

## Ajit Khimji Udeshi Vs State of Maharashtra and Others

**Court:** Bombay High Court

**Date of Decision:** Feb. 13, 1992

**Acts Referred:** Constitution of India, 1950 " Article 226  
Terrorist and Disruptive Activities (Prevention) Act, 1987 " Section 5

**Citation:** (1992) 3 BomCR 398

**Hon'ble Judges:** S.P. Kurdukar, J; M.B. Ghodeswar, J

**Bench:** Division Bench

**Advocate:** K.R. Sutrale, for the Appellant; R.F. Lambay, Asstt. P.P., for the Respondent

### Judgement

S.P. Kurdukar, J.

This is a petition filed by the petitioner under Article 226 of the Constitution of India seeking appropriate writ or

direction for quashing application of provisions of section 5 of Terrorist and Disruptive Activities (Prevention) Act, 1987, in respect of C.R No. I

135 of 1991 of Virar Police Station.

2. In order to consider the rival contentions raised before us, it would be appropriate to set out averment contained in the complaint dated 28-4-

1991 lodged by the complainant Shri Ranjitkumar Raj Deshmukh at Virar Police Station (F.I.R.). This complaint came to be registered by the

Virar Police Station being C.R. No. I 135 for 1991. The allegations contained in this complaint may be briefly summarised as under : The

complainant Deshmukh has a residence in Bombay and also possesses an accommodation at Virar in Rajinsi Apartment. According to him, he

obtained arm licence in 1978 from the concerned Police Authority and the said licence is valid till the date of the incident. On 28-4-1991, he had

gone to his Virar residence. At about 10.30 p.m. on the said day, he was sitting in his house and listening to music. The petitioner (accused) came

to his house and appreciated the music and requested him to permit him to sit in the house and listen to the music. At that time, the complainant

was having drinks. He had kept his pouch containing pistol on his bed. He offered the petitioner (accused) the drinks. He also showed the

petitioner (accused) the pistol which he had kept in the pouch. According to the complainant, he then went to have bath and before he went for

bath he saw wife of the petitioner having come to his house. Since the complainant was going to Bombay he had lifted and kept his Stereo in the

cupboard. In the meantime, the petitioner (accused) without informing him anything went away. The complainant further alleged that after putting on

clothes he wanted to keep his pistol on his person. When he lifted the pouch, he found it very light and suspected some foulplay. He, therefore,

immediately came on the ground floor and apprehended the petitioner (accused). Complainant told him that he has committed theft of his pistol.

Petitioner (accused) told the complainant that they should go to Police Station. Accordingly, both of them went to Police Station on 28-4-1991

between 10 and 10.50 P.M. In the complaint it was alleged that the petitioner (accused) and his wife with common intention committed theft of

loaded pistol and he has got every suspicions on the petitioner (accused) and his wife. This complaint was registered at the Virar Police Station at

about 2.30 a.m. on 29-4-1991, and the petitioner (accused) was shown to have been arrested on the same day at about 9.30 A.M. on 29-4-

1991, the petitioner (accused) was produced before the learned Judicial Magistrate, F.C., Vasai with a remand application and remand was

granted till 4-5-1991. It is alleged that recovery of the pistol was made on 30-4-1991 and it is said that the same was pursuant to the statement

made by the petitioner. Recovery of the pistol is shown to have been made u/s 27 of the Indian Evidence Act. On 4-5-1991 the same Police

Station made second application for remand and magisterial custody was granted till 18-5-1991. On 6-5-1991, the petitioner made an application

for bail. The concerned Investigating Officer on 7-5-1991 filed reply opposing the bail application and it was stated therein that the provisions of

the TADA Act are being made applicable against the petitioner. The learned trial Judge after hearing both the sides on 8-5-1991 passed order

releasing the petitioner (accused) on bail and it is not disputed that the petitioner availed bail on 8-5-1991.

3. In the meantime, the Investigation Officer moved Superintendent of Police, Thane (Rural), with an application to apply provisions of the TADA

Act against the petitioner (accused). This application came to be granted on 17-9-1991 by the Superintendent of Police Thane (Rural). Since the

provisions of TADA Act were made applicable against the petitioner, the Investigating Officer moved the trial Court for cancellation of the bail,

and it is common ground that the learned trial Judge, having regard to the provisions of TADA Act by the order dated 7-10-1991 cancelled the

bail. It is also not disputed by the petitioner that after cancellation of his bail, he has not surrendered to police as per bail bond executed pursuant

to the order dated 8-5-1991. In the meantime, the petitioner, on 27-12-1991 has filed the present writ petition challenging application of

provisions of the TADA Act against him. This writ petition came up for admission on 20-1-1992 and this Court made Rule returnable on 10-2-

1992. After hearing both the sides, this Court ordered that the order of bail dated 8-5-1991 passed by the Judicial Magistrate, F.C., Vasai shall

continue during the pendency of this writ petition. Certain other incidental directions were also given in the said order.

4. This writ petition is restricted to challenge to the provisions of TADA Act being made applicable against the petitioner (accused). C.R. No.

1135 of 1991 lodged with the Virar Police Station, District, Thane is accordingly amended by adding the provisions of TADA Act.

5. Mr. Sutrale, learned Counsel appearing in support of this writ petition challenging application of provisions of the TADA Act against the

petitioner, firstly urged that having regard to the facts and circumstances disclosed in the complaint and having regard to the fact that the pistol,

assuming to be recovered at the instance of the petitioner (accused) on 30-4-1991, yet application of provisions of the TADA Act is wholly illegal

and without application of mind and cannot be sustained. Mr. Sutrale, therefore, urged that addition of TADA Act against the petitioner in C.R.

No. 1135 at Virar Police Station be quashed and set aside. Mr. Lambay, learned Assistant Public Prosecutor vehemently opposed this petition

and urged that at this interlocutory stage this Court should not interfere and pass any orders as desired by the petitioner. Mr. Lambay further urged

that it is open to the petitioner to approach the Designated Court for necessary reliefs if he so desires.

6. At the outset, it must be stated that the averments contained in the complaint do not justify application of provisions of TADA Act against the

petitioner. Mr. Jaiprakash Shankarrao Bodhankar, Inspector of Police attached to Virar Police Station, filed his return on behalf of the

respondents. Even this return does not indicate that the petitioner (accused) has got any of the respondents. Even this return does not indicate that

the petitioner (accused) has got any criminal background or antecedents., Assuming that what is stated in the complaint is true, all that could be

said against the petitioner is that on 28-4-1991 he came to the house of the complainant and took away pistol without knowledge of the

complainant. Pistol was loaded. Petitioner had himself gone to Police Station along with the complainant and he was shown arrested at about 9.30

a.m. on 29-4-1991. The pistol in question is also alleged to have been recovered pursuant to the statement made by him u/s 27 of the Indian

Evidence Act. It is neither the case of the complainant in the complaint nor case of the Investigating Officer in the return that the petitioner had used

the said pistol for any purpose. It would, therefore be, a simple case of theft as disclosed in the complaint of the complainant and for application of

provisions of the TADA Act, no requirement laid down therein is prima facie proved. Mr. Lambay, learned Asstt. Public Prosecutor appearing for

the respondents strongly relied upon an unreported decision of this Court in Narendra Govind Mangela Vs. The Inspector of Police, Virar Police

Station and another, rendered by Pendse and Mane, JJ., on 3rd September, 1991. Mr. Lambay urged that apart from setting out the guidelines,

this Court in this decision opined that it is open to the aggrieved party to approach the Designated Court and apply for desired reliefs i.e. quashing

of application of provisions of TADA Act. We have gone through this judgment very carefully and undoubtedly this Court has held so. Mr. Sutrale,

however, urged that the very same Bench has entertained an application filed by the aggrieved party challenging application of TADA Act and this

Court has after being satisfied quashed the application of provisions of TADA Act against the said petitioner. See decision in Uttam Ramji

Hulavale v. State of Maharashtra, rendered by Pendse and Mane, JJ., on 2nd September, 1991, in Criminal Writ Petition No. 567 of 1991. Some

more judgments were also pointed out to us during the course of hearing but we do not see any inconsistency in these judgments because each

decision is based on facts and circumstances of a particular case.

7. After considering rival contentions and allegations contained in the complaint, we are of the opinion that this is not a fit case where application of

provisions of TADA Act should have been made applicable against the petitioner. Applying the ratio laid down in Uttam Ramji Hulavale (supra),

we hold that application of provisions of TADA Act against the petitioner, having regard to the facts and circumstances of the case, is wholly

unsustainable. We must also make it clear that our decision is based on the facts and circumstances of the present case and we lay down no final

verdict in that behalf.

In the result, petition succeeds. Application of provisions of TADA Act against the petitioner in Crime Register No. I 135 of 1991 registered at

Virar Police Station is quashed to that extent only. Consequently, prayer of the petitioner for revoking cancellation of bail order dated 7-10-1991

passed by the Judicial Magistrate, F.C., Vasai, is granted and order dated 7-10-1991 cancelling petitioner's bail is revoked. Consequently, order

dated 8-5-991 granting bail to the petitioner will remain in force until further orders are made by the Competent Court. In addition to the

conditions imposed in bail order dated 8-5-1991, we direct the petitioner to report to Virar Police Station on 7th and 23rd day of every month.

Liberty to the parties to apply to this Court. Rule is made absolute in the above terms.

Certified copy of the judgment is applied for, be furnished within two weeks.