



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 322 OF 2026

Rajesh @ Bhola Bandu Natkar,
Age : 27 years, Occupation : Agril,
R/o. Rakshasbhuvan, Tq : Georai,
Dist : Beed.

... PETITIONER

VERSUS

1. The District Magistrate,
Beed.
2. Superintendent of Police,
Beed.
3. The State of Maharashtra
(Through the Secretary Home Department (Spl)
Mantralaya, Mumbai.
4. The Superintendent Aurangabad
Central Prison, Aurangabad.

... RESPONDENTS

...
Mr. S.B.Solanke, Advocate for the Petitioner
Mr. Govind A. Kulkarni, APP for Respondent nos.1 to 4.

...

**CORAM : SANDIPKUMAR C. MORE &
VAISHALI PATIL-JADHAV, JJ.**

RESERVED ON : 9th September, 2026
PRONOUNCED ON : 30th September, 2026

JUDGMENT [Per : Vaishali Patil-Jadhav, J.] :

. Rule. Rule made returnable forthwith. Heard finally at the admission stage with the consent of learned advocates for the parties.

2. By this petition, the petitioner challenges the detention order dated 20.12.2025 bearing No. 2025/RB-Desk-1/Pol-1/MPDA-27, passed by Respondent No. 1-District Magistrate, Beed, in exercise of the powers under Section 3(2) 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”) and the confirmation order dated 11.02.2026 bearing No. MPDA-1225/CR-729/Spl-3B, passed by Respondent No. 3-State Government in exercise of the powers under Section 12(1) of the MPDA. By the impugned detention order, the petitioner is directed to be detained for a period of 12 months on the ground that the petitioner is a “sand

smuggler” within the meaning of Section 2 (e-2) of the MPDA.

3. The impugned detention order is passed on a proposal submitted by the Assistant Police Inspector, Chaklamba Police Station, Dist.- Beed. The proposal has been routed through the Sub-Divisional Police Officer, the Sub-Division Georai, Dist.- Beed and the Superintendent of Police, Beed, and eventually placed before the respondent No.1 – District Magistrate, Beed, who claims to have arrived at a subjective satisfaction that the petitioner’s detention is necessary to prevent him from acting in a manner prejudicial to public order. The record reflects registration of five (05) past criminal cases and one preventive action taken against the petitioner. The reference chart showing criminal record of the petitioner, is reproduced hereunder:-

Sr. No.	Police Station	Cri. No.	Section	Date of Registration	Present Status
01	Gondi, Dist. Jalna	248/2021	U/sec. 379, 34 IPC r.w. sec.48(7), (8) Mah. Land Revenue Act		Pending before Court
02	Chaklamba	42/2023	U/sec. 324, 323, 504, 506, 34 IPC	20.02.2023	Pending before Court
03	Chaklamba	208/ 2024	U/sec. 303(2) BNS, sec. 48(7), 48(8) Mah. Land Revenue Code	25.07.2024	On Investigation

04	Chaklamba	174/2025	U/sec. 303, 3(5) BNS	18.05.2025	On Investigation
05	Chaklamba	361/2025	U/sec. 303(2), 305(E) BNS	16.10.2025	On Investigation

4. Learned advocate for the petitioner submits that:

1) The last crime considered for passing the detention order on 20.12.2025 was registered on 16.10.2025. The gap between the crime considered and the detention order, snaps the live link and demonstrates no imminent threat or pressing urgency for taking action against the petitioner.

2) The detention order does not discuss the petitioner's arrest or bail status in the relied-upon crime, which shows non-application of mind. The record reveals that, a notice under Section 129 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS, 2023') was served on the petitioner, directing him to furnish a bond for good behaviour on 11.11.2025. This fact was not considered while passing the detention order.

3) The in-camera statements of confidential witnesses "A" and "B" are vague and stereotyped. The incidents stated are against specific individuals and do not establish that the petitioner's activities disturbed public order. At the most, they may amount to a breach of law and order.

It is lastly submitted that as the detention order is passed without proper application of mind and without recording the requisite subjective satisfaction, the same is liable to be quashed and set aside.

In support of his submissions, learned advocate has placed reliance on the judgments in ***Keshav Madhav Vaibhat Vs. District Magistrate, Jalna and Ors.*** reported in ***2026 LJ Soft (BOM) 1906***, ***Nilofer Ramjan Shaikh Vs. Commissioner of Police, Pune City and Ors.*** reported in ***MANU/MH/9401/2025***, ***Ameena Begum Vs. The State of Telangana & Ors.*** reported in ***MANU/SC/0966/2023***, ***Pebam Ningol Mikoi Devi Vs. State of Manipur*** reported in ***MANU/SC/0758/2010***, ***Hasan Khan Ibne Haider Khan v. R.H. Mendonca and Ors.*** reported in ***MANU/SC/0183/2000*** and ***Amanulla Khan Vs. State of Gujarat*** reported in ***MANU/SC/0396/1999***.

5. Per contra, learned APP while supporting the impugned order submitted that:

- 1) There is no delay in passing the detention order that would snap the live link. The proposal

was processed through the appropriate channels in a timely manner and was confirmed by the State Government.

2) Though the petitioner was arrested and released on bail, he has again indulged in 'sand-smuggling' activities and committing offences.

3) The in-camera statements of confidential witnesses are not vague. They specify the date, time, and place of the incidents and were duly verified by the authorities. They corroborate that the petitioner's criminal activities have generated fear among residents within the jurisdiction of Police Station, Chaklamba and adjoining areas, preventing them from coming forward to report against him.

Learned APP lastly submitted that the order of detention was passed on proper application of mind and subjective satisfaction that the petitioner's activities are prejudicial to public order, based on his criminal record and verified in-camera statements, and prayed for dismissal of the petition.

In support of his submissions, learned APP has placed reliance on the judgment of this Court in ***Harish Patil Vs. The State of Maharashtra & Ors.; Criminal***

Writ Petition No. 1398 of 2016, dated 10.10.2016, to submit that illegal sand mining activities have grave consequences that affect public order and, therefore, the detention order in the present case is sustainable.

6. Heard learned advocate Mr. S. B. Solanke for the petitioner and learned APP Mr. G. A. Kulkarni for the respondent-State. With the assistance of the learned advocates, we have perused the petition, affidavit-in-reply, original record and the citations relied upon by both the sides.

7. Although five offences are registered against the petitioner, while passing the impugned detention order, the detaining authority has considered only one recent offence, i.e., C.R. No. 361 of 2025 registered with Chaklamba Police Station, Tal.- Georai, Dist.- Beed on 16.10.2025, under Sections 303(2), 305(E) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS'), and two in-camera statements of Confidential Witnesses 'A' and 'B' to declare the petitioner a "Sand Smuggler".

8. In the present case, we have carefully perused the in-camera statements of confidential witnesses 'A' and 'B'.

Witness 'A' has stated that on 12.11.2025 at 10.00 am, while he was standing at Umapur Phata, the petitioner came there, abused him and said, "why are you giving information of my sand vehicles to police, due to it police are affecting raid on me and registering the offences." When the witness denied giving any information about the petitioner's sand business to the police, the petitioner, without listening to him, assaulted him by means of kick and fist blows, removed a knife from his waist and placed it on his neck.

The incident, as narrated, is essentially individual in nature and was directed specifically against the witness for his alleged act of passing on information to the police about the petitioner's sand business and vehicles. The assault and threat were personal to the witness and arose from a private grievance. There is no material to show that the incident caused any disturbance to the public at large.

9. Witness 'B' has stated that on 17.11.2025 at 10.00 am, while he was standing in front of Shani Mandir, the petitioner came there and asked him why he was not coming for the work of filling his sand vehicle for Rs.300/- per day in the Godavari river bed. The witness replied that he had work elsewhere for Rs.500/- per day and, therefore, could not come to fill the petitioner's sand vehicles. He further told the petitioner that he should close his illegal sand business, as excavation of sand from the Godavari river was reducing the sand level and could give rise to a drought-like situation. On that, without listening to him, the petitioner assaulted him.

The incident narrated is again personal in nature and arose from the witness's refusal to work for the petitioner and his advice to the petitioner to stop the illegal sand business. The statement does not disclose any specific act of the petitioner which caused disturbance to public order. The incident is confined to the individual witness and does not establish that the petitioner's activities had a wide impact on the community at large.

10. It is significant to note that both the confidential witnesses have, in almost identical phraseology, stated that on seeing the incident, persons fled away and shopkeepers shut their shops and tapris. Such verbatim repetition renders the statements stereotyped and mechanical. It appears that the said sentence has been introduced in both statements merely to create an impression that the petitioner's acts affected public order.

At this stage, it is necessary to bear in mind the distinction between "law and order" and "public order", as observed by the Hon'ble Supreme Court in ***Ameena Begum Vs. The State of Telangana & Ors.***, reported in **2023 INSC 788**. For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic or insecurity. Not every case of a general disturbance to public tranquillity affects public order.

The mere fact that shopkeepers shut their shop shutters and persons fled from the spot does not establish that the tempo of life of the community was disturbed. At the most, it shows a temporary reaction to a law and order situation arising from an individual incident. There is no

material to show that the public at large was affected or that the ordinary law was unable to deal with the situation. The in-camera statements, therefore, do not furnish a valid basis for preventive detention.

11. The record further reveals that in C.R. No. 174 of 2025, registered on 18.05.2025, a notice under Section 35(3) of the BNSS, 2023 was served upon the petitioner on 18.05.2025 itself. Only the said notice was issued and the petitioner was not arrested. This indicates that the authorities did not consider it necessary to arrest him. Thereafter, C.R. No. 361 of 2025 came to be registered on 16.10.2025, which is the last crime considered by the detaining authority while passing the impugned detention order. In connection with the preceding activities of the petitioner, Chapter Case No. 23 of 2025 was initiated against him on 11.11.2025. In the said chapter case, the petitioner was asked to execute a final bond for good behaviour under Section 129 of the BNSS, 2023, and accordingly, the petitioner executed the final bond for good behaviour on 25.11.2025, that is, after registration of the last crime considered, namely C.R. No. 361 of 2025. After

execution of the said final bond, no offence was registered against the petitioner.

12. The detention proceedings were initiated by the sponsoring authority by recording the statements of confidential witnesses on 25.11.2025 and 30.11.2025 respectively. It is, however, material to note that the incidents narrated by the confidential witnesses are alleged to have occurred on 12.11.2025 and 17.11.2025, that is, prior to the execution of the final bond for good behaviour by the petitioner on 25.11.2025. There was, therefore, no justification for the detaining authority to initiate the detention proceedings or pass the detention order without first seeking cancellation of the bond secured from the petitioner. If the situation was so imminent and pressing, the authorities ought to have resorted to cancellation of the bond rather than invoking the preventive detention proceedings. No steps were taken for cancellation of the bond. The non-consideration of this material fact vitiates the subjective satisfaction and demonstrates non-application of mind.

13. Moreover, along with the proposal, the sponsoring authority had produced all the record and

documents, including the papers relating to the initiation of the chapter proceedings and the final bond obtained from the petitioner. However, the detaining authority has not taken the same into consideration while passing the detention order, and there is no mention thereof in the detention order.

14. The petitioner was served with a notice under Section 35 (3) of the BNSS, which itself shows that the authorities felt no necessity of his arrest in connection with C.R.No. 361 of 2025, i.e., the last offence considered. Despite this fact, it is simply stated in paragraph 8 of the detention order that *“it is also seen that after releasing on bail you are involving in committing such type of offences, therefore, it is necessary to detain you.”* Similarly, in the affidavit-in-reply, it is stated that *“even after arrest and release on bail, the petitioner reiterated his indulgence in sand-smuggling activities and committing offences”*. These observations demonstrate the haphazard and mechanical manner in which the detention order is passed.

15. We have carefully perused the judgment relied on by the learned APP in **Harish Patil** (supra). This Court in the said case, while upholding the detention order,

observed in paragraph 36 that sand smuggling from river banks affects the water table and water level, thereby affecting the public in general and farmers in particular. The Court also observed that sand smugglers create terror in the vicinity and are a menace to public order.

16. We find that the said judgment is factually distinguishable from the present case. In the said case, there were specific allegations in the in-camera statements that the detenu had threatened and assaulted villagers, created a reign of terror, and prevented farmers from going to their fields at night, causing them great loss. The Court found that the activities of the detenu had affected not just individuals but the residents of several villages, thereby amounting to a disturbance of public order.

In the present case, the in-camera statements do not disclose such grave allegations. The incidents disclosed are of an individual nature and do not demonstrate that the petitioner's activities had a wide-ranging impact on the community at large, as was the case in **Harish Patil** (supra).

17. Moreover, the observations in paragraph 36 of **Harish Patil** (supra) are, at best, obiter dicta and cannot be treated as a ratio decidendi and thus, cannot be applied to all cases of sand smuggling. The reliance placed by the learned APP on the judgment is therefore misplaced. The said judgment, being distinguishable on facts, does not advance the case of the respondents.

18. Before parting, we deem it appropriate to restate the settled legal position regarding preventive detention. Before passing an order of detention, the detaining authority must keep in mind that recording of subjective satisfaction by the detaining authority in an order of preventive detention is a *sine qua non* for passing a valid order of preventive detention. This Court is conscious of the position that, while deciding the validity of an order of preventive detention, it cannot decide whether there was adequacy of material before the detaining authority. This Court can only examine whether there was material before the detaining authority and whether the detaining authority has recorded subjective satisfaction that the grounds provided in the statute for passing an order of detention exist. The order of preventive detention is an

order of a very drastic nature. The result of passing an order of preventive detention is to deprive the detenu of his liberty without trial. Therefore, an order of preventive detention cannot be passed in a casual manner. Passing of an order of preventive detention involves careful application of mind and recording of subjective satisfaction on the basis of the material on record that the grounds of detention provided by the statute exist.

19. From the aforesaid discussion, it is evident that the impugned detention order suffers from several infirmities. The detaining authority did not consider the fact that the police authorities did not find it necessary to arrest the petitioner in the crime considered i.e. C.R.No. 361 of 2025 and he was only served with a notice under Section 35 (3) of the BNSS; though a final bond for good behaviour under Section 129 of the BNSS was executed on 25.11.2025 and no offence was registered thereafter, the authority neither considered nor sought cancellation of the bond before resorting to preventive detention; the in-camera statements narrate individual incidents and are stereotyped and mechanical, and do not establish disturbance to public order; the solitary recent crime and

the said statements do not furnish sufficient material to conclude that the petitioner's activities were prejudicial to maintenance of public order and that ordinary law was incapable of dealing with the same; and the observation that the petitioner continued illegal activities after release on bail is unsupported by any cogent material. These infirmities go to the root of the decision-making process and vitiate the subjective satisfaction.

20. In view of the discussion made hereinabove, we are of the considered opinion that the detention order has ceased to be preventive, as it should be in law, and has instead become punitive and must therefore be struck down. The impugned detention order suffers from non-application of mind and non-recording of the requisite subjective satisfaction.

21. Hence, the following order is passed:-

ORDER

- (i) The Writ Petition is allowed.
- (ii) The detention order dated 20.12.2025 bearing No. 2025/RB-Desk-1/Pol-1/MPDA-27, passed by Respondent No. 1-District Magistrate, Beed and confirmation order

dated 11.02.2026 bearing No. MPDA-1225/CR-729/Spl-3B, passed by Respondent No. 3-State Government are hereby quashed and set aside.

(iii) The Petitioner- Rajesh @ Bhola Bandu Natkar shall be released forthwith, if not required in any other offence.

(iv) Rule is made absolute in the above terms.

[VAISHALI PATIL-JADHAV]
JUDGE

[SANDIPKUMAR C. MORE]
JUDGE

DDC