



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.894 OF 2025

Taufiq Ismail Shaikh @ Shahbarfiwale
Age: 25 years, Occu. Labour,
R/o Shahbarfiwale Galli Paranda,
Tq. Paranda, Dist. Dharashiv.

.. Petitioner

Versus

1. The State of Maharashtra
Through Section Officer,
Home Department (Special)
Mantralaya, Mumbai.
2. The District Collector Dharashiv,
District: Dharashiv.
3. The Police Inspector,
Police Station Paranda, Tq. Paranda,
District: Dharashiv.
4. The Superintendent of Police,
Chhatrapati Sambhajinagar,
Central Prison, Harsul,
District Chhatrapati Sambhajinagar

.. Respondents

...

Mr. Shubham D. Jayabhar, Advocate for the Petitioner.

Mr. A. M. Phule, APP for Respondent Nos.1 to 4/State.

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**CORAM : SMT. VIBHA KANKANWADI &
SUSHIL M. GHODESWAR, JJ.**

DATE : 22 AUGUST 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Shubham D. Jayabhar for the
petitioner and learned APP Mr. A. M. Phule 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 06.02.2025 bearing No.2025/DC/MAG-3/CR-6 passed by respondent No.2 as well as the approval order dated 14.02.2025 and the confirmation order dated 28.04.2025 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 while passing the detention order has considered all the five offences i.e. **(i) Crime No.62 of 2020** dated 20.03.2020 registered with Paranda Police Station, District Osmanabad for the offences punishable under Sections 324, 504, 506 read with Section 34 of Indian Penal Code, under Section 3(1)(r), 3(1)(s), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, **(ii) Crime No.180 of 2020** dated 11.07.2020 registered with Paranda Police Station, District Osmanabad for the offences punishable under Sections 326, 504 of Indian Penal Code, **(iii) Crime No.148 of 2023** dated 31.05.2023 registered with Paranda Police Station, District Osmanabad for the offences punishable under Sections 324, 323 read

with Section 34 of Indian Penal Code, **(iv) Crime No.246 of 2023** dated 23.10.2023 registered with Paranda Police Station, District Osmanabad for the offences punishable under Section 307, 324 of Indian Penal Code and **(v) Crime No.156 of 2024** dated 10.08.2024 registered with Paranda Police Station, District Osmanabad for the offences punishable under Sections 3 punishable under Section 25 of the Indian Arms Act. Learned Advocate for the petitioner submits that the detaining authority has considered old and stale cases to come to the conclusion that the petitioner is a dangerous person. The detention order suffers from live link. The material placed before the detaining authority has not been considered by him properly and, there was no subjective satisfaction arrived at before passing of the order. He further submits that though the petitioner has been released on bail in all of the offences, which were considered, yet the bail orders have not been considered at all by the detaining authority. He further submits that as regards statements of in-camera witnesses 'A' and 'B' are concerned, the incident in both the cases are personal in nature. At the most law and order situation would have been created. Therefore, the impugned order is illegal and cannot be allowed to sustain.

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 relies on the affidavit-in-reply filed by Dr. Sachin Ombase, the then District Magistrate, Dharashiv/detaining authority. 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 FIRs. 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 28.04.2025. Learned APP submits that in spite of involvement of the petitioner in so many cases his criminal activities have not been curtailed. 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 as regards first four offences are concerned i.e. Crime No.62 of 2020,

Crime No.180 of 2020, Crime No.148 of 2023 and Crime No.246 of 2023, there was no live link and therefore, these offences cannot be considered for passing the detention order on 06.02.2025. As regards the last offence i.e. Crime No.156 of 2024 is concerned, the contents of the FIR even if taken as it is would show that it is individual in nature and at the most law and order situation would have been created. Further, in respect of all the offences which were considered the petitioner has been released on bail by the competent Court, however, the bail orders have not been considered by the detaining authority 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. Perusal of the statements of in-camera witnesses ‘A’ and ‘B’ would show that the incidents in both the cases are personal in nature and

general public is not involved. Those statements would have created at the most law and order situation 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 06.02.2025 bearing No.2025/DC/MAG-3/CR-6 passed by respondent No.2 as well as the approval order dated 14.02.2025 and the confirmation order dated 28.04.2025 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Taufiq Ismail Shaikh @ Shahbarfiwale shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

[SUSHIL M. GHODESWAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm