2026:BHC-AUG:6270-DB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**
**CRIMINAL WRIT PETITION NO. 1417 OF 2025**

Sangharatna @Doroman s/o Madhav Waghmare,
Age-18 Years, Occu- Labour
R/o. Shahunagar, Waghala,
Nanded,Tq. & Dist. Nanded …Petitioner

***VERSUS***

1. The State of Maharashtra,
   Through its Section Officer,
   Home Department (Special),
   Mantralaya, Mumbai-32

2. The District Magistrate,
   Nanded, Tq. & Dist. Nanded

3. The Superintendent of Jail,
   Chhatrapati Sambhajinagar,
   Tq. & Dist. Chhatrapati Sambhajinagar ...Respondents

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Mr. Suraj R. Bagal, Advocate for the Petitioner.
Mr. P.S. Patil, A.P.P. for Respondent Nos. 1 to 3.

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| **CORAM** | : | **SANDIPKUMAR C. MORE AND ABASAHEB D. SHINDE, JJ.** |
| **Reserved on** | : | **29.01.2026** |
| **Pronounced on** | : | **11.02.2026** |

**JUDGMENT (PER : ABASAHEB D. SHINDE, J.) :**

1. Heard.

2. Rule. Rule is made returnable forthwith. With the consent of the parties Writ Petition is taken up for final hearing at the stage of admission.

3. By this Writ Petition, the petitioner is taking an exception to the detention order and committal order dated 28.05.2025 bearing

No.2025/RB-1/Desk-2/T-4/MPDA/CR-28, passed by Respondent No.2-District Magistrate, Nanded in exercise of powers under Section 3 (1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons, Video Pirates, Sand Smugglers, Persons Engaged in Black-Marketing of Essential Commodities, Illegal Gambling, Illegal Lottery and Human Trafficker Act, 1981 (hereinafter referred to as ***"MPDA Act"***) as well as the confirmation order dated 11.07.2025, passed by Respondent No.1-State Government in exercise of powers under Section 12 (1) of the MPDA Act. By the impugned detention order, the petitioner has been directed to be detained for a period of 12 months on the ground that the petitioner is a "*dangerous person*" within the meaning of Section 2(b-1) of the MPDA Act holding his activities prejudicial to the maintenance of public order.

4. The impugned detention order has been passed on the proposal submitted by the Police Inspector, Police Station Nanded Rural and Sub-Divisional Police Officer, Sub-Division Itwara, Nanded dated 10.03.2025. The proposal has been routed through the Superintendent of Police and on 12.04.2025 it was eventually placed before Respondent No.2-District Magistrate who claims to

have arrived at a subjective satisfaction that the petitioner's detention is necessary to prevent him from acting in manner prejudicial to public order. It is pertinent to note that, though the basis for submission of proposal for detention of petitioner is registration of four(4) past criminal cases and one Chapter Case No. 01 of 2025 dated 25.02.2025 under Section 129 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS") against the petitioner, however the impugned order of detention is based only on recent two(2) offences bearing Crime No. 192 of 2025 dated 27.02.2025 under Sections 109, 189, 189(4), 189(3), 191(1), 191(2), 191(3), 190, 115(2), 352, 351(2) of Bhartiya Nyaya Sanhita, 2023 (for short "BNS") and Sections 4 and 25 of the Arms Act and Crime No. 199 of 2025 dated 28.02.2025 under Sections 118(2), 115(2), 352, 351(2), 351(3), 189(2), 191(2), 191(3), 190 of BNS and Sections 4 and 25 of the Arms act registered with the Police Station, Nanded Rural. In addition to above crimes, two in-camera statements of witnesses 'A' and 'B' are also made basis for passing of the impugned detention order.

5. Learned Counsel for the petitioner would submit that, although the impugned detention order refers to release of petitioner on bail in pending cases, copies of bail application and

the bail orders were admittedly neither placed on record nor has been considered by the Competent Authority, this lacks the basic principle of subjective satisfaction. To buttress his submission he relied on the judgment of the this Court in the case of ***Paras Rajendra Apte Vs. The State of Maharashtra and Ors.*** reported in ***2025(4) Bom CR (Cri) 202*** , wherein it has been held that, when bail was granted by the jurisdictional Court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention ordered.

6. With regard to in-camera statement of two witnesses, learned counsel for the petitioner submits that those statements can not be relied upon, more particularly when those statements were recorded, the petitioner was on bail. He further contended that, the impugned order of detention has been issued after an inordinate delay due to which the live link if any has been snapped and credible chain if any, is also broken. He has relied on the judgment of this court in the case of ***Umesh Shivaji Vetal Vs. District Magistrate, Dist. Ahilyanagar and Ors.*** in Criminal Writ Petition No. 1097 of 2025, decided on 24 .09.2025 (Aurangabad Bench).

7. The learned counsel for the petitioner further submits that the proposal for preventive detention was forwarded on 10.03.2025 on the basis of two offences registered on 27.02.2025 and 28.02.2025 respectively. However, the order of detention has been passed on 28.05.2025, after an unexplained and inordinate delay of nearly three months from the date of last prejudicial act of the petitioner. Such delay clearly demonstrates that the requisite live link between the alleged prejudicial activities and the necessity for preventive detention had been severed, particularly when the in-camera statements were purported to have been recorded on 08.03.2025. The impugned action thus reflects a mechanical exercise of power by the authorities, without due application of mind, without arriving at the requisite subjective satisfaction, and without appreciating the well-settled distinction between acts affecting “public order” and those amounting merely to breaches of “law and order”.

8. It is further contended by the learned Counsel for the petitioner that so far as two offences bearing Crime No.192 of 2025 and Crime No. 199 of 2025 are concerned both these offences are arising out of the same incident alleged to have taken place on 26.02.2025. These offences are individualistic in nature. He thus

submit that, even taking the allegations of both the crimes as it is, the same would not amount to the act prejudicial to the public order but at the most it could be said to be an act affecting the law and order. He, therefore, submit that on the basis of these two crimes, the order of detention ought not have been passed.

9. The learned counsel for the petitioner further submits that the offences under Sections 4 and 25 of the Arms Act were added at a belated stage and were not part of the original proposal when it was forwarded seeking preventive detention of the petitioner. He further submits that, in so far as the in-camera statements of witnesses 'A' and 'B' are concerned, a perusal thereof would reveal that the same are cyclostyled and lacks specific details such as dates, places, or particulars of the alleged incidents. In short, the contention of the learned counsel is that the in-camera statements are vague and, therefore, could not have been made the basis for passing the impugned order of detention. It is further submitted that the in-camera statements were not properly verified and that the material purportedly relied upon for such verification was also not furnished to the petitioner.

10. The learned counsel further contends that several documents

which were part and parcel of the proposal for detention and which were considered while passing the impugned order were not served to the petitioner. Additionally, number of pages forming part of the detention proposal are either illegible or not properly readable. This has materially prejudiced the petitioner's right to make an effective representation before Respondent No. 2 as well as before the Advisory Board, thereby depriving him of his constitutional right to make an effective representation, as guaranteed under Article 22(5) of the Constitution of India.

11. Per contra, the learned APP supports the impugned detention order of detaining the petitioner for a period of 12 months. According to the learned APP the petitioner is a habitual offender who creates terror and the residents within the jurisdiction of Nanded Rural Police Station and adjoining areas remain in constant fear. He would further submit that Respondent No.2-District Magistrate was subjectively satisfied that, if not prevented, the petitioner is most likely to indulge in further dangerous activities which are prejudicial to the maintenance of public order in the future. He would further submit that considering the statements of the in-camera witnesses 'A' and 'B', it is evident that there was threat

and violence in both the incidents which would have directly affected the public order.

12. Learned APP would therefore, submits that Respondent No.2-District Magistrate has rightly considered the entire material placed before it and has arrived at a subjective satisfaction, that preventive detention of the petitioner is very much warranted. He would further submit that the authorities have scrupulously adhered to the provisions as contemplated under the MPDA Act as after passing the order of detention the same was forwarded to the Advisory Board. The proposal was placed before the Advisory Board on 06.06.2025, after hearing the petitioner on 26.06.2025, the same was forwarded to the State Government and after receipt of the opinion from the Advisory Board, the impugned order of detention has been confirmed by Respondent No.1-State Government by order dated 11.07.2025. In short, the contention of the learned APP is that the entire procedure as contemplated under MPDA Act has been scrupulously followed and he therefore urged that the Writ Petition deserves to be dismissed.

13. After having heard the learned counsel for the petitioner and the learned APP for the state authorities, we find that, the

impugned order of detention is based on two crimes and two in-camera statements, however it is pertinent to note that, there is delay of almost 3 months in between passing the impugned order of detention and the last prejudicial act of the petitioner. As it could be seen that, last crime bearing No. 199/2025 has been registered on 28.02.2025, the proposal for detention of petitioner appears to have been submitted on 10.03.2025, whereas impugned order of detention has been passed on 28.05.2025. Though Respondent No. 2 asserts that there is live link between passing of impugned order of detention and last prejudicial act of petitioner, we however find that, the Respondent No. 2 has utterly failed to explain the delay between the last prejudicial act of the petitioner and passing of impugned order of detention. We thus find that this delay has snapped the live link between the last prejudicial act of the petitioner and passing of impugned order of detention.

14. In that regard it would be profitable to rely on the judgement of the Hon'ble Apex Court in the case of ***T.A. Abdul Rahman* v. *State of Kerala*** reported in **AIR 1990 SC 225** and more particularly para 10 which reads thus :-

> *"10. 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. 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."*

15. We also find that the impugned detention order depicts observations made by Respondent No.2-District Magistrate that, the petitioner has been released on bail, however, he is likely to revert the similar activities prejudicial to the maintenance of public order in future and therefore the detention of petitioner is necessary. In short Respondent No.2-District Magistrate was aware that the petitioner has already been released on bail in connection with two crimes on the basis of which the impugned detention order has been passed.

16. The Hon'ble Apex Court in the case of ***Joyi Kitty Joseph Versus Union of India and Ors.; (2025) 4 SCC 476*** has observed thus :-

> *"32. Likewise, in the present case, we are not concerned as to whether the conditions imposed by the Magistrate would have taken care of the apprehension expressed by the detaining authority; of the detenu indulging in further smuggling activities. We are more concerned with the aspect that the detaining authority did not consider the efficacy of the conditions and enter any satisfaction, however subjective it is, as to the conditions not being sufficient to restrain the detenu from indulging in such activities.*
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> *33. Ameena Begum vs. State of Telangana, (2023) 9 Supreme Court Cases, 587, noticed with approval Vijay Narain Singh v. State of Bihar*

*(1984) 3 Supreme Court Cases 14 and extracted paragraph 32 from the same (Vijay Narain Singh): (SCC pp.35-36).*

> *"32....It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within... not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court. great caution should be exercised in scrutinizing the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court."*
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> *(emphasis supplied)*

*34. The criminal prosecution launched and the preventive detention ordered are on the very same allegations of organised smuggling activities, through a network set up, revealed on successive raids carried on at various locations, on specific information received, leading to recovery of huge cache of contraband. When bail was granted by the jurisdictional Court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention ordered.*

*35. The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the Magistrate while granting bail for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging in further like activities of smuggling".*

17. It would also be apt to refer to the decision of the Hon'ble Apex Court in the case of ***Shaik Nazneen Vs. State of Telangana and others*** reported in ***(2023) 9 SCC 633,*** more particularly paragraph 19 which reads thus :-

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

> *preventive detention law is not the proper remedy under the facts and circumstances of the case"*

18. We thus find that impugned detention order depicts non-application of mind at the hands of Respondent No.2-District Magistrate while appreciating the material as, although the order asserts that petitioner is on bail in both the pending cases, however, the record does not contained a single copy of any bail application or any bail order. As held by the Hon'ble Apex Court in the case of ***Joyi Kitty Joseph*** *(Supra),* ***Shaik Nazneen*** *(Supra),* as well as the judgment of this court in the case of ***Paras Rajendra Apte*** *(Supra)*, that, when a detaining authority takes into account the fact that the detenue is on bail, it must examine the bail orders themselves to assess the nature of offence, the conditions imposed by a Competent Court while releasing the accused on bail and also to ascertain as to whether there exists a real likelihood of detenue committing similar kind of offence if released on bail. In short, absence of these documents shows that the petitioner was denied an opportunity to make an effective representation which is mandatory under Article 22(5) of the Constitution of India.

19. So far as the reliance placed on the two in-camera statements of witnesses 'A' and 'B' are concerned, as observed above, we find

that both the statements are cyclostyled as well as vague as it can be seen that, the allegations made in the said statements are general in nature. The record also depicts that there is no proper verification of these statements nor the detaining authority appears to have applied its mind to its credibility. It is settled position of law that such vague statements that too without any proper verification cannot be made the basis of preventive detention.

20. So far as the contention of the learned APP that several crimes has been registered against the petitioner. We, thus, find that the registration of crimes against the petitioner cannot be said to be an act prejudicial to the public order but at the most it could be said to be an act affecting law and order.

21. It is settled position of law that, the preventive detention is not mean to punish for past act but to prevent future conduct that threatens public order. It is equally required to be considered, as to whether, mere pendency of criminal cases without a live link to eminent disturbances of public order justify preventive detention, whether it is only a concern about law and order or a public order, in that regard the Hon'ble Apex Court in the case of ***Ram Manohar Lohia v. State of Bihar*** reported in ***1965 SCC OnLine SC 9***, while

explaining the term ‘Law and Order’ and ‘Public Order’ observed thus :

> *“54. … Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are.…*
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> *55. It will thus appear that just as “public order” in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting “security of State”, “law and order” also comprehends disorders of less gravity than those affecting “public order”. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.”*

22. Thus, ‘Public Order’ refers to disturbances affecting community at large whereas, ‘Law and Order’ can encompass a broader range of disturbances, including those of local and minor nature. Thus the underline principle is that the activity of a person should be such that it will affect the public order. The three circles referred to by the Hon’ble Apex Court had explained that the activities disturbing law and order may not necessarily disturb the public order. We find that merely because of pendency of criminal cases without a live link to eminent disturbances of public order

cannot justify preventive detention.

23. We find that there is no material placed on record to substantiate that the petitioner was likely to commit any specific act prejudicial to public order in the immediate future. As can be seen that the alleged two crimes dated 27.02.2025 and 28.02.2025, cannot be said to have such a live link. In the light of above, we are of the considered view that the impugned detention order is unsustainable in law so also find that, the confirmation order of the State Government also does not sustain. Hence, we pass the following order:-

**:: <u>ORDER</u> ::**

i. The Writ Petition stands allowed.

ii. The impugned order of detention bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-28 dated 28.05.2025 passed by Respondent No.2-District Magistrate, Nanded and the order of confirmation dated 11.07.2025 passed by Respondent No.1-State Government, are hereby quashed and set aside.

iii. The Petitioner – Sangharatna@Doroman s/o Madhav Waghmare shall be released forthwith, if not required in any other offence/offences.

iv. Rule is made absolute in the above terms.

**(ABASAHEB D. SHINDE, J.)** **(SANDIPKUMAR C. MORE , J.)**