

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.4340 OF 2026

Mohammed Hujer@ Afridi @
Budha Hussain Shaikh

.... Petitioner

versus

The State of Maharashtra & Ors.

.... Respondents

.....

- Mr. Abhishek Avachat a/w Mr. Siddhant Deshpande a/w Mr. Sushant Jadhav, Advocate for Petitioner.
- Ms. M. H. Mhatre, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.
DATE : 24th SEPTEMBER, 2026**

JUDGMENT : (PER : SARANG V. KOTWAL, J.)

1. The Petitioner has challenged the detention order dated 16/06/2026 passed by the Commissioner of Police, Pune City/Respondent No.2. By a separate Committal Order dated 16/06/2026, he was directed to be detained in Washim District Prison. The Petitioner was served with grounds of detention dated 16/06/2026. The Petitioner was detained from 17/06/2026.

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2. Heard Mr. Abhishek Avachat, learned Counsel for the Petitioner and Ms. M. H. Mhatre, learned APP for the State.
3. Learned counsel has restricted his objections only to the main ground that the State Government had restricted the period of detention for 90 days at the first instance and suddenly after the receipt of Advisory Board's report, the period was extended to one year. According to the learned counsel for the Petitioner this action is arbitrary and without basis.
4. Learned APP relied on the affidavit-in-reply submitted by the Respondent No.2 as well as the Superintendent of Washim District Prison. She submitted that the scheme of the Act and also on the basis of Article 22 of the Constitution of India, the action taken by the State Government is within the legal framework and there is no fault in passing of the order.
5. We have considered these submissions in the background of the relevant provisions of the Act. Before referring to those provisions, very briefly, the grounds of detention are referred to as follows :

The grounds of detention run into 15 paragraphs. The paragraph No.3.1 refers to history of the registered offences. They were registered at Khadak Police Station and Bibwewadi Police Station between 2021 to 2025. Paragraph No.3.2 refers to three preventive actions taken against him. There is a special reference to two registered offences at Khadak Police Station in paragraph No.5, which are C.R.No.649 of 2025 and C.R.No.64 of 2026. They were registered on 24/12/2025 and 09/02/2026 respectively. Besides two registered offences, the Respondent No.2 relied on two 'In-Camera' statements of the witnesses 'A' and 'B' in respect of the instances dated 18/05/2026 and 22/05/2026. Based on these materials, the detention order was passed.

6. The detention order originally passed by the Respondent No.2, was approved by the Government of Maharashtra on 26/06/2026. Importantly, while approving the original detention order, the State Government specifically directed that the detainee shall be detained for the period of 90 days from the date of his actual detention. After that, the

Advisory Board's report was available. The report was made on 27/07/2026, and it was opined that there were sufficient grounds for further detention of the detainee.

7. After receiving the Advisory Board's report, the State Government passed an order dated 04/09/2026. It was titled as Detention Confirmation Order. In that order, it was directed that the detention of the detainee shall be continued for a total period of 12 months from the date on which he was actually detained in pursuance of the said detention order.
8. Learned counsel for the Petitioner objected to such extension of the period of detention to 12 months when at the first instance it was restricted only to 90 days.
9. In this background, it is necessary to refer to the relevant provisions of The Maharashtra (Prevention of Dangerous Activities) Act, 1981 (for short 'the Act'). Section 2 defines a 'dangerous person' and what is meant by the activities affecting maintenance of a public order in case of a 'dangerous person'. In the present case, the detention order is passed by

treating the Petitioner as a ‘dangerous person’ within the meaning of the Act.

10. Section 3 of the Act refers to power to make orders detaining certain persons, which reads thus:

“Section 3 - Power to make orders detaining certain persons.

- (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.
- (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section :Provided that the period specified in the order made by the State

Government under this sub-section shall not, in the first instance, exceed six months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding six months at any one time.

- (3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government.”

11. As can be seen, u/s 3 (3) of the Act, there is an outer limit of 12 days from the date of passing of the detention order by the Respondent No.2, before which the State Government had to approve the said order. The original order passed by the Respondent No.2 could not have remained in force beyond the period of 12 days if it was not approved by the State Government.

12. In compliance with the requirement of Section 3(3), the State Government approved the detention order passed by the Respondent No.2 vide the order dated 26/06/2026. The entire material referred to in the grounds of detention was referred to in the order dated 26/06/2026 passed by the State Government. It was observed that the material before the Detaining Authority indicated a real and proximate risk of the detainee acting in a manner prejudicial to public order based on relevant and contemporaneous evidence. The Government of Maharashtra, after considering the recommendation of the Commissioner of Police, Pune, approved the detention order and further observed that, the State Government was confirming the detention order dated 16/06/2026 issued by the Detaining Authority. It was specifically further directed that the Petitioner shall be detained for the period of **90 days** from the date of his actual detention by the Detaining Authority with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. The next clause of the order mentions that the detainee had the right to make a representation before various authorities, including the Advisory

Board, and that his case would be referred to Advisory Board constituted u/s 9 of the Act. The continuation of detention was subject to confirmation and review by the State Government upon the receipt of the opinion or report of the Advisory Board u/s 11 and 12 of the MPDA Act and recommendation of the Detaining Authority.

13. In this context, Section 10 of the Act provides for reference to Advisory Boards, which reads as under.

“Section 10 - Reference to Advisory Boards.

In every case where a detention order has been made under this Act, the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such officer under sub-section (3) of section 3.”

14. Section 12 provides the action which is to be taken upon the report of the Advisory Board, which reads thus :

“Section 12 - Action upon report of Advisory Board

- (1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the State Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period prescribed by section 13, as it thinks fit.
- (2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the State Government shall revoke the detention order and cause the person to be released forthwith.”

15. Section 13 provides for maximum period of detention as follows :

“Section 13 - Maximum period of detention.

The maximum period for which any person may be detained, in pursuance of any detention order made under this Act which has been confirmed under section 12, shall be twelve months from the date of detention.”

16. Thus, the scheme of the Act shows that a person can be detained under this Act for a maximum period of 12 months. The State Government has power to restrict the period of detention below 12 months. Accordingly, the State Government has restricted the period of detention to 90 days, as is specifically mentioned in their order dated 26/06/2026. At that point of time, the State Government had considered the grounds of detention, based on which the detention order was passed. Taking into consideration everything, the period of detention was restricted to 90 days.

17. After that, the Advisory Board's report was received on 27/07/2026, advising further detention of the detainee. After the said report, the State Government confirmed the original detention order vide the order dated 04/09/2026, titled as Detention Confirmation Order. There is a reference in that order that after considering the report of the Commissioner of Police, Pune City, the grounds of detention and the material accompanying the said report, the State Government had approved the detention order vide the order dated 26/06/2026

u/s 3(3) of the Act. Then there is a reference to the Advisory Board's report. It is further mentioned that the State Government independently and carefully considered the detention order, the grounds of detention, the material relied upon by the Detaining Authority, the representation "if any" (emphasis supplied) made by or on behalf of the detainee and the opinion of the Advisory Board.

18. Having observed this, it was further mentioned that the State Government confirmed the detention order and directed that the detention shall be continued for a period of 12 months from the date from which he was actually detained.

19. The said Detention Confirmation Order, first of all, shows non-application of mind because there is no reference to any specific representation by the detainee. It is mentioned that the State Government has considered the representation "if any". The State Government was required to be specific whether there was any representation and whether such representation was considered by them. This clearly shows non-application of mind

on their part. Apart from that, the order dated 04/09/2026 was confirmation of the original detention order. There was no question of modifying the original detention order. Therefore, the State Government could not have modified the period which they had restricted to 90 days by the order dated 26/06/2026. Even otherwise, from the record, there was no material available, except the Advisory Board's report which does not refer to any specific period, for the State Government to change the period from 90 days to 12 months. The entire act is thus arbitrary and is not sustainable. The period of 90 days from the date of detention is already over. Therefore, continuous detention of the Petitioner after that period does not have basis of law. On this ground, the continued detention of the Petitioner will have to be set aside.

20. Hence, the following order :

ORDER

- (i) The Detention Confirmation Order dated 04/09/2026 passed by the State Government directing detention of the Petitioner for a total

period of 12 months from the date of his actual detention, is set aside.

- (ii) The period of 90 days referred to in the order dated 26/06/2026 is already over. The Petitioner, therefore, cannot be detained further in respect of the original detention order dated 16/06/2026, which is the subject matter of this Petition.
- (iii) The Petitioner be released forthwith, if not required in any other case.
- (iv) The Rule is made absolute in the aforesaid terms.
- (v) The Petition is disposed of.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)