IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1100 OF 2025

Dikshant @ Dadu Devidas Sapkale,
Age: 20 years, Occu: Labour,
R/o. Near Office of Water Supply,
Rameshwar Colony, Mehrun,
Jalgaon, and Dist. Jalgaon … Petitioner

Versus

1. The State of Maharashtra
Through Deputy Secretary,
Home Department (Special),
Mantralaya, Mumbai - 400032

2. The State of Maharashtra,
Through District Magistrate,
Jalgaon.

3. The State of Maharashtra,
Through Superintendent,
Central Prison Nagpur. … Respondents

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Mr. Harshal P. Randhir, Advocate for Petitioner
Ms.P.R. Bharaswadkar, APP for Respondent No.1 – State

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CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.
RESERVED ON : 24 SEPTEMBER, 2025
PRONOUNCED ON : 01 OCTOBER, 2025

JUDGMENT [Per Hiten S. Venegavkar, J.] :-

1. **Rule**. Rule made returnable forthwith. With the consent of all the parties, the petition is taken up for final hearing and final disposal at the stage of admission itself.

2. The Petitioner who is the original detenue has preferred this writ petition challenging the detention order dated 18.07.2024 bearing No.Dandapra/KAVI/MPDA/22/2024 passed by respondent No.2.

3. The facts leading for filing of the present petition can be summarized in brief is that on the date of detention order, the petitioner was already in judicial custody in connection with C.R. No. 140 of 2024, registered with M.I.D.C. Police Station, Jalgaon and continued to remand in such custody for many months thereafter. The order of detention though passed on 18.07.2024, was not served upon the petitioner immediately. The detention order came to be served upon the petitioner only after he was released on bail on 23.05.2025, that was nearly after 11 months later. The petitioner, therefore, raises a grievance that the authorities though fully aware about the petitioner is in jail, have failed to serve the order upon him in the jail and held back the said order till the moment, he came out of the custody, so that they can immediately take him back in the custody on the basis of the said preventive detention.

4. The pleadings in the writ petition and grounds mentioned therein raises several questions upon the illegality of the detention order. The learned advocate appearing for the petitioner argued that the grounds

of detention demonstrates that the detaining authority has relied upon two criminal cases, i.e. C.R. No. 140 of 2024 and C.R. No.127 of 2023, for the purpose of considering the preventive detention action against the petitioner. In addition to these two crimes, there are two in-camera statements which were also recorded and certain earlier instances have also been mentioned in the detention order in the grounds of detention while reaching substantive satisfaction. He also argued that one of the crimes that has been considered for the purpose of passing detention order is C.R. No.127 of 2023. He argued that the petitioner is neither an accused or witnessed nor even remotely connected with the said crime. He took us through the averment made in the affidavit in reply, while dealing with these contentions of the petitioner wherein the authorities have explained casually by saying that this is a typographical mistake and that the authority, in fact, have relied only on C.R. No. 140 of 2024 and upon the in-camera statements. According to the advocate for the petitioner, such explanation cannot cure the defect because the order itself shows reliance on that case as part of the foundation for preventive detention. He further contends that the two in-camera statements are absolutely vague and at the most relates to an isolated incidents which can be said to cause law and order situation and definitely it is not disclosed any disturbances of public order. He further argued that several documents including remand orders and other

crucial papers were supplied to the petitioner in English language, though the authorities are well aware that the petitioner is a Marathi medium student and only understands Marathi. According to him, not supplying the translation frustrates the constitutional right of making an effective representation guaranteed under Article 22 (5) of the Constitution of India. The learned advocate also argued that the detention order stands vitiated on the ground of long and unexplained delay between the making of the order and its execution thereby affecting the very purpose of preventive detention. The very inclusion of an offence which the petitioner has no concern, demonstrates total non-application of mind and also reliance of extraneous material. According to him, such reliance is fatal to the subjective satisfaction of the detaining authority. Lastly, he argued that apart from the two offences, remaining material amounts only to breach of law and order and does not affect the public order. In this background, he prayed for releasing the petitioner from custody by holding that the petitioner's detention is absolutely illegal and the detention order passed by the respondent No. 2 is bad in law.

5. The Learned APP vehemently opposed the petition and supported the detention order. She submitted that there is no bar for issuing preventive detention order even against the person who is already in

custody and the only requirement that is necessary to be satisfied is that the detaining authority is very much aware of the custody and still is satisfied that after his release he is likely to engage in prejudicial activities. She further argued that these requirements were satisfied, and therefore, the authority was justified in making the order. She has demonstrated by pointing to Section 13 of MPDA Act to justify her arguments that period of detention under MPDA Act has to be reckoned from the date of actual detention and not from the date of order and hence there is absolutely no illegality that can be attached to the fact that the order was served only upon the petitioner's release on bail. As far as reference of crime number 127 of 2023 which is found in the detention order. She took us through the averments which are made in the affidavit-in-reply on page 110, paragraph (XIII) which reads as thus:

> "*(XIII) With reference to the claim and contentions in ground no. (XIII) it is submitted that as mentioned above in answer to ground no. (III) that crime no. 127/2023 is mentioned inadvertently. So far crime no. 140/2024 is concerned it cannot be said that this offence does not affect the law and order and that it is individualistic in nature. It is submitted that when individual from the society is involved in such crime it becomes a crime not only against an individual but also against the society as a whole. Besides, this crime shows the criminal antecedent of the petitioner/detenu. Under such circumstances, the case law sought to be relied are not applicable. Hence, it also cannot*

be said that the order of detention is not just, fair and legal, ought to be quashed and set aside."

6. Thus, here explanation is that it was a typographical mistake and by no stretch of imagination vitiate the subjective satisfaction since the authorities have considered only one single offence i.e. C.R.No. 140 of 2024 for the purpose of reaching the satisfaction that preventive detention of the petitioner was necessary. She vehemently opposes the petition and prayed for dismissing the same stating that there is ample material on record to show that the petitioner is a 'dangerous person' likely to engage in prejudicial activities.

7. Having heard the rival submissions and after careful consideration of the entire material on record, we find ourselves unable to hold that the impugned detention order can sustain the scrutiny of law. The preventive detention is an exceptional measure which embarks upon the rights to personal liberty and it must directly confirm to the constitutional and statutory requirements. Article 22 (4) of the Constitution of India and Section 13 of MPDA provides that the maximum permissible period of detention is to be recognized "from the date of detention". As explained by the constitutional bench in ***Haradhan Saha v. State of W.B.***, (1975) 3 SCC 198, wherein it is held

that the making of detention order and actual detention of the person are distinct concepts. Detention in law commences only when the order is actually executed and the person is physically taken in preventive custody. The MPDA act follows the similar scale. Therefore, for competing the period of detention, what is decisive is the date of service or execution of the order and not the date on which it was signed.

8. Section 13 of the MPDA act reads as follows:

> *"13. The maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under section 12, shall be six months from the date of detention."*

9. Thus, the aforesaid provision also makes it clear that the period of detention begins from the date of actual detention of the detainee and not from the date of passing of the order.

10. This position of law, however, does not authorize the detaining authority to sit over the execution of an order at its pleasure. When the person is already in a judicial custody and easily accessible, the authority is expected either the execute the order in jail or to demonstrate by cogent material that there was a real and proximate possibility of release of the detainee on bail and furthermore to justify the making of the order and its postponement of execution. The

Honorable Supreme Court in ***Kamarunnissa v. Union of India***, (1991) 1 SCC 128, wherein the Hon'ble Supreme Court 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 [(1985) 4 SCC 232 : 1985 SCC (Cri) 514] 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 seems 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 detenues were in custody.*

11. In the aforesaid judgment, the Hon'ble Supreme Court has laid down that three conditions must co-exist when the detention order is made against the person already in custody (i) the authority must be aware of such custody, (ii) there must be a reliable material to show real possibility of release of the detainee on bail and (iii) there must be likelihood of the detainee indulging in prejudicial activities upon such release. Applying the aforesaid conditions, to the present case and records before us including grounds of detention shows awareness of the fact of custody, but is conspicuously silent on any real or proximate possibility of the petitioner's immediate release on bail. It has to be noted that detention order against the petitioner was made in July 2024 and petitioner was granted bail only in May 2025 that is almost 10 months later. Applying these facts to the principle laid down in the ***Kamrunnisa*** (supra) condition No.(ii) stands stands not satisfied.

12. In the case of ***State of Maharashtra v. Bhaurao Punjabrao Gawande***, (2008) 3 SCC 613, the Hon'ble Supreme Court has observed as under:

"53. Unfortunately, the attention of the High Court was not invited to Haradhan Saha [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] wherein the Constitution Bench did not approve the law laid down by this Court in Biram Chand [(1974) 4 SCC 573 : 1974 SCC (Cri) 609 : AIR 1974 SC 1161] . Referring to the larger Bench decisions, the Court stated: (Haradhan Saha [(1975) 3 SCC 198 : 1974 SCC (Cri) 816] , SCC p. 209, paras 33-34)

> *"33. Article 14 is inapplicable because preventive detention and prosecution are not synonymous. The purposes are different. The authorities are different. The nature of proceedings is different. In a prosecution an accused is sought to be punished for a past act. In preventive detention, the past act is merely the material for inference about the future course of probable conduct on the part of the detenu.*
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> *34. The recent decisions of this Court on this subject are many. The decisions in Borjahan Gorey v. State of W.B. [(1972) 2 SCC 550 : 1972 SCC (Cri) 888] , Ashim Kumar Ray v. State of W.B. [(1973) 4 SCC 76 : 1973 SCC (Cri) 723] , Abdul Aziz v. District Magistrate [(1973) 1 SCC 301 : 1973 SCC (Cri) 321] and Debu Mahato v. State of W.B. [(1974) 4 SCC 135 : 1974 SCC (Cri) 274] correctly lay down the principles to be followed as to whether a detention order is valid or not. The decision in Biram Chand v. State of U.P. [(1974) 4 SCC 573 : 1974 SCC (Cri) 609 : AIR 1974 SC 1161] which is a Division Bench decision of two learned Judges is contrary to the other Bench decisions consisting in each case of three learned Judges. The principles which can be broadly stated are these. First, merely because a detenu is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act. Second, the fact that the police arrests a person and later on enlarges him on bail and initiates steps to prosecute him*

> *under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention. Third, where the person concerned is actually in jail custody at the time when an order of detention is passed against him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardise the security of the State or the public order. Fourth, the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate (sic vitiate) the order. Fifth, the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances."*
>
> *(emphasis supplied)*

13. Even more serious is the conduct of the authorities in keeping the detention order in cold storage and serving upon the petitioner only on 27.05.2025 after the petitioner was released on bail. No plausible explanation for this long and deliberate delay has been offered.

14. The Hon'ble Supreme Court in ***T.A. Abdul Rahman v. State of Kerala***, (1989) 4 SCC 741, has held as under:

> *"12. In the light of the above proposition of law, we shall now examine the first contention which has been raised for the first time before this Court. From the reading of the counter-affidavit filed on behalf of the first respondent, it is seen that the detaining authority has attempted to explain the laxity that has occasioned in passing the impugned order, but miserably failed in explaining the delay of three months in securing the arrest of the detenu from the date of the passing of the order, and keeps stunned silence on that score. The learned counsel appearing for*

the first respondent when queried by this Court whether he could give any reason for this undue delay in arresting the detenu on 18-1-1988 in pursuance of the impugned order of detention made on 7-10-1987, has frankly admitted that he could not do so — rightly so in our view — in the absence of any explanation in the counter-affidavit. The Superintendent of Police, Malapurram to whom the detention order was forwarded for execution has not filed any supporting affidavit explaining the delay in securing the arrest of the detenu. Under these circumstances, we hold that leaving apart the question of delay in passing the order of detention from the date of the seizure of the gold, the fact remains that the detaining authority has failed to explain the long delay in securing the arrest of the detenu after three months, from the date of the passing of the detention order and this non-explanation in our view throws a considerable doubt on the genuineness of the subjective satisfaction of the detaining authority vitiating the validity of the order of detention."

15. In the case of ***Rajinder Arora v. Union of India***, (2006) 4 SCC 796, the Hon'ble Supreme Court has held as under:

"21. The question as regards delay in issuing the order of detention has been held to be a valid ground for quashing an order of detention by this Court in T.A. Abdul Rahman v. State of Kerala [(1989) 4 SCC 741 : 1990 SCC (Cri) 76 : AIR 1990 SC 225] stating:

> *"10. The conspectus of the above decisions can be summarised thus: The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard-and-fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of*

> *proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the court has to investigate whether the causal connection has been broken in the circumstances of each case.*
>
> *11. Similarly when there is unsatisfactory and unexplained delay between the date of order of detention and the date of securing the arrest of the detenu, such a delay would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to preventing him from acting in a prejudicial manner."*
>
> *22. The delay caused in this case in issuing the order of detention has not been explained. In fact, no reason in that behalf whatsoever has been assigned at all."*

16. Thus, unexplained delay in execution of the detention order has not been the live link between prejudicial activities and the necessity of the detention and renders the detention illegal. This principle in our view squarely applies to the present case. The live and reasonable nexus between the alleged activities and purpose of detention was irretrievably lost by the unexplained delay of nearly over a year.

17. Upon perusing the records, we find another fundamental infirmity in the impugned detention order. The order in express terms taken into account crime No. 127 of 2023 as one of the recent offence while arriving at the subjective satisfaction to detain the petitioner under MPDA Act. Explanation provided in affidavit in reply by the authorities makes it clear that it is not in dispute that the petitioner is not even remotely connected with that case. The clarificatory plea mentioned in the affidavit stating that a typographical error and inadvertent mistake cannot be held that there was no subjective satisfaction order or due and proper application of mind. It is well settled that if the detaining authority relies on material which does not exist or irrelevant, the order stands vitiated for non-application of mind.

18. In the case of ***Khudiram Das v. State of W.B.***, (1975) 2 SCC 81, the Hon'ble Supreme Court has held as under:

> *"15. Now, the proposition can hardly be disputed that if there is before the District Magistrate material against the detenu which is of a highly damaging character and having nexus and relevancy with the object of detention, and proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, it would be legitimate for the Court to infer that such material must have influenced the District Magistrate in arriving at his subjective satisfaction and in*

such a case the Court would refuse to accept the bald statement of the District Magistrate that he did not take such material into account and excluded it from consideration. It is elementary that the human mind does not function in compartments. When it receives impressions from different sources, it is the totality of the impressions which goes into the making of the decision and it is not possible to analyse and dissect the impressions and predicate which impressions went into the making of the decision and which did not. Nor is it an easy exercise to erase the impression created by particular circumstances so as to exclude the influence of such impression in the decision making process. Therefore, in a case where the material before the District Magistrate is of a character which would in all reasonable probability be likely to influence the decision of any reasonable human being, the Court would be most reluctant to accept the ipse dixit of the District Magistrate that he was not so influenced and a fortiori, if such material is not disclosed to the detenu, the order of detention would be vitiated, both on the ground that all the basic facts and materials which influenced the subjective satisfaction of the District Magistrate were not communicated to the detenu as also on the ground that the detenu was denied an opportunity of making an effective representation against the order of detention."

19. In the case of ***Ashadevi v. K. Shivraj, Addl. Chief Secy. to the Govt. of Gujarat***, (1979) 1 SCC 222, the Hon'ble Supreme Court has held as under:

"6. It is well-settled that the subjective satisfaction requisite on the part of the detaining authority, the formation of which is a condition precedent to the passing of the

detention order will get vitiated if material or vital facts which would have a bearing on the issue and would influence the mind of the detaining authority one way or the other are ignored or not considered by the detaining authority before issuing the detention order. In Sk. Nizamuddin v. State of West Bengal [(1975) 3 SCC 395 : 1975 SCC (Cri) 21 : AIR 1974 SC 2353] the order of detention was made on September 10, 1973 under Section 3(2)(a) of MISA based on the subjective satisfaction of the District Magistrate that it was necessary to detain the petitioner with a view to preventing him from acting in a manner prejudicial to the maintenance of supplies and services essential to the community and this subjective satisfaction, according to the grounds of detention furnished to the petitioner, was founded on a solitary incident of theft of aluminium wire alleged to have been committed by the petitioner on April 14, 1973. In respect of this incident of theft a criminal case was filed inter alia against the petitioner in the Court of the Sub-Divisional Magistrate, Asansol, but the criminal case was ultimately dropped as witnesses were not willing to come forward to give evidence for fear of danger to their life and the petitioner was discharged. It appeared clear on record that the history-sheet of the petitioner which was before the District Magistrate when he made the order of detention did not make any reference to the criminal case launched against the petitioner, much less to the fact that the prosecution had been dropped or the date when the petitioner was discharged from that case. In connection with this aspect this Court observed as follows:

> *"We should have thought that the fact that a criminal case is pending against the person who is sought to be proceeded against by way of preventive detention is a very material circumstance which ought to be placed before the District Magistrate. That circumstance might quite possibly have an impact on his decision whether*

> *or not to make an order of detention. It is not altogether unlikely that the District Magistrate may in a given case take the view that since a criminal case is pending against the person sought to be detained, no order of detention should be made for the present, but the criminal case should be allowed to run its full course and only if it fails to result in conviction, then preventive detention should be resorted to. It would be most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to the District Magistrate."*

It is true that the detention order in that case was ultimately set aside on other grounds but the observations are quite significant. These observations were approved by this Court in Suresh Mahato v. District Magistrate, Burdwan [(1975) 3 SCC 554 : 1975 SCC (Cri) 120 : AIR 1975 SC 728] . The principle that could be clearly deduced from the above observations is that if material or vital facts which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order, are not placed before or are not considered by the detaining authority it would vitiate its subjective satisfaction rendering the detention order illegal. After all the detaining authority must exercise due care and caution and act fairly and justly in exercising the power of detention and if taking into account matters extraneous to the scope and purpose of the statute vitiates the subjective satisfaction and renders the detention order invalid then failure to take into consideration the most material or vital facts likely to influence the mind of the authority one way or the other would equally vitiate the subjective satisfaction and invalidate the detention order."

20. According to us, this defect of relying upon an unconnected crime with the petitioners goes to the roots of the subjective satisfaction and cannot be cured by way of any subsequent explanation much less with such irresponsible explanation like typographical error or inadvertent mistake when the authorities are dealing with the personal liberty of a citizen though he may be facing criminal charges.

21. Even if we decide to leave aside the C.R. No.127 of 2023, the remaining material does not justify preventive detention of the petitioner. The two in-camera statements even taken at their face value merely refers to isolated incidents which at the most constitute breach of law and order constitution.

22. The Hon'ble Supreme Court has provided distinction between law and order and public order in the judgment of ***Dr. Ram Manohar Lohia v. State of Bihar***, 1966 SC 740, wherein it is held as under:

> *"8. It is common place that words in a statutory provision take their meaning from the context in which they are used. The context in the present case is the emergent situation created by external aggression. It would, therefore, be legitimate to hold that by maintenance of public order what was meant was prevention of disorder of a grave nature, a disorder which the authorities thought was necessary to prevent in view of the emergent situation. It is conceivable that the expression "maintenance of law and order" occurring in the detention order may not have been used in the sense of prevention of disorder of*

> *a grave nature. The expression may mean prevention of disorder of comparatively lesser gravity and of local significance only. To take an illustration, if people indulging in the Hindu religious festivity of Holi become rowdy, prevention of that disturbance may be called the maintenance of law and order. Such maintenance of law and order was obviously not in the contemplation of the Rules."*

23. Thus, a breach of law and order does not, by itself, amount to a disturbance of public order. The material placed before the detaining authority fails to demonstrate that the petitioner's alleged criminal activities had the effect of disturbing the even tempo of life of the community or of creating a general atmosphere of fear and insecurity in the minds of the public at large. The subjective satisfaction that detention was necessary to prevent disturbance of public order is completely absent and subjective satisfaction carved out by the authorities by placing the lines on this in-camera statement is therefore unsustainable.

24. We also find yet another violation which cannot be brushed aside. The petitioner has specifically pleaded that crucial documents like judicial remand orders and other relied-upon papers were supplied to the petitioner only in English language though he had studied in Marathi medium and understands only Marathi. The state has not shown that these documents were accompanied by Marathi translation.

The requirement of article 22(5) of the Constitution of India is that the grounds of detention and relied-upon documents must be effectively communicated to the detenue in a language that he understands so as to enable him to make a purposeful and effective representation. This principle has been laid down by the Hon'ble Supreme Court in ***Lallubhai Jogibhai Patel v. Union of India***, (1981) 2 SCC 427, wherein it is held as under:

> *"20. It is an admitted position that the detenu does not know English. The grounds of detention, which were served on the detenu, have been drawn up in English. It is true that Shri C.L. Antali, Police Inspector, who served the grounds of detention on the detenu, has filed an affidavit stating that he had fully explained the grounds of detention in Gujarati to the detenu. But, that is not a sufficient compliance with the mandate of Article 22(5) of the Constitution, which requires that the grounds of detention must be "communicated" to the detenu. "Communicate" is a strong word. It means that sufficient knowledge of the basic facts constituting the "grounds" should be imparted effectively and fully to the detenu in writing in a language which he understands. The whole purpose of communicating the "ground" to the detenu is to enable him to make a purposeful and effective representation. If the "grounds" are only verbally explained to the detenu and nothing in writing is left with him, in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed. If any authority is needed on this point, which is so obvious from Article 22(5), reference may be made to the decisions of this Court in Harikisan v. State of*

Maharashtra [1962 Supp 2 SCR 918 : AIR 1962 SC 911 : (1962) 1 Cri LJ 797] and Hadibandhu Das v. District Magistrate [(1969) 1 SCR 227 : AIR 1969 SC 43 : 1969 Cri LJ 274].”

25. In the case of ***Powanammal v. State of T.N.***, (1999) 2 SCC 413, the Hon’ble Supreme Court has held as under:

“8. The law relating to preventive detention has been crystallized and the principles are well-nigh settled. The amplitude of the safeguard embodied in Article 22(5) extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detenu but also to supplying their translation in script or language which is understandable to the detenu. Failure to do so would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making a representation against the order. (See Hadibandhu Das v. District Magistrate, Cuttack [AIR 1969 SC 43 : (1969) 1 SCR 227].”

26. Thus, failure to furnish a translation also vitiates the order of detention. On all of the above counts, we hold that the detention order dated 18.07.2024, suffers from multiple incurable defects.

27. Upon perusal of the entire material on record and the impugned detention order in the present case, we are of the considered view that this is a fit case for exercise of our jurisdiction under Article 226 of the Constitution of India to impose exemplary costs on the detaining

authority as well as the State Government. This is a case where the criminal proceedings, on the basis of which the entire detention action has been initiated against the petitioner, have resulted in the petitioner being kept in illegal detention for over a year, thereby affecting his fundamental rights to life and personal liberty guaranteed under the Constitution of India. The entire course of action demonstrates an arbitrary exercise of executive power. The detaining authority, in our considered view, has been absolutely insensitive and careless while initiated the proceedings against the petitioner. However, because of this unconstitutional arbitrary behavior of the detaining authority, the petitioner herein has suffered illegal and unconstitutional detention which directly violates Articles 21 and article 22(4) and 22(5) of the Constitution of India. he non-application of mind by the detaining authority, its reliance on extraneous material, and furthermore, the act of casual explanation by stating in the affidavit that offence is mentioned inadvertently and the learned APP orally stating it as typographical error is absolutely and wholly unacceptable. Because of these serious infirmity, the fundamental right of the petitioner of making effective representation is violated. According to us, this is an excellent case where the authorities have abused the preventive detention law which is an extraordinary measure and have forgotten that the powers under this law are to be used sparingly against those

criminals who are genuine threats to public order. Keeping the detention order pending for several months and serving it upon the petitioner at the moment of his release amounts to a colourable exercise of power. We, therefore, impose heavy compensation to be paid to the petitioner by the State Government and direct that the State Government shall be entitled to recover the same from the salary of respondent No. 2, who exercised powers under Section 3 of the MPDA Act in imposing the illegal detention upon the petitioner.

28. In view of the aforesaid reasons and discussion, the writ petition deserves to be allowed. Hence, we proceed to pass the following order:

ORDER

I) The Writ Petition stands allowed.

II) The detention order dated 18.07.2024 bearing No.DC/Desk/9C1/641/2025 passed by respondent No.2 – District Magistrate, Jalgaon as well as the approval order dated 19.07.2025 and the confirmation order dated 15.07.2025 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Dikshant @ Dadu Devidas Sapkale shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

29. We direct that compensation in the sum of Rs.2,00,000/- (Rupees Two Lakh only) be paid to the petitioner by the State Government. The State Government shall recover the said amount from the salary of respondent No. 2 i.e. detaining authority, who passed the illeggal detention order against the petitioner.

[HITEN S. VENEGAVKAR, J.] **[SMT. VIBHA KANKANWADI, J.]**

S P Rane