



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.790 OF 2025

Dilipsingh Harising Pawar
Age: 38 years, Occu.: Labour,
R/o. Extended Nath Nagar,
Nanded, Tq. And Dist. Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate,
Nanded, District Nanded.
3. The Superintendent of Jail,
Central Prison, Aurangabad.

.. Respondents

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Ms. Ashwini A. Lomte, Advocate for the petitioner.

Mr. Govind A. Kulkarni, APP for respondents/State.

...

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

DATE : 11 AUGUST 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Ms. Ashwini A. Lomte for the petitioner
and learned APP Mr. Govind A. Kulkarni 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 29.03.2025 bearing 2025/RB-1/Desk-2/T-4/MPDA/CR-17 passed by respondent No.2 as well as the approval order dated 07.04.2025 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 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.446 of 2024 dated 14.12.2024 registered with Itwara Police Station, District Nanded for the offences punishable under Sections 140(1), 115(2), 351(3), 352, 3(5) of Bharatiya Nyaya Sanhita, 2023. Learned Advocate for the petitioner submits that the detaining authority had considered Crime No.446 of 2024 as well as two in-camera statements for passing the detention order. Perusal of the FIR in Crime No.446 of 2024 would show that it was against unknown person and even if the contents of the FIR are taken as it is, then it would have raised only law and order situation at the most and not the public order.

Further, he submits that in the said offence, the petitioner came to be released on bail by order dated 28.03.2025, however, the bail order was not considered by the detaining authority while passing the impugned order. As regards in-camera 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. Further, he submits that there is delay in passing the detention order, which has not been explained by the respondents and, therefore, the impugned order deserves to be set aside.

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 is relying upon the affidavit-in-reply filed by Mr. Rahul Kardile, District Magistrate, Nanded. He supports the

detention order passed by him and tries to demonstrate as to how he had arrived at the conclusion that the petitioner is a dangerous person. The subjective satisfaction was arrived at on the basis of the in-camera statements and the contents of the FIR. After the subjective satisfaction, the detaining authority has passed a reasoned order, which is then confirmed with the opinion of the Advisory Board and, thereafter, confirmed by the State Government on 14.05.2025. 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. At the outset, it is to be noted that the statements of in-camera witnesses 'A' and 'B' were taken on 13.10.2024. Proposal was then submitted by sponsoring authority on 27.12.2024 and it was forwarded to Assistant Commissioner of Police. Assistant Commissioner of Police had then forwarded it to Superintendent of Police and after verification of the statements on 05.12.2024, Superintendent of Police had then forwarded it to District Magistrate and the detention order has been passed on 29.03.2025. That means, there is delay in passing the detention order. The affidavit-in-reply by Mr. Rahul Kardile, the District Magistrate, Nanded/detaining authority, is totally silent on the point of delay. This ground alone is sufficient to set aside the detention order. Further, the detaining authority has considered only one offence i.e. Crime No.446 of 2024 dated 14.12.2024 and two in-camera statements for passing the detention order. Perusal of the contents of the FIR would show that on 13.12.2024 at about 9.00 p.m.,

when the informant and one Sohail Ali Layak Ali were doing work of his private vehicle at Lucky Welding and Works, at that time, one unknown person along with five to seven other persons came and took the informant away in white Tata Safari Car and by saying that “You are talking a lot against the leader. After this, stop talking against the leader”, he was threatened to kill. Thereafter, the FIR was registered against the unknown persons. It is stated that thereafter the investigating officer has conducted the investigation. During investigation, an iron dagger has been seized from the possession of the petitioner. Further, the statements of the witnesses have been recorded and it was found that the petitioner has committed the crime. If the contents of the FIR even if taken as it is would show that general public was not involved and at the most law and order situation would have been created and not the public order. Further, it is to be noted that though the petitioner has been released on bail on 28.03.2025 in the said offence, however, the detaining authority has not considered the bail order while passing the detention order. 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. As regards the statements of in-camera witnesses ‘A’ and ‘B’ are concerned, we have perused the original statements and it appears that there is difference of ink in the name of witness ‘A’ and his statement. The difference in the ink is glaring indicating that it might have been prepared at a later point of time. Even if we take those statements as it is, the incidents 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.

10. 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.

11. 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 29.03.2025 bearing 2025/RB-1/Desk-2/T-4/MPDA/CR-17 passed by respondent No.2 as well as the approval order dated 07.04.2025 and the confirmation order dated 14.05.2025 passed by respondent No.1, are hereby quashed and set aside.
- III) Petitioner – Dilipsingh Harising Pawar 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