



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

CRIMINAL WRIT PETITION NO.442 OF 2026

Akshay @ Bhaiya s/o. Ramesh Wahul,
Age : 26 years,
R/o. House No.52, Ekta Colony,
Chhatrapati Sambhajanagar

... PETITIONER

VERSUS

- 1] Commissioner of Police,
Chhatrapati Sambhajanagar
- 2] The State of Maharashtra
(Through the Secretary Home
Department (Spl)
Mantralaya, Mumbai
- 3] The Superintendent
District Prison, Chandrapur.

... RESPONDENTS

...
Mr.Rupesh A. Jaiswal, Advocate for the petitioner
Mr.A.S.Shinde, APP for Respondent nos.1 to 3.

...

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

**RESERVED ON : 10.08.2026
PRONOUNCED ON : 21.08.2026**

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 26.02.2026 bearing No. 2026/CB/MPDA/DET-04/CR-18, passed by Respondent No. 1- Commissioner of Police, Chhatrapati Sambhajanagar in exercise of the 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”) as well as the approval order of the State Government dated 09.03.2026 and the confirmation order dated 14.05.2026 bearing No. MPDA-0226/CR No. 139/Spl-3B, passed in exercise of the powers under Section 12(1) of the MPDA. By the impugned detention order, the petitioner is 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.

3. The record reflects registration of ten (10) past criminal cases and four (04) recent crimes, one externment proceeding, one preventive action and three preventive detention proceedings taken against the petitioner. The

reference chart showing criminal record of the petitioner, is reproduced hereunder :-

Sr. No.	Police Station	C.R. No.& under Section	Date of registration	Present status
1.	Mukundwadi	213/2020 u/s. 392 IPC.	02.06.2020	Pending Trial
2.	Jawaharnagar	32/2021 u/s. 380, 461 IPC.	11.02.2021	Pending Trial
3.	Satara	203/2021 u/s.324, 323, 504, 34 IPC.	10.05.2021	Pending Trial
4.	Pundaliknagar	123/2022 u/s.379 IPC.	08.04.2022	Pending Trial
5.	Satara	356/2022 u/s.452, 427, 323, 504, 507 IPC	13.10.2022	Pending Trial.
6.	Satara	38/2023 u/s.307, 323, 504, 34 IPC.	01.02.2023	Pending Trial.
7.	Pundaliknagar	453/2023 u/s.392, 34 IPC.	02.12.2023	Pending Trial.
8.	Satara	407/2023 u/s.392 IPC.	05.12.2023	Pending Trial
9.	Satara	553/2024 u/s. 352, 351 (2), 351 (3), 238 Bharatiya Nyaya Sanhita, 2023 u/s. 4/25 Arms Act, 1959	28.11.2024	Pending Trial
10.	Satara	559/2024 u/s. 109(1), 118(1), 121(1), 352, 351(2)(3), 238 Bharatiya Nyaya Sanhita, 2023 u/s.4/25 Arms Act, 1959	28.11.2024	Pending Trial.

Externment Proceeding :-

Sr. No.	Police Station	Externment order No.	Under Section & Disposal
1.	Satara	Order No. DCP/Zone-II/ Externment/13/2017 – 3740, Office of the Dy. Commissioner of Police, Zone-II, Aurangabad. Dt.07.09.2017.	56(1)(a)(b) of Maharashtra Police Act, 1951. Externed from Aurangabad City and District for one year.

Preventive Action :

Sr. No.	Police Station	Chapter Case No. & u/s.	Disposal
1.	Satara	73/2021 u/s 107 Cr.P.C.	Final bond of Rs.50,000/- was taken.

Detention Proceedings :

Sr. No.	Police Station	Detention order no.	Disposal
1.	Satara	2023/MPDA/DET-17/CB – 187 Office of the Commissioner of Police, Chhatrapati Sambhajinagar. Date 19.12.2023	Writ Petition allowed.
2.	Satara	2024/MPDA/DET-05/CB-28 Office of the Commissioner of Police, Chhatrapati Sambhajinagar. Date 17.04.2024.	Writ Petition allowed.
3.	Satara	2025/MPDA/DET-01/CB – 28 Office of the Commissioner of Police, Chhatrapati Sambhajinagar. Date 09.04.2025	Writ Petition allowed.

Recent crimes committed by the petitioner :

Sr. No.	Police Station	C.R.No. & Under Section	Date of Registration	Present status
1	MIDC Cidco	366/2025 u/s.140(2), 309(6), 352, 351 (3), 3(5) Bharatiya Nyaya Sanhita, 2023, u/s. 3/25 Arms Act, 1959	19.06.2025	Pending Trial
2	MIDC Cidco	367/2025 u/s.310 (2) Bharatiya Nyaya Sanhita, 2023	19.06.2025	Pending Trial
3	Satara	446/2025 u/s.309 (6), 3(5) Bharatiya Nyaya Sanhita, 2023	19.10.2025	Police Investigation.
4.	Satara	503/2025 u/s.4/25, 7, 27 (1), 27 (2) Arms Act, 1959, u/s.135 of Maharashtra Police Act, 1951	24.11.2025	Pending Trial

4. Learned advocate for the petitioner submits that although fourteen offences are registered against the petitioner, the detaining authority while passing the impugned detention order has mainly relied upon two offences only, i.e. C.R. No.446/2025 registered on 19.10.2025 under Sections 309(6) and 3(5) of the Bharatiya

Nyaya Sanhita, 2023 (for short 'BNS, 2023') and C.R. No. 503/2025 registered on 24.11.2025 under Sections 4/25, 7, 27(1),(2) of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951, both registered with Satara Police Station, Chhatrapati Sambhajinagar, along with two in-camera statements of confidential witnesses 'A' and 'B', to declare the petitioner as a "Dangerous Person".

5. Learned advocate for the petitioner challenged the impugned order mainly on the following grounds:

a) That the petitioner was enlarged on bail in all offences, including the two relied upon i.e. C.R. No.446/2025 and C.R. No. 503/2025. The bail orders were not considered by the detaining authority, and there is no discussion as to why the conditions imposed were insufficient.

b) That the in-camera statements of witnesses 'A' and 'B' are vague, general and stereotyped, failing to disclose specific dates or places. The incidents described only disclose law and order issues and not those affecting public order.

c) That the detaining authority failed to consider the fact that previous detention orders passed against the petitioner under the MPDA in the years 2023, 2024 and 2025 were quashed and set aside by this Court, and the observations made in those judgments were suppressed.

d) That the detaining authority has taken into consideration extraneous material by placing a bulky compilation of old and stale cases before the authority, which has influenced the mind of the detaining authority while passing the detention order.

Lastly, learned advocate submitted that there is lack of application of mind on the part of the detaining authority while passing the impugned order and therefore, the same deserves to be quashed and set aside.

6. Per contra, learned APP supported the impugned order and submitted that:

a) The petitioner is repeatedly involved in serious offences, and his continuous criminal activities have created constant fear and terror

among the residents within the jurisdiction of Satara Police Station and adjoining areas, thereby adversely affecting public order.

b) The grant of bail does not preclude or invalidate the exercise of powers under the MPDA. The detaining authority was aware of the bail orders but found them insufficient to prevent the petitioner from acting in a prejudicial manner.

c) After considering the gravity of the petitioner's criminal activities, the in-camera statements of confidential witnesses were recorded and duly verified. The incidents occurred at public places, involved threats and violence, and directly disturbed public order.

d) This is the fourth instance of the petitioner being detained, which shows the ascending trend of his criminal activities and the failure of ordinary law to curb his actions.

Learned APP lastly prayed that the petition be dismissed.

7. Heard learned advocate Mr. Rupesh A. Jaiswal for the petitioner and learned APP Mr. A.S. Shinde for the respondents. With the assistance of the learned advocates, we have perused the petition, affidavit-in-reply, citations and the record.

8. The law on preventive detention is well-settled. It is a precautionary measure and not a punitive one. The power to detain is based on the subjective satisfaction of the detaining authority, that it is necessary to prevent a person from acting in any manner prejudicial to the public order. However, this power is extraordinary and must be exercised with great caution as it involves the question of personal liberty of an individual.

9. The first issue that arises for our consideration is whether the detaining authority has properly considered the bail orders and the conditions imposed therein. The Hon'ble Supreme Court, in the case of **Ameena Begum Vs. The State of Telangana & Ors.** reported in **2023 INSC 788**, has observed as under:

“..... It is pertinent to note that in the three criminal proceedings where the Detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an extraordinary statute, should not have been resorted to

when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned Detention Order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention.

52. In *Vijay Narain Singh vs. State of Bihar*, Hon'ble E.S. Venkataramiah, J. (as the Chief Justice then was) observed:

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 the four corners of the relevant law. The law of preventive detention should 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 scrutinising 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."

(emphasis supplied)

10. It would also be appropriate 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**, wherein it is observed that if the detenu is a menace to society, the prosecution should seek cancellation of his bail and/or move an appeal to the Higher Court, rather than seeking shelter under the preventive detention law.

11. In the present case, the petitioner was granted bail in C.R. No. 446 of 2025 by the Court of Judicial Magistrate First Class, Aurangabad on 01.01.2026 and in C. R. No. 503 of 2025 by the Additional Sessions Judge, Nanded on 03.01.2026, with conditions of a general nature. The detaining authority while passing the detention order has merely noted the fact of the petitioner's release on bail but failed to consider the bail order itself. The detention order implies that the authority did not apply its mind to the nature of the conditions imposed. It is absolutely not mentioned as to how the conditions which have been imposed while releasing him on bail would not curtail his future criminal activities, and, inspite of the bail order, the detention is necessary. Nothing is brought on record to show that the petitioner has not complied with or violated any bail conditions. Further, there is nothing on record to show that the State has filed any application for cancellation of bail, which indicates that the remedies under ordinary criminal law were not exhausted.

12. The second issue is regarding the vagueness of in-camera statements. The statements of witnesses 'A' and 'B' are general and do not provide specific details about the

incidents. The incidents described, even if accepted at face value, appear to be incidents affecting law and order, but not public order.

The Hon'ble Supreme Court in ***Ameena Begum*** (**supra**) while referring to the Constitution Bench decision in ***Ram Manohar Lohia Vs. State of Bihar*** reported in **1965 SCC OnLine 9** has discussed the distinction between "law and order" and "public order" stating that the difference between the two is of degree and impact. An act may affect law and order but not public order. It is only when the act affects the community at large or the tempo of life of the people that it becomes a public order issue.

The statements of confidential witnesses in the present case do not establish that the petitioner's activities had caused impact on the society at large or disturbed the even tempo of life.

13. The third issue is regarding the failure of the detaining authority to consider the earlier orders of this Court. This is the fourth detention order passed against the petitioner, with the previous three being quashed by this Court. The detaining authority was bound to take note of

the earlier orders and the observations made therein. As has been observed by this Court in the earlier petitions filed by the same petitioner, the material before the detaining authority was insufficient to categorize the petitioner as a dangerous person. The failure to consider these vital observations shows a clear non-application of mind.

14. The fourth issue is regarding the reliance on extraneous material. In the case of **Ameena Begum (supra)**, this Court while considering whether there was proper application of mind to all the relevant circumstances or whether consideration of extraneous factors had vitiated the order of detention, had observed thus:

“43. Considering past criminal history, which is proximate, by itself would not render an order illegal. The Commissioner in the Detention Order made pointed reference to the Detenu being a habitual offender by listing 10 (ten) criminal proceedings in which the Detenu was involved during the years 2019-20, consequent to which the Detenu was preventively detained under the Act vide order of detention dated 4th March, 2021, since quashed by the High Court by its order dated 16th August, 2021. It is then stated therein that the Detenu had committed 9 (nine) offences in the years 2022-23, and these offences are again listed out in detail. However, the Commissioner states that the present order of detention is based only on 5 (five) out of these 9 (nine) crimes, which are alleged to show that the Detenu’s activities are “prejudicial to the maintenance of public order, apart from disturbing peace and tranquillity in the area.”

44. Interestingly, even in paragraph 9 E of his Counter Affidavit, the Commissioner has extracted a portion of the Detention Order which we have set out in paragraph 3 (supra). The reiteration of considering past criminal history of the Detenu is not without its effect, as we shall presently discuss.

45. In Khudiram Das (supra), while examining the 'history sheet' of the detenu, this Court had, in express terms, clarified that a generalisation could not be made that the detenu was in the habit of committing those offences. Merely because the detenu was charged for multiple offences, it could not be said that he was in the habit of committing such offences. Further, habituality of committing offences cannot, in isolation, be taken as a basis of any detention order; rather it has to be tested on the metrics of 'public order', as discussed above. Therefore, cases where such habituality has created any 'public disorder' could qualify as a ground to order detention.

46. Although the Commissioner sought to project that he ordered detention based on the said 5 (five) FIRs, indication of the past offences allegedly committed by the Detenu in the Detention Order having influenced his thought process is clear. With the quashing of the order of detention dated 4th March, 2021 by the High Court and such direction having attained finality, it defies logic why the Commissioner embarked on an elaborate narration of past offences, which are not relevant to the grounds of the present order of detention. This is exactly what this Court in Khaja Bilal Ahmed (supra) deprecated. Also, as noted above, this Court in Shibban Lal Saksena (supra) held that such an order would be a bad order, the reason being that it could not be said in what manner and to what extent the valid and invalid grounds operated on the mind of the authority concerned and contributed to his subjective satisfaction forming the basis of the order."

15. Applying the above principles to the facts of the present case, it is evident that the detaining authority has placed reliance on a bulky compilation of old and stale offences committed by the petitioner between the years

2020 to 2024, which were not even the basis for the present detention order. The grounds of detention contain narration of the petitioner's past criminal history. Though the detaining authority has passed the present order only on the consideration of two recent offences committed by the petitioner in the year 2025, and statements of confidential witnesses, the reference to the past offences indicates that they have influenced the thought process of the detaining authority. Such reliance on extraneous and remote material, which ought not to have been considered and placed before the detaining authority, has clearly vitiated the subjective satisfaction of the detaining authority.

16. The Hon'ble Supreme Court, in ***Rekha Vs. State of Tamil Nadu*** reported in **(2011) 5 SCC 244**, has held that preventive detention is a serious encroachment on personal liberty, and the subjective satisfaction of the detaining authority must be based on cogent and relevant material. The Court further observed that if the ordinary criminal law is sufficient to deal with the situation, the detention order is liable to be quashed.

17. In the instant case, the detaining authority has failed to record any valid reason as to why the ordinary penal provisions under the BNS, 2023 were inadequate to prevent the petitioner's alleged activities. The non-consideration of bail conditions, the vague nature of the in-camera statements, the failure to consider the earlier orders of this Court, and the reliance on extraneous material, indicate that the authority mechanically applied its mind without examining the actual impact of the incidents. This failure shows the non-application of mind while arriving at the subjective satisfaction by the detaining authority. The material relied upon is insufficient to categorize the petitioner as a "Dangerous Person" within the meaning of the MPDA Act.

18. We are, therefore, of the considered view that the detention order and the subsequent confirmation order is unsustainable and are liable to be quashed and set aside. Accordingly, we pass the following order:

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The detention order dated 26.02.2026 bearing No. 2026/CB/MPDA/DET-04/CR-18, passed by Respondent

No. 1- Commissioner of Police, Chhatrapati Sambhajanagar, approval order dated 09.03.2026 and confirmation order dated 14.05.2026 bearing No. MPDA-0226/CR No. 139/Spl-3B, passed by Respondent No. 2- State Government are hereby quashed and set aside.

(iii) The Petitioner- Akshay @ Bhaiya S/o Ramesh Wahul 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