsel for the Petitioner, would submit that the impugned orders suffer from multiple infirmities. Firstly, the Courts below have lost sight of the fact that the Petitioner is not an accused, but the victim. Secondly, the Petitioner is a major. Thirdly, the Courts below have declined to release her on a tenuous premise that the victim may again relapse into commercial sex work. In the process, the cherished fundamental rights of the Victim No.3, who was a major, have been trampled upon. As the Courts below have not appreciated the distinction between the victim of exploitation and the preparator of the offences under the PITA, 1956, the impugned orders are unsustainable.

6. Mr. Jangale would further submit that, there is a clear breach of the

provisions contained in Section 17 of the PITA, 1956, in as much as the learned Magistrate had not had the assistance of the Panel of five respectable persons. Though, sub-section (5) of Section 17 uses the term 'may', yet, in the context of the legislative object, the term 'may' is required to be construed as 'shall'.

7. Per contra, Mrs. Tendulkar, learned APP, stoutly supported the impugned orders. It was submitted that, as the Petitioner had no relatives, who could vouch for her safety, the learned Magistrate was justified in ordering the detention of the Petitioner in a protective home, as there was an imminent risk of the Petitioner being again forced to indulge in commercial sex work. Learned APP laid stress on the facts that the victim was allegedly residing alone, since her parents had separated, and the economic condition of the victim was extremely poor.

8. A pivotal question as to whether the victim, who is a major, can be ordered to be detained in a protective home, against her wish, when there are allegations that the victim had engaged in commercial sex work, arises for consideration.

9. PITA 1956 was enacted to provide for the prevention of immoral traffic. The principal object of the Suppression of Immoral Traffic in Women and Girls Act, 1956, which was substituted by the Act No.44 of 1986, was to prevent commercialisation of the vice and trafficking among women and girls. By the

subsequent amendments, the scope of the PITA, 1956, has been widened to cover all persons, whether male or female, who are exploited sexually for commercial purposes and to make adequate provisions in that regard.

10. PITA 1956 contains a fasciculus of provisions. Under Section 2(f) of the PITA, 1956, 'Prostitution' means the sexual exploitation or abuse of persons for commercial purpose, and the expression 'prostitute' shall be construed accordingly. In addition to the punishments for the offences defined under PITA 1956, provisions have been made for protection of the victims of trafficking.

11. Sub-section (1) of Section 17 of the PITA, 1956, provides that when the special police officer removes a person under Section 15 or a person is rescued under Section 16, such person is required to be produced before the nearest Magistrate. Thereafter, the nearest Magistrate is enjoined to pass such order as he deems fit for the safe custody of such person for a stipulated period. Sub-section (2) of Section 17 provides that the appropriate Magistrate shall after giving the person an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of Section 16, the age, character and antecedents of the person and the suitability of his parents, guardian or husband for taking charge of him and the nature of the influence which the conditions in his home are likely to have on him if he is sent home, and, for this purpose, the Magistrate may direct a

probation officer to inquire into the above circumstances and into the personality of the person and the prospects of his rehabilitation.

12. Where the Magistrate is satisfied after making an inquiry as required under sub-section (2) that the information received is correct and that such person is in need of care and protection, the Magistrate may, subject to the provisions of sub-section (5), make an order that such person be detained for such period, being not less than one year and not more than three years, in a protective home or in such other custody as he shall, for reasons to be recorded in writing, consider suitable. Sub-section (5) of Section 17 provides that, in discharging his functions under sub-section (2), a Magistrate may summon a panel of five respectable persons, three of whom shall wherever practicable, be women, to assist him, and, may for this purpose, keep a list of experienced social welfare workers in the field of suppression of immoral traffic in persons.

13. In the case of **Kumari Sangeeta Vs. State and Anr.**¹, learned Single Judge of the Delhi High Court, clarified the object of PITA 1956. It was, inter alia, held that the object of the PITA, 1956 was not to abolish the prostitute or the prostitution. There is no provision under the Act which makes the prostitution per se a criminal offence or punishes a person because he is indulging in prostitution. What is punishable under the PITA 1956 is sexual

¹ 1995 Cri.L.J. 3923

exploitation or abuse of persons for commercial purposes and to earn the bread thereby except where a person is carrying on prostitution in the vicinity of a public place (vide S. 7) or when a person is found soliciting or seducing another person (vide S. 8).

14. In the case of **Asiya Anwar Shaikh Vs. The State of Maharashtra and Anr.**², a learned Single Judge of this Court delved into the question as to whether a major victim can be detained in the protective home against her wish on the apprehension that such person may again indulge into commercial sex work. In the facts of the said case, the learned Single Judge tested the justifiability of the impugned action of detention on the touchstone of the constitutional guarantee of freedom under Article 19 of the Constitution.

The relevant observations read as under :

"12. Indisputably Respondent No.2 Victim XYZ is major, therefore it is imperative to consider her wishes. There is no doubt that the State Government within its power under the said Act, keeping in view of the interest of the victim, can seek appropriate directions from the Court to send the victim to Corrective Institution. It is true that the fundamental rights conferred upon the citizen of India in Part III of the Constitution of India are with reasonable restrictions mentioned in each Article. The fundamental rights of the citizen enshrined in Part III of the Constitution of India stand on higher pedestal vis-a-vis statutory right or any other rights conferred by the general law. Therefore I find considerable

² 2019 ALL MR (Cri) 5006

force in the submission made by the learned counsel for the Petitioner that the victim being major, her fundamental right to move from one place to another place, reside at the place of her choice and to chose her vocation has to be considered, and contrary to her wishes she cannot be asked to reside in the said Corrective Institution i.e. Shaskiya Mahila Rajya Gruh, Prerana Mahila Wasti Gruh, Baramati, Dist. Pune.

13. It is pertinent to mention at this stage that the police machinery has not brought on record any material suggesting that Respondent No.2 Victim XYZ is suffering from disability or her case is covered by reasonable restrictions under Article 19 of the Constitution of India, and setting her free would cause danger to the society. It is also required to be noted that nothing is placed on record by the police which would show that her right to move from one place to another place or reside at the place of her choice is hampered due to restrictions imposed in Article 19 of the Constitution of India." (emphasis supplied)

15. Following the aforesaid pronouncement, in the case of **Kajal Mukesh Singh V/s. State of Maharashtra**³, another learned Single Judge enunciated that the victims being major, their fundamental rights to move from one place to another cannot be curtailed. The victims cannot be subjected to unnecessary detention against their wish. The observations in paragraph 30 read as under :

"30. In view of this position of law, the victims being major, their fundamental rights to move from one place to another

³ 2021(1) Abr (Cri) 534

place or to reside at a place of their choice and choose their vocation has to be considered. They cannot be subjected to unnecessary detention contrary to their wish and should be asked to reside in the corrective institution. There is no material on record suggesting that the victims are suffering from any disability or any diseases so that reasonable restrictions can be placed. It is not the case of the Police that setting the victims free would cause some danger to the society. It is nearly one year that the victims have been detained in the corrective home against their wish and, therefore, for the reasons stated herein, they need to be released forthwith.” (emphasis supplied)

16. Laying emphasis on the imperativeness of soliciting assistance of the Panel of respectable persons in exercising the power under Section 17(4) of the PITA 1956, learned Single Judge observed, as under :

“26. Section 17(4) implies that an order under the said Section can only be passed subject to the provision of sub-section (5) of section 17 of the said Act. AS already stated, sub-section (5) contemplates that while discharging the function under sub-section (2), the Magistrate will have to summon a panel of 5 respectable persons, 3 of whom shall, wherever practicable, be women to assist him in that regard. It can, therefore, be safely inferred that the legislature while using the word “may” wanted to use it in a mandatory sense otherwise they would not have subjected to exercise powers under Sections 17(2) to 17(5) of the said Act.”

17. In the light of the aforesaid position in law, re-adverting to the facts of the case, it is imperative to note that, two of the co-victims i.e. victim Nos.4 and 5, were released by the learned Magistrate, primarily on the ground that those victims had a family and they had undertaken to take proper care of the victims and ensure that they do not indulge in identical acts. The custody of victim No.4 was given to her brother and the custody of victim No.5 was given to her mother.

18. The learned Magistrate was of the view that since the victim No.3 was residing alone and her parents had separated, the economic condition of the victim would force the victim to again indulge in the immoral acts. Learned Magistrate did not record that the victim was suffering from any sexually transmitted diseases and the release of the victim posed threat to public safety on the said count. The only difference between victim Nos.4 and 5 who were ordered to be released from protective custody and the victim No.3 was that there was no relative of the victim to whom the custody of the victim could be entrusted.

19. The justifiability of the aforesaid view is required to be examined in the light of the nature and object of the PITA 1956. PITA 1956 was not meant to punish a victim of the sexual exploitation. In the absence of material to show that the role attributed to the victim would fall within the dragnet of any of the

penal provisions, the victim cannot be subjected to unreasonable restrictions on the basis of a bald assertion that the victim may again indulge in immoral acts.

20. A profitable reference in this context can be made to a Division Bench judgment of the Gujarat High Court in the case of **Sahyog Manila Mandal and Anr. Vs. State of Gujarat and Ors.**⁴, wherein it was enunciated that the provisions of Section 17(4) of the PITA 1956, indicate that the victims of trafficking and offences committed by others under the PITA, 1956, Act deserve to be rescued and rehabilitated and not punished as criminals.

21. In the case at hand, as noted above, the controversy boils down to the question as to whether the victim who is a major, can be detained against her wish for the only reason that she has no family of her own. This court is of the considered view that the courts below approached the issue from a wrong perspective and got swayed by the absence of a relative to whom the custody of victim No.3 could be entrusted. In the view of this Court, the necessity of detention of victim No.3 in a protective home ought to have been determined on the touchstone of the constitutional rights of personal liberty and fundamental freedom. In the absence of material which would justify the restriction on personal liberty and fundamental freedom, in the nature of detention of the victim, learned Magistrate could not have directed the

⁴ 2004 SCC Online Guj 269

detention of victim No.3 for the reason that there was nobody to take care of Victim No.3, who was a major, and, thus, there were chances of victim No.3 again indulging in commercial sex work, if she was released without providing her necessary counseling and training. The mere fact that Victim No.3 was alone, by itself, could not have been a justifiable ground to detain Victim No.3 in a protective home.

22. As noted above, it was not the case of the prosecution that, Victim No.3 was found indulging in offences punishable under the PITA 1956. Nor there was material to show that the release of victim No.3 posed threat to the society. In the absence of any material to justify an inference that the interest of the society and the victim could only be protected by detaining her in a protective home, the impugned orders cannot be sustained.

23. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned order dated 24 June 2025 and the order dated 19 April 2025 passed by the learned Magistrate directing detention of the Petitioner – Victim No.3 in a protective home, stand quashed and set aside.
- (iii) The Petitioner – victim No.3 be released forthwith, if not required to be detained in any other case.
- (iv) The Petitioner – Victim No.3 shall not indulge in any activity

identical to one which led to the rescue of victim No.3 and her detention in a protective home.

- (v) Rule made absolute in the aforesaid terms.
- (vi) No costs.

(N.J.JAMADAR, J.)