



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.943 OF 2025

Akshay @ Jalkya s/o Balu Shinde
Age: 28 years, Occu.: Labour,
R/o. Sumbha,
Taluka and District Dharashiv

.. Petitioner

Versus

1. The State of Maharashtra
Through the Section Officer,
Home Department, Mantralaya,
Mumbai-32.
2. The District Magistrate
Dharashiv.
3. The Superintendent
Harsul Central Jail, Aurangabad.

.. Respondents

...
Mr. D. S. Ingole, Advocate h/f Mr. N. S. Ghanekar, Advocate for the petitioner.
Mrs. R. P. Gour, APP for the respondents/State.
...

**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

DATE : 03 SEPTEMBER 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. D. S. Ingole holding for learned Advocate Mr. N. S. Ghanekar for the petitioner and learned APP Mrs. R. P. Gour 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 23.01.2025 bearing No.2024/DC/MAG-3/WS-646/CR-19 passed by respondent No.2 as well as the approval order dated 03.02.2025 and the confirmation order dated 25.02.2025 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 order and the material which was supplied to the petitioner by the detaining authority after passing of the order. He submits that for the purpose of passing the impugned order, the detaining authority has considered all the offences i.e. **(i) Crime No.95 of 2020** dated 02.04.2020 registered with Dhoki Police Station, District Dharashiv **(ii) Crime No.193 of 2021** dated 23.06.2021 registered with Dhoki Police Station, District Dharashiv **(iii) Crime No.116 of 2022** dated 02.06.2022 registered with Bembli Police Station, District Dharashiv, **(iv) Crime No.76 of 2024** dated 10.04.2024 registered with Shiradhon Police Station, District Dharashiv, **(v) Crime No.103 of 2024** dated 23.05.2022 registered with Shiradhon Police Station, District Dharashiv, **(vi) Crime No.130 of 2024** dated 23.03.2024 registered with Dhoki Police Station, District Dharashiv, **(vii) Crime No.221 of 2024** dated 14.06.2024 registered with Dhoki Police Station, District Dharashiv, **(viii) Crime No.266 of 2024** dated 22.07.2024 registered with Dhoki Police Station, District Dharashiv, **(ix) Crime No.147 of 2024** dated 24.03.2024

registered with Kalamb Police Station, District Dharashiv, **(x) Crime No.279 of 2024** dated 03.07.2024 registered with Kalamb Police Station, District Dharashiv, **(xi) Crime No.171 of 2024** dated 24.07.2024 registered with Bembli Police Station, District Dharashiv and **(xii) Crime No.276 of 2024** dated 28.07.2024 registered with Dhoki Police Station, District Dharashiv. Learned Advocate for the petitioner submits that the detaining authority has considered all the offences pending since 2020 against the petitioner for passing the impugned order. The petitioner is involved in twelve offences and all of them have been considered. There was absolutely no live link between the first three offences and the detention order. As regards other offences are concerned, at the most law and order situation would have been created and not the public order. Learned Advocate for the petitioner further submits that there is delay in sending the proposal by the sponsoring authority, which has not been explained at all. As regards statements of in-camera witnesses 'A' and 'B' are concerned, at the most law and order situation would have been created and not the public order. 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 is relying upon the affidavit-in-reply filed by Dr. Sachin Ombase, the then District Magistrate, Dharashiv presently working as Municipal Commissioner, Solapur Municipal Corporation, Solapur. 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 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 25.02.2025.

6. At the outset, we would like to rely on the decisions of the Hon’ble Supreme Court in ***Nenavath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367]*** and ***Ameena Begum Vs. The State of Tamilnadu and Ors., [2023 LiveLaw (SC) 743]***; wherein the detention law has been summarized and has been said to be draconian

measure. Further, it has been observed that illegal detention orders cannot be allowed to sustain 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 offences, which were registered against the petitioner for passing the detention order. As regards, first three offences are concerned, there was absolutely no live link. As regards the other offences are concerned, even if we take the contents of all the FIRs as it is, at the most law and order situation would have been arisen and not the public order. In first three offences, the petitioner was released on bail, however, the bail orders were not considered by the detaining authority while passing the detention order. 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 it has been held 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.” Further, in this case, confidential statements of witnesses ‘A’ and ‘B’ were recorded on 14.08.2024 and 16.08.2024. Those statements were got verified on 29.10.2024 and then the proposal

was forwarded by the Superintendent of Police on 20.12.2024 to the detaining authority. Why there was so much delay in sending the proposal has not been explained by the sponsoring authority. There is no affidavit by the sponsoring authority explaining the said delay. The time spent between recording of confidential statements and verification thereof till the detention order, is more than four months.

7. 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.

8. 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.

9. 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 23.01.2025 bearing No.2024/DC/MAG-3/WS-646/CR-19 passed by respondent No.2 as well as the approval order dated 03.02.2025 and the confirmation order dated 25.02.2025 passed by respondent No.1, are hereby quashed and set aside.
- III) Petitioner – Akshay @ Jalkya s/o Balu Shinde shall be released forthwith, if not required in any other offence.
- IV) Rule is made absolute in the above terms.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm