



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.552 OF 2025

Atik Ghulam Hussain Qureshi,
Age: 34 years, Occu.: Business,
R/o. Khatik Galli, Shrigonda,
Tq. Shrigonda, Dist. Ahilyanagar.

.. Petitioner

Versus

1. District Magistrate, Ahilyanagar,
District Ahilyanagar.
2. The State of Maharashtra
Through the Additional Chief Secretary,
Govt. of Maharashtra, Home Department,
Mantralaya, Mumbai-32.
3. The Jail Superintendent,
Nasik Central Prison, Nasik.
4. The Police Inspector Srigonda,
Police Station, Ahilyanagar.

.. Respondents

...
Mr. Rohit Patwardhan h/f Mr. Satej S. Jadhav, Advocate for the petitioner.
Mr. G. A. Kulkarni, APP for respondents/State.

...

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

DATE : 20 JUNE 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Rohit Patwardhan holding for learned
Advocate Mr. Satej S. Jadhav for the petitioner and learned APP Mr. G.
A. Kulkarni for 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 28.03.2025 bearing No.DC/Desk-9C1/341/2025 passed by respondent No.1 as well as the approval order dated 07.04.2025 and the confirmation order dated 14.05.2025 passed by respondent No.2, 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. He submits that though several offences were registered against the petitioner, yet for the purpose of passing the impugned order, only one offence was considered i.e. Crime No.976 of 2024 registered with Shrigonda Police Station, District Ahmednagar for the offences punishable under Sections 103, 194(2), 125, 125(a)(b), 189(2), 191(2) of Bhartiya Nyaya Sanhita, 2023, under Section 3(2)(v), 3(2)(va), 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act"), under Section 37(1)(3), 135 of the Maharashtra Police Act. Learned Advocate for the petitioner submits that though the petitioner is stated to be involved in fifteen offences, for passing the detention order only one offence i.e. Crime

No.976 of 2024 was considered. It is still under investigation. If the contents of the FIR are considered, then it can be seen that it would have raised only law and order situation at the most and not the public order. The learned detaining authority had not considered the bail order which was passed by the learned Additional Sessions Judge, Shrigonda on 01.03.2025, when in fact the detention order came to be passed on 28.03.2025. In the bail order, the concerned Additional Sessions Judge had taken note of the fact that charge-sheet has been filed. In fact, initially, the FIR was registered for the offences punishable under Section 194(2) of the Bhartiya Nyaya Sanhita, under Section 135 and 37(1)(3) of the Maharashtra Police Act, however, when Ram Shankar Sasane expired, then Sections 103, 125, 125(a)(b), 89(2), 191(2) of Bhartiya Nyaya Sanhita and Section 3(2)(v), 3(2)(va), 3(1)(r), 3(1)(s) of the Atrocities Act came to be added in view of the order passed by learned Judicial Magistrate First Class on 30.12.2024. It was noted by the learned Additional Sessions Judge that once the charge-sheet is filed and if the investigating officer wants to make further investigation in respect of the same case, then permission of the concerned Magistrate ought to have been obtained as per Section 193(9) of the Bhartiya Nagrik Suraksha Sanhita, 2023. No such permission has been taken and in fact, the learned Magistrate has passed the order of “seen” only. Note was also taken that victim is the wife of the deceased and the son of the

deceased had given no objection for grant of bail to the petitioner. The investigation of the crime has been carried out by number of police officers by their whims and fancies. Two spot panchanamas have been prepared of different dates and with all such reasons, it was opined that the petitioner appears to have been involved in the matter. Doubt has been raised in respect of the entire investigation itself. When these facts have not been considered at all, it cannot be said that the material before the learned detaining authority was sufficient for him to apply his mind. Even in respect of the statements of confidential witnesses 'A' and 'B', it can be seen that at the most law and order situation would have been created.

5. 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 relied on the affidavit-in-reply of Mr. Pankaj

Ashiya, the District Magistrate, Ahilyanagar/detaining authority. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. He further states that his order has been approved by the State Government and also by the Advisory Board. 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.

6. 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) 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];*

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

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

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

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

7. 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. The first and the foremost fact to be noted is that only one offence has been considered by the detaining authority i.e. Crime No.976 of 2024. It is stated that the said crime is still under investigation, when in fact from the copy of the bail order it can be seen that charge-sheet was already filed before the learned Judicial Magistrate First Class, Shrigonda i.e. S.C.C. No.1414 of 2024. Later on when victim appears to have expired, namely, Ram Shankar Sasane, thereafter, by simple communication, which has been sent by the Magistrate, it appears that the further investigation has been carried out. Here, 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.”

8. Further, reliance can be placed on the decision in ***Dhanyam Vs. State of Kerala and Ors., [Criminal Appeal No.2897 of 2025 (Arising out of SLP (Crl.) No.14740 of 2024) decided on 06.06.2025]***, wherein it has been observed that :-

“17.From perusal of Section 2(j), it is evident that a person who indulges in activities “harmful to maintenance of public order” is sought to be covered by the Act. This Court in ***Sk. Nazneen Vs. State of Telangana, [(2023) 9 SCC 633]*** had emphasized on the distinction between public order as also law and order situations :

“18. In two recent decisions [*Banka Sneha Sheela v. State of Telangana, (2021) 9 SCC 415 : (2021) 3 SCC (Cri.) 446; Mallada K. Sri Ram v. State of Telangana, (2023) 13 SCC 537: 2022 SCC OnLine SC 424*], this Court had set aside the detention orders which were passed, under the same Act i.e. the present Telangana Act, primarily relying upon the decision in *Ram Manohar Lohia [Ram Manohar Lohia v. State of Bihar, 1965 SCC OnLine SC9]* and holding that the detention orders were not justified as it was dealing with a law and order situation and not a public order situation.”

19.The observations made in the detention order do not ascribe any reason as to how the actions of the detenu are against the public order of the State. As discussed above, given the extraordinary nature of the power of preventive detention, no reasons are assigned by the detaining authority, as to why and how the actions of the detenu warrant the exercise of such an exceptional power.

20. Moreover, it has been stated therein by the authority that the detenu is violating the conditions of bail imposed upon him in the cases that have been considered for passing the order of detention. However, pertinently, no application has been filed by the respondent-State in any of the four cases, alleging violation of such conditions, if any, and moreover, have not even been spelt out here.”

9. The District Magistrate ought to have taken note of the bail order and the reasons stated therein. The entire record, which is made available to us which was before the District Magistrate, would show that the bail order was never placed before the Magistrate. The chronology goes in a way that the confidential statements of witnesses ‘A’ and ‘B’ were recorded on 28.02.2025 and 01.03.2025 respectively. Proposal was then submitted by sponsoring authority on 02.03.2025 and it was forwarded to Deputy Superintendent of Police. Deputy Superintendent of Police had then forwarded it to Superintendent of Police on

04.03.2025 after verification of the statements on 03.03.2025. Superintendent of Police had then forwarded it to District Magistrate on 04.03.2025 itself i.e. without losing a single day and the detention order has been passed on 28.03.2025. Neither Deputy Superintendent of Police, nor Superintendent of Police, who normally should know as to when the bail is granted to the accused persons, forwarded the bail order to the District Magistrate. The District Magistrate without getting information, which he himself can also call regarding whether the petitioner has been released on bail in between the sponsoring date and reaching of the proposal to him as well as on the date of passing of the order, appears to have passed the order and, therefore, it will have to be stated that the impugned order is without application of mind. If he would have considered the bail order passed by the learned Additional Sessions Judge, Shrigonda on 01.03.2025, certainly, he would not have taken the step of passing the detention order. One more fact that is required to be considered is that the said bail order was not even placed before the Advisory Board and we could get that from the original record. That was brought to the notice of the Board by the learned Advocate appearing for the petitioner before the Board and in the opinion, the Board has stated that perusal of the bail order produced by the detenu would show that he was granted bail on 01.03.2025 and the order was digitally signed on 02.03.2025 in the evening. The proposal was

submitted on 02.03.2025 and, therefore, the copy of the bail order was not made available before the detaining authority. We do not agree to those reasons. Even the District Magistrate, instead of saying as to why he had not called for the latest information regarding the bail of the detenu, states that the order of bail has no bar for issuing detention order. In fact, the District Magistrate is saying something against the ratio laid down in **Joyi Kitty Joseph (Supra)**, which we cannot accept. In fact, this would have been the case of granting compensation to the detenu, whose bail order, especially the reasons in the bail order, were not at all considered and his constitutional rights were then jeopardized. However, we would be taking that step if at all the gross violation is noticed. The District Magistrate while passing an order is not required to oblige the sponsoring authority/police authority. He has to apply his mind and, therefore, he should also take note of the constitutional rights of the person detained. Therefore, the District Magistrates are required to be trained when such proposals for detention are sent. We hope that the State Government would take the training of the District Magistrates on this point seriously. In **Shashikant Sakharam Badgal v. District Magistrate, Nanded and Ors. [Criminal Writ Petition No.2028 of 2024 decided by this Court on 13.01.2025]**, we had already observed that the State Government would take care henceforth and would conduct the training of the District Magistrates or in any other manner convey it to

the District Magistrates or the authority empowered to pass order under M.P.D.A. that they should consider various decisions of the Hon'ble Supreme Court and this Court in and before passing any such order under M.P.D.A.

10. Here, the act of District Magistrate has been protected by the observations in the opinion of the Advisory Board. As regards the role of Advisory Board is concerned, we would like to rely on the decision in ***Nenavath Bujji (Supra)***, wherein the role of the Advisory Board has been explained and the observations in respect of the same in paragraph Nos.55 to 58 are important :-

“55. What can be discerned from a bare perusal of the above-mentioned provisions is that the Advisory Board performs the most vital duty of independently reviewing the detention order, after considering all the materials placed before it, or any other material which it deems necessary. When reviewing the detention order along with the relevant materials, the Advisory Board must form an opinion as to the sufficiency of the cause for warranting detention. An order of detention passed under the Act, 1986 can only be confirmed if the Advisory Board is of the opinion that there exists sufficient cause for the detention of the detenu.

56. The framers of the Constitution being in *seisin* of the draconian nature of an order of preventive detention and its adverse impact on individual liberty, have specifically put in place safeguards within Article 22 through the creation of an Advisory Board, to ensure that any order of preventive

detention is only confirmed upon the evaluation and scrutiny of an independent authority which determines and finds that such an order for detention is necessary.

57. The legislature in its wisdom has thought it fit, to entrust the Advisory Board and no one else, not even the Government, with the performance of this crucial and critical function which ultimately culminates into either the confirmation or revocation of a detention order. The Advisory Board setup under any preventive detention law in order to form its opinion is required to; (i) consider the material placed before it; (ii) to call for further information, if deemed necessary; (iii) to hear the detenu, if he desires to be heard and; (iv) to submit a report in writing as to whether there is sufficient cause for “such detention” or whether the detention is justified.

58. An Advisory Board is not a mere rubber-stamping authority for an order of preventive detention. Whenever any order of detention is placed before it for review, it must play an active role in ascertaining whether the detention is justified under the law or not. Where it finds that such order of detention is against the spirit of the Act or in contravention of the law as laid down by the courts, it can definitely opine that the order of detention is not sustainable and should not shy away from expressing the same in its report.”

11. As regards statements of witnesses ‘A’ and ‘B’ are concerned, the incident in both the cases would show that general public was not involved. At the most law and order situation would have been created and not the public order.

12. 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.

13. For the aforesaid reasons, the petition deserves to be allowed. Hence, following order is passed :-

ORDER

- I) The Writ Petition stands allowed.
- II) The detention order dated 28.03.2025 bearing No.DC/Desk-9C1/341/2025 passed by respondent No.1 as well as the approval order dated 07.04.2025 and the confirmation order dated 14.05.2025 passed by respondent No.2, are hereby quashed and set aside.
- III) Petitioner – Atik Ghulam Hussain Qureshi shall be released forthwith, if not required in any other offence.

IV) Learned APP is directed to bring paragraph No.09 of this order to the notice of the State and place it before the concerned Authority for scheduling the training programme.

V) Rule is made absolute in the above terms.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm