



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.441 OF 2025

Krushna Shrawan Shinde
Age: 25 years, Occu.: At Present in Jail
R/o. Sumbha, Tal. And Dist. Osmanabad
District Osmanabad.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department (Special)
Mantralaya, Mumbai.
2. The Collector/District Magistrate,
Osmanabad.
3. The Superintendent
Central Prison, Harsul,
Aurangabad.

.. Respondents

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Ms. Tanvi V. Jadhav, Advocate for the petitioner (Appointed Through
Legal Aid).
Mr. A. R. Kale, APP for respondents/State.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 07 MAY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Ms. Tanvi V. Jadhav for the petitioner and
learned APP Mr. A. R. Kale for the respondents – State.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the parties.

3. The petitioner challenges the detention order dated 07.11.2024 passed by respondent No.2 bearing No.2024/DC/MAG-3/WS-429 and approval order dated 14.11.2024 as well as confirmation order dated 07.01.2025 passed by respondent No.1, by invoking the powers of this Court under Article 226 of the Constitution of India.

4. Learned Advocate for the petitioner has taken us through the impugned orders and the material which was supplied to the petitioner by the detaining authority after passing of the order. She submits that in all seventeen offences were registered against the petitioner i.e. **(i)** Crime No.231 of 2021 registered with Dhoki Police Station, District Dharashiv for the offences punishable under Sections 307, 324, 143, 147, 148, 149 of Indian Penal Code, **(ii)** Crime No.116 of 2022 registered with Bembli Police Station, District Dharashiv for the offences punishable under Sections 457, 380 of Indian Penal Code, **(iii)** Crime No.171 of 2022 registered with Bembli Police Station, District Dharashiv for the offences punishable under Sections 395, 397, 354(b), 427 of Indian Penal Code, **(iv)** Crime No.127 of 2023 registered with Anandnagar Dharashiv Police Station, District Dharashiv for the offences punishable under Sections 454, 380 of Indian Penal Code, **(v)** Crime No.101 of

2023 registered with Bembli Police Station, District Dharashiv for the offences punishable under Sections 457, 380 of Indian Penal Code, **(vi)** Crime No.19 of 2024 registered with Bembli Police Station, District Dharashiv for the offences punishable under Sections 324, 504 of Indian Penal Code, **(vii)** Crime No.76 of 2024 registered with Shiradhon Police Station, District Dharashiv for the offences punishable under Sections 454, 380 of Indian Penal Code, **(viii)** Crime No.103 of 2024 registered with Shiradhon Police Station, District Dharashiv for the offences punishable under Sections 457, 380 of Indian Penal Code, **(ix)** Crime No.158 of 2024 registered with Shiradhon Police Station, District Dharashiv for the offences punishable under Sections 331(4), 305 of Bhartiya Nyaya Sanhita, **(x)** Crime No.130 of 2024 registered with Dhoki Police Station, District Dharashiv for the offences punishable under Sections 457, 380 of Indian Penal Code, **(xi)** Crime No.221 of 2024 registered with Dhoki Police Station, District Dharashiv for the offences punishable under Sections 354, 380 of Indian Penal Code, **(xii)** Crime No.266 of 2024 registered with Dhoki Police Station, District Dharashiv for the offences punishable under Sections 331(4), 305(A) of Bhartiya Nyaya Sanhita, **(xiii)** Crime No.273 of 2024 registered with Dhoki Police Station, District Dharashiv for the offences punishable under Sections 331(4), 305(A) of Bhartiya Nyaya Sanhita, **(xiv)** Crime No.147 of 2024 registered with Kallamb Police Station, District Dharashiv for the

offences punishable under Sections 457, 380 of Indian Penal Code, **(xv)** Crime No.279 of 2024 registered with Kallamb Police Station, District Dharashiv for the offences punishable under Sections 331(4), 305(A) of Bhartiya Nyaya Sanhita, **(xvi)** Crime No.171 of 2024 registered with Bembli Police Station, District Dharashiv for the offences punishable under Sections 331(4), 305(A) of Bhartiya Nyaya Sanhita and **(xvii)** Crime No.276 of 2024 registered with Dhoki Police Station, District Dharashiv for the offences punishable under Sections 331(4), 305(A) of the Bhartiya Nyaya Sanhita. Learned Advocate appearing for the petitioner who has been appointed through legal aid vehemently submits that the detaining authority has absolutely not applied his mind while passing the detention order. The petitioner has been shown to be involved in seventeen cases right from 2021 and all have been considered for passing the detention order. All the offences are similar in nature mostly involving the offences under Sections 454, 380 of Indian Penal Code, Sections 395, 397, 307 of Indian Penal Code and Sections 331(4), 305 of Bhartiya Nyaya Sanhita. There was absolutely no live link between the offences and the detention order. The learned District Magistrate has not considered the bail orders in many cases. In five cases out of seventeen, the petitioner has been released on bail. Way back from August 2023 - September 2023, only in four matters charge-sheets have been filed. As per the chart that is given in the order and in

rest of all the twelve cases, even the charge-sheet has not been filed. Now, in three matters i.e. in R.C.C. No.396 of 2024 in respect of Crime No.276 of 2024, in R.C.C. No.399 of 2024 in respect of Crime No.266 of 2024 and in R.C.C. No.393 of 2024 in respect of Crime No.273 of 2024, the petitioner has been acquitted by the concerned Court on 21.01.2025. In all these matters, it appears that the charge-sheet was filed on 10.10.2024, still the learned Magistrate showed the matter as still under investigation. In all the matters which were under Sections 454, 380 of Indian Penal Code, the FIR was against unknown persons. The name of the present petitioner came to be involved on the basis of discovery panchanama under Section 23(2) of Bharatiya Sakshya Adhiniyam, 2023. All these offences and the statements of in-camera witnesses would show that at the most law and order situation would have been created and not the public order.

5. Learned Advocate for the petitioner relies on the following decisions :-

- I) Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and others, [1993 Supp (2) SCC 61],**
- II) Rekha Vs. State of Tamil Nadu Through Secretary to Government and Another, [(2011) 5 SCC 244],**
- III) Sadhu Roy Vs. The State of West Bengal, [(1975) 1 SCC 660],**

**IV) Khaja Bilal Ahmed Vs. Stte of Telangana and others,
[(2020) 13 SCC 632].**

6. Per contra, the learned APP strongly supports the action taken against the petitioner. He submits that the petitioner is a dangerous person as defined under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the “MPDA Act”). The detaining authority has relied on the two in-camera statements and the subjective satisfaction has been arrived at. There is no illegality in the procedure adopted while recording the in-camera statements of the witnesses. Due to the terror created by the petitioner, people are not coming forward to lodge report against him and, therefore, it affects the public order. Learned APP relies on the affidavit-in-reply of Dr. Sachin Ombase, the District Magistrate, Dharashiv, who has stated as to how he had arrived at the subjective satisfaction and what was the material before him at the time of passing the impugned order. Learned APP submits that in spite of involvement of the petitioner in so many cases, his criminal activities have not been curtailed. The criminal antecedents can be taken into consideration for passing the detention order. There is no illegality or error committed by the learned District Magistrate in holding the petitioner as a dangerous person. Therefore, no fault can be found in the impugned order.

7. Before considering the case, we would like to take note of the legal position as is emerging in the following decisions :-

(i) Nenavath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367],

(ii) Aameena Begum Vs. The State of Tamilnadu and Ors., [2023 LiveLaw (SC) 743];

(iii) Kanu Biswas Vs. State of West Bengal, [1972 (3) SCC 831] wherein reference was made to the decision in *Dr. Ram Manohar Lohia vs. State of Bihar and Ors. [1966 (1) SCR 709];*

(iv) Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, [1995 (3) SCC 237];

(v) Pushkar Mukherjee and Ors. Vs. The State of West Bengal, [AIR 1970 SC 852];

(vi) Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751) and;

(vii) Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, [(1981) 4 SCC 647].

8. Taking into consideration the legal position as summarized above, it is to be noted herein as to whether the detaining authority while passing the impugned order had arrived at the subjective satisfaction and whether the procedure as contemplated has been complied with or

not. In ***Nenavath Bujji*** (*Supra*) itself it has been reiterated by the Hon'ble Supreme Court that illegal detention orders cannot be sustained and, therefore, strict compliance is required to be made, as it is a question of liberty of a citizen. Here, it is to be noted from the impugned order that the District Magistrate has considered all the seventeen offences, which were registered against the petitioner, for passing the detention order. The first offence that was registered against the petitioner was on 19.07.2021, in which he came to be arrested on 02.08.2021. In first four matters, he was released on bail and the cases are stated to be still pending before the concerned Courts. In Crime No.19 of 2024 registered with Bembli Police Station, the offence involved was under Sections 324, 504, 506 of Indian Penal Code and only notice has been given to the petitioner under Section 41(A)(1) of the Code of Criminal Procedure. In ten cases, the petitioner is said to be in Magisterial Custody, but then in Crime No.276 of 2024 i.e. last offence, it is stated that he is on bail from 04.09.2024. The bail orders passed in those cases have not been considered at all by the learned District Magistrate and, therefore, we would like to rely on the decision in ***Joyi Kitty Joseph Vs. Union of India and Ors., [Criminal Appeal No.____ of 2025 (arising out of Special Leave Petition (Crl.) No.16893 of 2024) decided by the Hon'ble Supreme Court on 06.03.2025]***, wherein reliance has been placed on the decision in ***Ameena Begum v.***

State of Telangana and others, [(2023) 9 SCC 587] and it has been observed that preventive detention is impermissible when the ordinary law of the land is sufficient to deal with the situation was *per incuriam* to the Constitution Bench decision in ***Haradhan Saha vs. State of W.B. [(1975) 3 SCC 198]***, in the limited judicial review available to constitutional courts in preventive detention matters. However, in ***Ameena Begum (Supra)***, the Hon'ble Supreme Court explained the true distinction between a threat to "law and order" and acts "prejudicial to public order" and it is stated that it cannot be determined merely by the nature or quality of the act complained of, but in the proper degree and extent of its impact on the society. Further, it is observed 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. 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."

9. At any point of time, the prosecution has not filed any application for cancellation of bail even after coming to know that the petitioner is still committing offences.

10. The Hon'ble Supreme Court in **Khaja Bilal Ahmed (Supra)**, has held that :-

“22. In the facts of that case, the Court held that the order of detention was passed on stale grounds, which could not have been considered as relevant for arriving at the subjective satisfaction that the detenu must be detained. This Court held thus:-

17. The detention order must be based on a reasonable prognosis of the future behaviour of a person based on his past conduct in light of the surrounding circumstances. The live and proximate link that must exist between the past conduct of a person and the imperative need to detain him must be taken to have been snapped in this case. A detention order which is founded on stale incidents, must be regarded as an order of punishment for a crime, passed without a trial, though purporting to be an order of preventive detention. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. See **G. Reddeiah v. State of A.P. (2012) 2 SCC 389** and **P.U. Iqbal v. Union of India, (1992) 1 SCC 434.**”

(Emphasis supplied)

Therefore, the proximity has to be shown or live link is to be shown by the respondents.

11. In most of the offences alleged to have been committed in 2024 involving Sections 457, 380 of Indian Penal Code or equivalent Section from Bhartiya Nyaya Sanhita, the FIRs are against unknown persons. There were co-accused involved in the matter and it appears that the prosecution had heavily relied on the discovery panchanama under Section 23(2) of Bharatiya Sakshya Adhiniyam, 2023 allegedly given by co-accused Akshay Shinde. The confessional statements of the co-accused involving another person in the crime can be proved only under the provisions of law and not by way of Section 23(2) of Bharatiya Sakshya Adhiniyam. The said discovery is not binding on the accused who has not made such statement. Though the District Magistrate cannot act as per the Judicial Magistrate First Class and assess the evidence, but at least he should bear in mind that there are hurdles for the prosecution to prove such confessional statements. If the case is based only on the confessional statement, then every precaution is required to be taken by the District Magistrate while curtailing the personal liberty of a person. The personal liberty cannot be curtailed on the basis of inadmissible evidence. The acquittal in three matters is of course subsequent to the passing of the impugned order. We can also take a note from the record that the same discovery panchanama under Section 23(2) of Bharatiya Sakshya Adhiniyam given by co-accused is used in some other cases also which are still pending before the learned

Magistrate. We can take the note of the fate of those cases on the basis of the judgment of acquittal in three cases. In ***Rekha (Supra)***, Hon'ble Supreme Court has observed that :-

“Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is : Was the ordinary law of the land sufficient to deal with the situation ? If the answer is in the affirmative, the detention order will be illegal.”

12. Here, in this case, the ordinary law is in fact sufficient to take action against the petitioner, if he is involved in subsequent offences also. In respect of taking recourse to those available legal provisions to curtail the liberty of the petitioner, a step which is termed as rule of draconian law has been followed and, therefore, such order cannot be allowed to sustain.

13. Thus, taking into consideration the above observations and the decisions of the Hon'ble Apex Court, at the most, the statements as well as the offences allegedly committed would reveal that the petitioner had created law and order situation and not disturbance to the public order. Though the Advisory Board had approved the detention of the petitioner, yet we are of the opinion that there was no material before the detaining authority to categorize the petitioner as a dangerous person or bootlegger.

14. For the aforesaid reasons, the petition deserves to be allowed.

Hence, following order is passed :-

ORDER

- I) Writ Petition stands allowed.
- II) Detention order dated 07.11.2024 passed by respondent No.2 bearing No.2024/DC/MAG-3/WS-429 and approval order dated 14.11.2024 as well as confirmation order dated 07.01.2025 passed by respondent No.1, are hereby quashed and set aside.
- III) Petitioner viz. Krushna Shrawan Shinde shall be released forthwith, if not required in any other offence.
- IV) Rule is made absolute in the above terms.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm