



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.768 OF 2025

Shaikh Saud Shaikh Sharfoddin
Age: 32 years, an Indian
residing at Ali Saheb Mohalla,
Nandurbar,
District Nandurbar.

.. *Petitioner*
(brother of detenu)
.. (Detenu)

Shaikh Shahebaz Shaikh Sharfuddin

Versus

1. The State of Maharashtra
Through Secretary Home Department
(Special) Mantralaya, Mumbai – 400032
2. The District Magistrate,
Nandurbar.
3. The Superintendent of Nashik,
Road Centre Prison, Nashik.

.. *Respondents*

...

Mr. Shaikh Mohd. Rasiq Shaikh M. A., Advocate for the petitioner.
Mr. V. K. Kotecha, APP for respondents/State.

...

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

DATE : 01 JULY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Shaikh Mohd. Rasiq Shikh M. A. for
the petitioner and learned APP Mr. V. K. Kotecha 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 21.03.2025 bearing No.Home/Desk-2/MPDA-D.O.-1/WS-86/2025 passed by respondent No.2 as well as the approval order dated 01.04.2025 and the confirmation order dated 14.05.2025 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. He submits that the detaining authority has considered all the seven offences for passing the impugned order i.e. **(i)** Crime No.243 of 2020 registered with Nandurbar City Police Station, District Nandurbar for the offences punishable under Sections 353, 332, 188, 268, 504 and 506 of Indian Penal Code and under Section 54 of the National Disaster Management Act, **(ii)** Crime No.734 of 2021 registered with Nandurbar city Police Station, District Nandurbar for the offences punishable under Sections 353, 336, 337, 143, 145, 147, 149, 268, 269, 290, 427 of Indian Penal Code and under Section 37(1)(3), 135 of the Maharashtra Police Act, **(iii)** Crime No.222 of 2023 registered with Nandurbar City Police Station, District Nandurbar

for the offences punishable under Sections 307, 308, 353, 333, 332, 143, 147, 148, 149, 427 of Indian Penal Code, under Sections 3, 7 of the Prevention of Damages to Public Property Act and under Section 37(1)(3), 135 of the Maharashtra Police Act, **(iv)** Crime No.856 of 2023 registered with Nandurbar City Police Station, District Nandurbar for the offence punishable under Section 186 of the Indian Penal Code, under Section 37(1)(3) of the Maharashtra Police Act, **(v)** Crime No.579 of 2024 registered with Nandurbar City Police Station, District Nandurbar for the offences punishable under Sections 109, 132, 121(2), 118(1), 324(4), 324(5), 189(2) of Bharatiya Nyaya Sanhita, 2023, under Section 4 punishable under Section 25 of the Indian Arms Act, under Section 3, 7 of the Prevention of Damages to Public Property Act and under Section 37(1)(3), 135 of Maharashtra Police Act, **(vi)** Crime No.759 of 2024 registered with Nandurbar City Police Station, District Nandurbar for the offences punishable under Sections 352, 324(4), 324(5), 303(2), 3(5), 115(2) of Bharatiya Nyaya Sanhita, 2023, **(vii)** Crime No.167 of 2025 registered with Nandurbar City Police Station, District Nandurbar for the offences punishable under Sections 189, 192, 196(1)(A), 196(1)(B), 353(2) of Bharatiya Nyaya Sanhita, 2023. Learned Advocate for the petitioner submits that the impugned order suffers from live link. The brother of the petitioner is involved in seven offences since 2020 and all have been considered by the detaining authority for passing the

detention order. As regards first six offences are concerned, in all those offences, the brother of the petitioner was released on bail. The bail orders in those offences were not considered by the detaining authority. As regards the last offence i.e. Crime No.167 of 2025 is concerned, the brother of the petitioner came to be arrested and the said crime is under police investigation. In fact, the incident in the said offence would show that at the most law and order situation would have been created and not the public order. Therefore, the impugned order is illegal.

5. Per contra, the learned APP strongly supports the action taken against the petitioner. He submits that the brother of 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 submits that in spite of involvement of the brother 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 brother of the petitioner as a dangerous person. Therefore, no fault can be found in the impugned order. Further, he sought time to place all the things on record by way of affidavit-in-reply on behalf of respondent No.2/detaining authority.

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.

8. At the outset, it is to be noted that since the basic procedure has not been adhered to and the brother of the petitioner would be languishing in jail, we are dealing with the matter without the affidavit-in-reply on behalf of respondent No.2/detaining authority. There is no necessity to give an opportunity to file the affidavit-in-reply, which would be nothing but the repetition of whatever reasons those have been given. Further, it is to be noted that the respondent No.2 forgot or has not taken note of the legal position that there should be a live link between the activities of the detenu and the detention order. The first six offences which were stated to have been committed from 12.04.2020 till 19.12.2024 were considered while passing the impugned detention order on 21.03.2025. There was absolutely no live link between those offences and the detention order. As regards the last offence i.e. Crime No.167 of 2025 dated 07.03.2025 is concerned, the incident in the said offence

would show that general public was not involved. At the most law and order situation would have been created and not the public order. In fact, in respect of first six offences, the brother of the petitioner was released on bail, but the detaining authority has not considered the bail orders. 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.”

9. 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.”

10. Perusal of the in-camera statements of witnesses ‘A’ and ‘B’ would show that general public was not involved. Those statements would have created at the most law and order situation and not the public order.

11. 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 brother of 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 brother of the petitioner as a dangerous person or bootlegger.

12. 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 21.03.2025 bearing No.Home/Desk-2/MPDA-D.O.-1/WS-86/2025 passed by respondent No.2 as well as the approval order dated 01.04.2025 and the confirmation order dated 14.05.2025 passed by respondent No.1, are hereby quashed and set aside.
- III) The brother of the Petitioner viz. Shaikh Shahebaz Shaikh Sharfuddin 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