



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2291 OF 2025

Rushikesh @ Monya Shamrao Waghare
Age: 25 years,
R/at: Face No-2, Shrivardhan Apartment,
Pimparigaon, Pune.
At present Yerawada Jail.

... Petitioner.

V/s.

1. The Commissioner of Police,
Pimpri Chinchwad, Pune.
2. The State of Maharashtra
(Through Addl. Chief Secretary to Government
of Maharashtra, Mantralaya, Home Department,
Mumbai – 400 032.)
3. Superintendent,
Yerwada Central Prison, Pune.

... Respondents.

Mr. Ganesh Gupta a/w Mr. Sahil Ghorpade, Ms. Roshni Naaz, Mr. Surya P. Gupta, Mr. Madan Khansole, Ms. Priyanka Rathod, Mr. Tushar Gaikwad i/b. G.G. Legal Associates, Advocate for the Petitioner.
Shri. Shreekant V. Gavand, A.P.P. for the State.

CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.

RESERVED ON : 09th OCTOBER 2025

PRONOUNCED ON : 17th OCTOBER 2025

JUDGMENT [Per : RANJITSINHA RAJA BHONSALE, J] :-

- 1) By this Petition under Article 226 of the Constitution of India, the Petitioner seeks to quash the Order of Detention, bearing No.Conf.

OW.No./PCB/DET/41/2025, Pimpri-Chinchwad, dated 26th February, 2025 passed 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 (MPDA Act) and also Committal Order of the even date whereby the Petitioner has been detained in the Yerwada Central Prison, Yerwada, Pune. The Petitioner seeks to be released and set at liberty.

2) By Order dated 29th April, 2025, this Court issued Rule in the Petition. The Respondents have filed their Affidavits in Reply and sought to oppose the present Petition.

3) Heard Mr. Ganesh Gupta, learned counsel for the Petitioner and Shri. Shreekant V. Gavand, learned A.P.P. for the State. Perused the Affidavits in reply filed by the Respondents and the record produced before us.

3.1) Learned counsel for the Petitioner, though has raised various grounds in the Petition while assailing the Order of Detention, restricted his arguments to the ground that, the Detention Order is vitiated as the proposal was moved/submitted by the Sponsoring Authority to the Assistant Commissioner of Police, without verifying the in-camera statements. Learned Advocate for the Petitioner submits that Respondent has relied upon two in-camera statements of witness 'A' and 'B' recorded on 16th December, 2024 and 19th December, 2024 respectively which have been verified on 30th December, 2024. That, it is Respondent's own case that the Sponsoring Authority

submitted the proposal to the Assistant Commissioner of Police, Pimpri Division, Pune on 23rd December, 2024. That, the proposal as submitted was an incomplete proposal i.e. without the verification of the in-camera statements being carried out.

3.2) Learned counsel for the Petitioner placed reliance on Para-6 of the Judgment and Order of this Court dated 11th December, 2024 passed in *Criminal Writ Petition (ST) No. 19008 of 2024 in the matter of Parveen Yusuf Pathan Vs. The State of Maharashtra and others*, to contend that, proposal which was sent on 23rd December, 2024, was incomplete proposal, as the same was sent without verifying the truthfulness and genuineness of the in-camera statements. That, the same is impermissible in law and the Detention Order is vitiated.

4) Mr.Gavand, learned APP appearing for the State, submits that, one of the Authorities which scrutinizes the entire proposal of Detention is the Assistant Commissioner of Police. That, while processing the detention proposal, the Assistant Commissioner of Police acts in a dual capacity i.e. he verifies the genuineness of the in-camera witness statements and also is one of the Authorities in the hierarchy who scrutinizes the entire proposal and forwards the same to the DCP Crime. That, the process of verification of the in-camera statements, is done to ensure that in-camera statements of the witnesses are genuine, correctly recorded and to rule out the possibility of false or fabricated statement being used against the detenu.

4.1) Learned APP submits that, as regards the subjective satisfaction under the Act, it is only the Detaining Authority or an Officer appointed under Section 3(2) of the MPDA Act whose subjective satisfaction is required and or relevant. That, the act of verifying the in-camera statements, is done by the Assistant Commissioner of Police, after the proposal is received by him from the Sponsoring Authority and before it is forwarded to the DCP Crime. The said process/method of verification of the in-camera statement does not vitiate the entire proposal and/or the subsequent subjective satisfaction of the Detaining Authority. That, the procedure for submitting the proposal and the steps envisaged therein have evolved over time and are carried out to ensure that the proposal is seen and verified by responsible and senior officers to ensure strict procedural compliance. That, only after the entire proposal is scrutinized and verified by the officers at various levels that the entire proposal along with all checked and verified documents is submitted to the Detaining Authority for consideration, final approval and sanction. That, it is at this stage, that entire proposal as a whole is considered for the first time by the Detaining Authority for the purposes of arriving at the subjective satisfaction as required under Law. That, what is important is the verification of the proposal by a responsible officer to ensure that the in-camera statements are genuine and reflect the true and complete facts.

4.2) Learned APP submits that the ACP has dual responsibility i.e. firstly is to verify the in-camera statement for its genuineness, truthfulness

and correctness and secondly is to verify the entire proposal along with verified in-camera statements to ensure procedural compliance. That, it is only for administrative convenience and to ensure that there is no unnecessary delay, that proposal is sent to the ACP who, at the first instance, verifies the in-camera statements and then scrutinizes the entire proposal along with the verified in-camera statements.

4.3) Learned APP would rely on Judgment of the Supreme Court in the matter of *Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another* reported in *AIR 1982 Supreme Court 8*, and whilst referring to paragraph 15 thereof submits that, in a Writ Petition under Article 226 of the Constitution of India, what has to be seen is whether the procedural formalities and safeguards enjoined by Article 22(5) of the Constitution of India have been complied with by the Detaining Authority. Once the formalities, are complied with, the Court cannot examine the materials before it and find that the Detaining Authority should not have been satisfied on the materials before it.

4.4) Learned APP, further relied on the Judgment of this Court in the matter of *Smt. Phulwari Jagadambaprasad Pathak v. R.H. Mendonca and others* reported in *2000 AIR SCW 2527* and submitted that, in the matter of preventive detention, which is a precautionary measure for preserving public order, what has to be seen is that if it is sufficient from the material available on record that Detaining Authority could reasonably feel satisfied about the

necessity of the detention of the person so as to prevent him from indulging in activities prejudicial to the maintenance of public order. That, in the absence of any provision in the MPDA Act, in specifying the type of material which may or may not be taken into consideration by the Detaining Authority and keeping in view the purpose of the statute which it intends to achieve the power vested in the Detaining Authority should not be unduly restricted.

4.5) Learned APP would then rely on Order dated 22nd December, 2023 passed in *Criminal Writ Petition ST No. 18264 of 2023* in the case of *Harshad Jivanrao Mundkar Vs. State of Maharashtra and others* and whilst referring to Para Nos. 5 and 9 therein and Para Nos. 9 and 10 of the Order dated 19th September, 2024 passed in *Criminal Writ Petition (ST) No. 16098 of 2024* in the case of *Zubeda Khaksar Ahemad Shaikh @ Zubeda Rais Khan @ Zebada Kalam/Kamal Shaikh @ Zubeda Sameer Ansari @ Zibbo Vs. Commissioner of Police Brihan Mumbai and others* submits that the practice of verification of the statement by the ACP after the proposal has been moved and submitted by the Sponsoring Authority to the ACP is the usual and accepted practice and procedure that is the usually followed by the Respondents. Relying on the aforesaid two Judgments he would submit that same has also not been faulted by this Court. Learned APP would further submit that the view now taken by this Court, in the Order dated 11th December, 2024 in *Criminal Writ Petition (ST) No. 19008 of 2024* in *Criminal Writ Petition (ST) No. 19008 of 2024* in the case of *Parveen Yusuf Pathan Vs.*

The State of Maharashtra and others is taken without considering the aforesaid two judgments i.e. in the cases of *Harshad Jivanrao Mundkar and Zubeda Khaksar Ahemad Shaikh*.

5) We are in agreement and concur with the observations of the coordinate Bench of this Court in its order dated 11th December, 2024 in the case of *Parveen Yusuf Pathan Vs. The State of Maharashtra and others in Criminal Writ Petition (ST) No. 19008 of 2024* in Paragraph No.6 that,

“Unless and until, the in-camera statements are verified by the higher authority, which is a necessary exercise to be undertaken by the Sponsoring Agency for preparing a complete proposal for detention, the proposal for Detention could not have been moved.”

6) We say this for various reasons. Before adverting to the reasons, we feel it necessary to first take a very broad overview of the law as laid down by the Supreme Court in matters related to Preventive Detention with specific reference and regard to the nature of Preventive Detention action, difference between action under the criminal law and preventive detention, and the importance of the strict implementation of the procedural safeguards available to a Detenu in preventive detention matters.

7) The Supreme Court in the case of *Ram Manohar Lohia v. State of Bihar*, reported in (1965) SCC OnLine SC 9 in paragraph No.14 has observed that:

“If a man can be deprived of his Liberty under a rule by the simple process of the making of a certain order, he can only be so deprived if the order is in terms of the rule. Strict compliance with the letter of the rule is the essence of the matter.”

7.1) The Supreme Court in the case of *Abdul Latif Abdul Wahab Sheikh v. B.K. Jha*, reported in (1987) 2 SCC 22, whilst referring to the procedural requirements of Article 22 and the statute, stated that, the same must be strictly complied with and observed in paragraph No.5 that:

“In a habeas corpus proceeding, it is not a sufficient answer to say that the procedural requirements of the Constitution and the statute have been complied with before the date of hearing and therefore, the detention should be upheld. The procedural requirements are the only safeguards available to a detenu since the court is not expected to go behind the subjective satisfaction of the detaining authority. The procedural requirements are, therefore, to be strictly complied with if any value is to be attached to the liberty of the subject and the constitutional rights guaranteed to him in that regard. If a reference to an Advisory Board is to be made within three weeks, it is no answer to say that the reference, though not made within three weeks, was made before the hearing of the case. If the report of the Advisory Board is to be obtained within three months, it is no answer to say that the report, though not obtained within three months, was obtained before the hearing of the case. If the representation made by the detenu is required to be disposed of within a stipulated period, it is no answer to say that the representation, though not disposed of within three

months, was disposed of before the hearing of the case.”

7.2) The Supreme Court in the case of *Ahmedhussain Shaikhussain v. Commr. of Police, Ahmedabad, reported in (1989) 4 SCC 751* has observed in paragraph No.8 that:

“A citizen is entitled to protection within the meaning of Art. 22(5) of the Constitution of the procedural guarantees envisaged by law. The court frowns upon any deviation or infraction of the procedural requirements. That in fact is the only guarantee to the citizen against the State's action of preventive detention.”

7.3) The Supreme Court in the case of *State of T.N. v. Senthil Kumar, reported in (1999) 2 SCC 646* observed in paragraph No.12 that :

“Courts adhere to strict compliance of the procedural safeguards in every case of preventive detention. A casual or random approach in complying with procedural safeguards more often results in infringement of the safeguard and vitiates the detention.”

7.4) The Supreme Court in the case of *Hare Ram Pandey v. State of Bihar, reported in (2004) 3 SCC 289* in paragraph No.6 has observed that:

“Preventive detention is an anticipatory measure and does not relate to an offence, while the criminal proceedings are initiated to punish a person for an offence which is committed by him. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is

convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to public order. In preventive detention matters, the action of the executive in detaining a person being only precautionary, the matter has necessarily to be left to the discretion of the executive authority. While it is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the detaining authority, therefore, is a purely subjective affair. The detaining authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty would lose all their meanings are the true justification for the laws of preventive detention. The pressures of the day in regard to the imperatives of the security of the State and of public order might require the sacrifice of the personal liberty of individuals. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has been called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order

might compel a curtailment of individual liberty. This, no doubt, is the theoretical jurisdiction for the law enabling preventive detention. But the actual manner of administration of the law of preventive detention is of utmost importance. The law has to be justified by the genius of its administration so as to strike the right balance between individual liberty on the one hand and the needs of an orderly society on the other.”

7.5) The Supreme Court in the case of *Union of India & Anr Vs. Chaya Ghoshal (Smt.) & Anr* reported in (2005) 10 SCC 97 observed in paragraph No.15 that :

“15. In case of preventive detention no offence is proved, nor any charge is formulated and the justification of such detention is suspicion or reasonability and there is no criminal conviction which can only be warranted by legal evidence. Preventive justice requires an action to be taken to prevent apprehended objectionable activities. (See R. v. Halliday and Kubic Darusz v. Union of India). But at the same time, a person's greatest of human freedoms, i.e., personal liberty is deprived, and, therefore, the laws of preventive detention are strictly construed, and a meticulous compliance with the procedural safeguard, however, technical is mandatory.”

7.6) The Supreme Court in the case of *Pebam Ningol Mikoi Devi v. State of Manipur*, reported in (2010) 9 SCC 618, in paragraph 3 and 4 has observed that:

“Individual liberty is a cherished right, one of the most valuable fundamental rights guaranteed by the Constitution to the citizens of this country. In India, the utmost importance is given to life and personal liberty of an individual, since we believe personal liberty is the paramount essential to human dignity and human happiness. The Constitution of India protects the liberty of an individual. Article 21 provides that no person shall be deprived of his life and personal liberty except according to procedure established by law. In matters of preventive detention, as there is deprivation of liberty without trial, and subsequent safeguards are provided in Article 22 of the Constitution. The constitutional framework envisages protection of liberty as essential, and makes the circumstances under which it can be deprived.”

7.7) The Supreme Court in the case of *Harish Pahwa Vs. State of U. P & Ors.* reported in (1981) 2 SCC 710 , observed in paragraph No.5 that:

“..... Again, we fail to understand why the representation had to travel from table to table for six days before reaching the Chief Minister who was the only authority to decide the representation. We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State

to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional.”

8) To sum up from the aforesaid decisions, the settled law is that, matters of Preventive Detention are different from the criminal prosecution under the normal criminal law, the degree of proof and evidence, relied upon is largely different and the real protection available to a Detenue, under the Preventive Detention laws, is that of the procedural safeguards and procedural requirements, which is ought to be and shall be, followed and complied with in the strictest manner. The essence of the matter is that, there needs to be a strict compliance, in the letter and spirit of procedural law, however technical. There is no place or scope for deviations and or infraction of the procedural safeguards and requirements. A casual or random approach, in complying with procedural safeguards, is not accepted and in fact condemned by the Courts, as the same more often than not results in infringement of the procedural safeguard. It vitiates the detention.

9) Under the Preventive Detention laws, the arrest/detention is by a summary procedure and without a trial. This is not the case in other criminal

prosecutions. Preventive Detention is a punishment, without a trial. Under the preventive detention laws it is permissible that, at the first instance, the punishment starts and liberty is curtailed, before an opportunity of being heard is even granted. This is because, the purpose and objective is preventive and based on valid suspicion and/or apprehension. Therefore, preventive detention is also called a jurisdiction of suspicion. The protection against preventive detention law is more procedural and/or technical than substantive. The safeguards available to a person against whom an order of detention has been passed are limited to procedural safeguards. The strict observance and compliance of the procedural aspects, requirements and safeguards in matters of preventive detention is the essence of the protection afforded to the detenu. Procedural safeguards and protections, are the guarantees and assurances that the authorities will act in accordance with law and not at their own will or prejudices. In our view, therefore the strict compliance of the procedural requirements and safeguards however technical, is a must.

10) Under the preventive detention laws, no offence is proved beyond reasonable doubt as in other criminal prosecutions. Being a jurisdiction of suspicion, the detention is based on reasonable probability. There is no trial and no conviction. The procedural safeguards incorporated by practice and procedure being the only safeguards, need to be strictly complied and construed. Procedural compliance and safeguards, are for that reason

extremely vital and mandatory.

11) We are of the opinion that the actual method and manner in which the procedure is followed and the procedural safeguards implemented in matters of preventive detention is also of utmost importance. The compliance should be genuine and in the interest of the Detenu. It is the essence. It would therefore be the duty of the court to ensure that the power of executive is exercised within strict limits of the law, both substantive and procedural.

12) A Detention Order is based on material, documents and incidents which are collected, collated and compiled by the sponsoring authority, checked together as a proposal by the high ranking officers of the rank of Assistant Commissioner Police, Deputy Commissioner of Police (Crime), Sr P.I. P.C.B. (Crime), Additional Commissioner of Police on the administrative side and then submitted to the Detaining Authority, who in turns applies his/her mind to the proposal, scrutinizes it, and after being satisfied relies upon the material to arrive at his/her subjective satisfaction and pass the Detention Order. The subjective satisfaction of the detaining authority, is based on the said material and is of the utmost importance. Therefore, the material placed before the Detaining Authority ought to be proper and complete in all aspects and also completed at the right stage and time in all aspects. One also need to keep in mind that, the nature of the material is such that, if taken in the state in and stage at which it is relied upon, such material in a trial under the

normal criminal laws, may not even pass the test of evidence, leave alone legal evidence. Preventive detention, being a jurisdiction of suspicion, the material relied upon may not satisfy the tests and requirements of legal evidence on which a conviction is arrived at in a criminal trial. The material may though form the basis of a strong prima facie suspicion. This is one more reason, why we feel that, the procedural safeguards should be followed swiftly, strictly, vigorously and in the right spirit.

13) In Preventive Detention matters, there are various procedural safeguards, the most important being under Article 22 of the Constitution of India, certain timelines provided under the MPDA Act and some have been established over a period of time by practice and convention. There are timelines provided for certain actions, approvals etc under the MPDA Act. The object of the said safeguards is to avoid unnecessary delay and to ensure that the procedure is complied with, within the stipulated time lines.

14) Verification of the in-camera statements, is one of the most important procedural safeguard, which has evolved over a period of time. In the initial days the recording of in-camera statements was done by the Sponsoring Authority. Over a period of time in-camera statement, being an important material which is relied upon and on occasions is the foundational aspect of the Detention Order, it became the responsibility of senior officers i.e the Assistant Commissioner of Police to ensure that the in-camera statement is verified. This was done and rightly so, to ensure that the verification of the in-

camera statement by the Assistant Commissioner of Police would ensure that the statements are genuine and the possibility of incorrect statements being recorded is ruled out.

15) Here we would also like to make a useful reference to the Judgment of this Court in the case of *Shri. Nagnarayan Saryu Singh Vs. Shri. A. N. Roy & Ors.*, reported in 2006 ALL MR (Cri) 2147, wherein in Paragraph No. 20, this Court has made following observations that;

“Moreover, it would be pertinent to note that the decision in the case of Pradip Nilkanth Paturkar (supra), was rendered in the year 1992. At that time, in camera statements which were recorded by the sponsoring authority were not verified by an Assistant Commissioner of Police as is done nowadays. All the in camera statements recorded by the sponsoring authority nowadays are verified by the Officer of the rank of the Assistant Commissioner of Police. The Assistant Commissioner of Police verifies the identity of the person making the statement i.e. the in camera witnesses are indeed real persons and not fictitious persons. After making enquiries with the in camera witnesses when the Assistant Commissioner of Police is satisfied about the genuineness of the statement made by the witness, he certifies the said in camera statement. The very purpose of an officer of the rank of Assistant Commissioner of Police verifying the statements of in camera witnesses is to lend assurance that the statements can be safely relied upon. Unless the in camera witnesses had indeed suffered at the hands of the detenu, there would be no reason for these persons to come forward and give

statements against the detenu. In our view, verification of in camera witnesses by an Officer of the rank of the Assistant Commissioner of Police would provide a sufficient check & would lend sufficient assurance that the statements are genuine.”

16) We are in the agreement, with the said observations, that in as much as the verification of the in-camera statement is undertaken by an officer of the rank of Assistant Commissioner of Police. The intention behind an officer of the rank of Assistant Commissioner of Police verifying the statement is to scrutinize, confirm and re-verify that, the in-camera statement recorded by the Sponsoring Authority is true, correct and genuine. In our opinion, this scrutiny is a necessary check, and rules out the possibility of false implication and/or harassment. The purpose of the verification is to test genuineness of the statements and the incident which it relates. In-camera statements are at times, the foundation of the Detention Order. The verification thereof, is an exercise to scrutinize the correctness of the statement. It, in our opinion, is a detailed investigative exercise undertaken with care and caution, to confirm correctness, genuineness and authenticity of the statement and its contents. The acts and scope of the verification is to ascertain the truth and correctness.

17) The purpose and importance of the verification of the in-camera statements is clear and well accepted i.e to lend credence to the genuineness, to verify the reliability of the statement and also the very existence of the

incident narrated therein. The in-camera statement is one of the important material on which the subjective satisfaction is arrived at. It may at times form the basis and foundation of the subjective satisfaction and thereby the Detention Order. The process of verification of an in-camera statement is done to lend credence to the material on which the proposal is mooted. It is done to rule out the possibility of manipulation, falsity and false implication. It is a very vital and important procedural and investigative safeguard. A verification of the in-camera statement entails enquiry with the witness and other persons in the locality. It entails a sort of investigation to cross check the factual narration made therein by the witness. It entails re-verification of the facts of the incident from the persons in the locality. It is a process, which part takes the various facets of an enquiry and investigation.

18) Considering the scope and work entailed in verification of in-camera statements it is clearly an investigative exercise which is required to be done independently. A proposal being moved by the sponsoring authority, with an unverified in-camera statement would be a mockery of the procedural laws. A clear eyewash, in the name of procedural compliances. Procedural requirements ought to be followed strictly in all aspects and all stages of the detention process and procedure i.e aspects which have a bearing on and are relating to or even relatable to the process of approving the proposal and to ensure that the detention proposal is initiated on at least prima facie material in accordance with the aims and object of the preventive detention laws.

19) We are of the firm view that the detention proposal, when moving out from the hands of Sponsoring Authority, should contain the verified in camera statements and it is not proper for the proposal to move out of the hands of the Sponsoring Authority with a unverified in-camera statement. We say this for the following reasons:-

(i) The detention proposal should move out as a complete proposal in all aspects, as by the time it moves out of the hands of the Sponsoring Authority, the detinue, his objectionable acts and reasons for preventive detention are already identified. Material necessary for arriving at the “subjective satisfaction” is collected, collated, compiled and being relied upon.

(ii) As the material, on which reliance is placed, is available, it must be at the first instance complete in itself, complete in all material aspects as it is on this material that the Detaining Authority applies its mind and arrives at a subjective satisfaction.

(iii) An unverified in camera statement would mean and imply that, one of the important material on which reliance is placed, was not verified for its truthfulness, reliability and genuineness when the proposal left the hands of the Sponsoring Authority. That, reliance is placed by the Sponsoring Authority on unreliable and incomplete material.

(iv) It would not, be correct in law, for the ACP to verify the in camera statement, after it has been received as a part of the detention proposal by the ACP in his administrative capacity for checking. The verification ought to

be done, when the proposal is with the Sponsoring Authority itself and when the ACP acts in his capacity of an officer in his investigative capacity. The scope of work and duties on the administrative side, while checking the entire proposal and on the investigative side while scrutinizing, checking and verifying the in-camera statement are distinct and different in as much as the scope, nature and assessments are done for different reasons and to find out or verify different and distinct aspects. The basic objective is different, therefore the nature and depth of the respective exercise is materially different.

(v) To verify the in camera statements, when the detention proposal along with the in-camera statements i.e entire proposal is received as a part of the administrative duty, would imply that the verification of the in-camera is not done with the intention and purpose it is meant for. On the administrative side, what is done is checking/confirmation of the entire proposal to see whether the procedural compliance are done properly and all requirements are meet before the proposal reached the Detaining Authority. This general checking of the entire proposal. This is not the stage to undertake for the first time the verification of in-camera statement. Verification of the in-camera statements cannot be taken as a casual exercise and mixed with or done along with an administrative task, for it is not an administrative task.

20) A detention proposal once initiated must in all circumstances and at all levels follow the procedural laws strictly. Infractions, which are relevant

and strike at the root of the matter must be called out by the Courts. Checking the entire proposal is in our view an administrative exercise. Checking is a simple exercise to see if something is correct, good or satisfactory. It is in a way of confirming administrative compliances and nothing more. It is a most general and informal administrative exercise, where to object and purpose is to “check” the proposal. The said object and purpose is entirely different and distinct, from a “verification”. The term/exercise of “Verification” on the other hand, entails a process of establishing the truth, accuracy of a particular thing, often because there is some doubt. The object and purpose is to prove or substantiate the truth, correctness and provide factual correct information. Verification of in-camera statement, at the time of checking the entire proposal cannot be done as the scope and work in a “verification of a in-camera statement” and “checking a proposal on the administrative side” is different and distinct.

21) The dividing line, between an internal administrative check and procedural compliances and safeguards, to us is clear and well engraved. Aspects of personal liberty and right to life, which ought to be cherished and protected, make it even more clear. It is the statutory duty and obligation of the sponsoring authority from the very first instance, to ensure that, in the initiation and process of detention, the procedural safeguards are strictly followed. Any material infraction, a part from an administrative act, which cannot be casually explained away, would at all times benefit the detenu. We

are of the view that the procedures and procedural safeguards are required to be zealously watched, guarded and enforced by the court. The importance thereof cannot be allowed to be watered down or read down by calling them technical or a minor infraction. Preventive Detention laws and orders passed thereunder are drastic in as much as they interfere, in a summary manner, with the personal liberty of person. We must also not forget, that the Courts usually do not go behind the order of detention, therefore it is all the more necessary and legitimate that there is a strict compliance and observance of the procedural rules and requirements.

22) We are, of the clear and firm opinion, that the verification of the in-camera statement by the ACP i.e. higher authority should be done before the Sponsoring Authority submits/moves the proposal as the very purpose and object of verifying in-camera statements by the Higher Authority/ Responsible Superior officer is to check and verify, the truthfulness and genuineness of the in-camera statements and contents thereof. As stated hereinabove the same is a process and exercise, which entails an enquiry and investigation. The scope and purpose is to see and check the genuineness of the in-camera statements and the truthfulness of the incident. The verification of in-camera statements could be done in more than one way i.e. by personally visiting the place of incident and interacting with the witnesses and/or concerned persons or by calling the witnesses and /or the concerned persons for a personally interacting and verifying the true and correct facts. In short, the verification of

the in-camera statement, is personally done by the Assistant Commissioner of Police, who at that time becomes the part of team of the Sponsoring Authority or Higher officer/Authority supervising the Sponsoring Authority in mootng the proposal. In this role, the job of the Assistant Commissioner of Police, is to verify, ascertain and be personally satisfied as to the existence of the in-camera statement, the correctness of the contents thereof and the incident which is narrated in the in-camera statement and the impact of the incident on the society. To put it more specifically in a different way, for the purposes of Preventive Detention Laws, the verification is done is to see whether the incident and aftermath of the incident are such which can be termed as 'acts prejudicial to the public order' or 'conduct which disturbs even tempo of the society'. Preventive detention, being extremely harsh measure, and summary in nature and procedural safeguards as envisaged and the procedures as followed should be complied in the most strictest manner and interpreted strictly.

23) The entire object and purpose of verifying in-camera statements is to ensure that statements are genuine, true and to rule out the possibility of preparing a false, incorrect or exaggerated version of the incident or creating the incident. The truthfulness and the genuineness of the contents of the statement, the identity of the maker and the effect of the incident on the general public and society at large are all verified and checked at the time of verification. This is done by the Assistant Commissioner of Police. This cannot

be done after the proposal moves out from the hands of the Sponsoring Authority. We are of the opinion that entire procedural process undertaken to detain an individual should be from its inception proper, correct and complete in all aspects, done at the right time, in the right manner and stage. The detention proposal, before, being moved or submitted further, for approval, by the Sponsoring Authority cannot be allowed to be incomplete or not wholly complete in material, relevant, fundamental and foundational aspects. As the detention proposal relates to or deals with the personal liberty of a citizen, the same cannot even be conceived to be partly incomplete or irregular in material and foundational aspects when it moves out at the hands of the Sponsoring Authority itself.

24) According to us, a proposal moving out from the hands of the Sponsoring Authority, without verification of the in camera statement is a material defect and illegality. It would also mean that, the Sponsoring Authority, has not followed at the right time, the important procedural aspects of verification of the in camera statement as to its genuineness, correctness and completeness. That would make the detention proposal incomplete, therefore defective and unsustainable.

25) Verification of the in-camera statements along with relied upon C.R.s being the core and foundation of the Detention Order, ought to and has to be undertaken as an independent exercise. When we say independent, we attached to the verification extreme importance and due weight-age. It is the

exercise which cannot be done casually or in the normal course of things. We are of the firm view that verification of in-camera statement is not and cannot be a 'by the way' exercise. It is an independent exercise, which entails within it an independent application of mind, an independent enquiry and investigation. Considering the Preventive Detention Laws and its serious consequences on personal liberty, the verification exercise cannot be and should not be "conducted along with" and "at the time of checking the entire proposal". We say this, for the reason that, the degree of application of mind and satisfaction required for confirming the genuineness and truthfulness while verifying an in-camera statement is much higher. It requires the detailed scrutiny, verification and cross re-verification of the contents of the in-camera statement. One has to be more careful and apply his mind to each fact which is stated in the in-camera statement. On the other hand, checking the entire proposal is rather an informal exercise, to see general administrative compliance. We are in agreement with learned APP when he submits that the ACP acts in dual capacity. According to us, ACP is wearing two hats i.e. at the time of verification, it is that of Police Officer utilizing and engaging in his investigating skills and instincts and at the time of checking the entire proposal, it is that of an officer in administrative role which only generally checks the proposal.

26) We are also alive of the fact that what is ultimately most important and relevant is the subjective satisfaction of the Detaining

Authority. It could be possible that the proposal, when it moves through the various stages of checking, minor administrative irregularities may be cured by the officers or sent back for rectification to the sponsoring authority. The same is permissible provided the defect is minor, does not affect or delay the detention process and most importantly is rectified swiftly, diligently and promptly. Rectification of minor defects which do not strike at the foundation of a detention order or subjective satisfaction could be permissible. The same will depend on the facts and circumstances of each case.

27) We are also aware and accept learned APP's arguments that the completeness of the proposal is of utmost importance when it reaches in the hands of the Detaining Authority for approval. There can be no quarrel or divergent view in that regard. Similarly, the view, that a proposal without verification of in-camera statements, being moved by the Sponsoring Authority is an incomplete proposal, also cannot be doubted or deferred with.

28) We have come across instances and have also noticed that in many a preventive detention matters the State Government is unable to defend the preventive detention action and/or Detention Orders on the ground of delay. The delay seems to be taking place at different and distinct stages of proposal, for different reasons and is of different durations. In most cases there is no explanation or the explanation is not satisfactory, for which reason the detention order cannot be sustained and is set aside. We are of the opinion that it is the need of the hour for the State Authorities to take proactive steps

to ensure that the process of approval of the Detention Order is firstly curtailed and then made more efficient in the terms of saving time, effort and resources. Prima facie we feel that there are too many officers in the chain of hierarchy of officers who check the proposal. The movement of the proposal from table after table seems to be unnecessary. We say this for a reason. The proposal is mooted by the Sponsoring Authority, and submitted to the ACP, who verifies the in-camera Statements and the proposal and submits it to the DCP. The DCP checks the proposal and the same is submitted to the DCP (Crime) and then by the DCP (Crime) to the Sr PI. P.C.B. Crime. The ACP and DCP give their endorsements. The papers along with the notings is forwarded to the Additional Commissioner of Police, who checks the proposal and submits it to the Detaining Authority for consideration and approval. Once the same is sanctioned, it is sent back to the Sponsoring Authority for making the required sets/photocopies , translations and compilations etc. It is, once again sent back,through the same chain to reach the Detaining Authority for approval and final orders. We feel that the chain of officers/ hierarchy or process undertaken for approval is too long. The same should be curtailed to include only the Sponsoring Authority, the DCP (Crime) and ultimately the Detaining Authority. By doing so the responsibility will increase and the time taken to process the detention proposal will reduce. These are suggestions made for now, which if required may be incorporated as directions in appropriate matters at the appropriate time.

29) In our opinion, the procedure which should be followed to ensure compliance of the procedural safeguards and requirement of law, is as under:

(i) The material for the detention proposal is collated, collected and compiled including the recording of the in-camera statement(s), which is done by the Sponsoring Authority;

(ii) Immediately, and in any event within 2 or 3 days, the ACP should be called upon by and to the Sponsoring Authority to verify the in-camera statements. This be done, when the ACP is acting as an Officer in his investigative capacity, and as an independent exercise of enquiry and investigation.

(iii) After the verification is completed, the ACP, should independently prepare a report addressed to the Detaining Authority. The report should contain, the in-camera statement, the verification thereof and make a mention of the process as carried out by the ACP, at the time of verification. A copy of the report, be given to the Sponsoring Authority to include with the proposal. The original report be sent by the office of ACP to the Detaining Authority. This be done on the same day. This is done to ensure that the Detaining Authority has sufficient time to see and analysis the Report, statements and verification independently and if required interact with the concerned ACP.

(iv) The ACP, after he verifies the in-camera statements cannot and should not have anything to do with the proposal or the detention process.

(v) The verification by the ACP, may be done by personally

visiting the spot and interacting with the witnesses and persons in the neighborhood or in the alternative by having interactive sessions with the witnesses and or persons from the neighborhood at the office of the Sponsoring Authority.

(vi) The Sponsoring Authority shall within 48 hours the verification of the in-camera statement move the Detention proposal (in the required number of copies and along with the translation thereof in the language of known to the Detenue as required) along with the verified in-camera statement and other material complete in all aspects, including the required translations to the Senior Officer/DCP (Crime) for checking, approval and forward transmission.

(vii) On receipt of proposal, the Senior Officer/DCP (Crime) in its administrative capacity, will check the same and forward it to the Detaining Authority. This be done in 48 hours.

(viii) Once the proposal, reaches the Detaining Authority, the Detaining Authority shall personally goes through the entire proposal along with all the documents which are relied upon and form part of the detention proposal, including the report of the Assistant Commissioner of Police, the in-camera statements, the verifications done by the Assistant Commissioner of Police etc. The queries if any be dealt with.

(ix) All of the aforesaid procedure should be done in an expeditious manner, and promptly and in any event within a period of at the

most 5 to 7 days.

30) In view of the aforesaid observations and findings, we are of the view, that, the verification of the in-camera statements, during the checking of the proposal in an administrative capacity on the administrative side or as we called it “by the way” verification is not permissible and would in fact go contrary to the very object and the purpose of the Preventive Detention Laws. The verification of the proposal by the ACP has to be at the earliest first instance when the proposal is with the Sponsoring Authority and before it is moved by the Sponsoring Authority. We are of the view that it is only when the in-camera statements are verified and checked for their truthfulness and genuineness that the bundle of paper become a proposal or a detention proposal comes into existence. Needless to say, that said verification needs to be proper and in that sense, the cross re-verification of the contents of the statement, it may be done by visiting the place of incident and interacting witness/witnesses or calling the witness/witnesses for an interactive verification. In view of aforesaid facts and circumstances and the discussion herein, we are of the view that the Detention Order based on verification of in-camera statements done after proposal has been moved by the Sponsoring Authority is unsustainable, illegal and out to be quashed and set aside.

30.1) Hence, the following order;

- (a) Detention Order dated 26th February, 2025 bearing No. Conf. OW.No./PCB/DET/41/2025, Pimpari-Chinchwad, issued by the

Respondent No.1, is quashed and set aside.

- (b) Petitioner/Detenu be released from Jail forthwith, if not required in any other case/cases, on production of an authenticated copy of the operative part of present Judgment.
- (c) Petition is allowed in terms of prayer clause (a).
- (d) Rule is made absolute in the aforesaid terms.
- (e) All concerned to act on the basis of an authenticated copy of operative part of this Judgment.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)