



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 970 OF 2025

Ganesh s/o Bharat Giri
Age 23 years, Occu. Laborer
R/o Indraprasth Colony,
Nagar Road, Beed
Tq. and Dist. Beed

-----PETITIONER

VERSUS

1. The State of Maharashtra
Through Addl. Chief Secretary
Home Department, (Special)
Mantralya, Mumbai – 400032
2. The District Magistrate/Collector
Beed, District Beed
3. The Superintendent of Jail
Central Prison Harsool
Chha. Sambhajinagar

-----RESPONDENTS

Ms. Asha Rakh h/f Ms. Sangita M. Sonpethkar, Advocate for Petitioner
Mr. V. K. Kotecha, APP for respondent-State

**CORAM : Smt. Vibha Kankanwadi &
Hiten S. Venegavkar, JJ.**

DATE : 12th September, 2025

JUDGMENT (PER : Hiten S. Venegavkar, J) :-

1. Heard learned Advocate, Ms. Rakh holding for learned Advocate, Ms. Sonpethkar for the petitioner and learned APP, Mr. Kotecha for respondent-State.

2. Rule. Rule made returnable forthwith.

3. With the consent of both the parties, the writ petition is taken up for final hearing and final disposal.

4. The petitioner, Ganesh Bharat Giri, aged 23 years, has approached this Court invoking writ jurisdiction under Article 226 of the Constitution of India, thereby challenging the order of preventive detention dated 11.05.2025 passed by the District Magistrate, Beed who is respondent No. 2 herein by exercising his powers under Section 3(1) read with Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (in short "M.P.A.D Act"). By the impugned order, the District Magistrate has recorded subjective satisfaction that the petitioner is "dangerous person" within the meaning of Section 2(b-1) of the M.P.A.D Act and thus with a view of preventing the petitioner from acting in any manner prejudicial to the maintenance of public order, it was found necessary to direct the petitioner detention.

The order received approval of the State Government on 21.05.2025 under Section 3(3) of the M.P.A.D Act, and the matter was thereafter placed before the Advisory Board. The opinion of the Advisory Board through its order dated 11.07.2025, confirmed the detention order of the petitioner. The petitioner thus, seeks to quash and set aside the detention order dated 11.05.2025 and further prays for his release forthwith.

5. The essential factual background of the present case is previous to crimes have been taken into consideration by Detaining Authority, Crime No. 39/2025 registered with Shivaji Nagar Police Station, Beed on 19.01.2025 alleging offences punishable under Section 308(4), 326(f), 115(2), 352 and 351(2), 351(3), 3(5) of Bhartiya Nyaya Sanhita (in short "B.N.S"), 2023. The gravamen of this First Information Report (in short "F.I.R") is that the petitioner and his associates, allegedly under the influence of liquor had visited the shop of the informant and demanded him to serve them "Pan" without offering any payment for the same. When the informant refused to serve them "Pan", the petitioner and his associates abused him, threatened him and further demanded Rs. 10,000/- by way of extortion per month. As the informants mother arrived on the shop, she took the informant home. The friend of the informant had borrowed the motor cycle for the purpose of going to his residence. On the way, the petitioner and his

friends saw him and started abusing him and had also thrown a stick towards him however, the informant's friend was not hurt but he drove away the motor cycle from that place and escaped. He had parked the motor cycle near one school in the night and had gone to his house. In the morning, when informant went to his friend's house to check the motor cycle, they saw that motor cycle was burnt. On verifying CCTV footage, the informant saw that the petitioner and his associates in the night had burnt the motor cycle of the petitioner. He, therefore, had lodged the F.I.R bearing No. 39/2025 with Shivaji Nagar Police Station. In respect of second offence bearing Crime No. 75/2025 dated 12.02.2025 invokes Section 119, 118(1), 115(2), 324(4) and 3(5) of B.N.S where the allegation of the informant is that the petitioner and his companions have assaulted the informant in a hotel and had snatched his mobile phone and cash. The incident in the hotel has caused fear and panic among the patrons and neighboring shop keepers and hence, everybody ran away. The shop keepers had shut their shops out of fear. The grounds of detention provided to the petitioner additionally refers to two in camera statements recorded on 12.03.2025 and 30.03.2025 alleging extortion and assaults, these statements are confidential and were relied upon without disclosure of the witnesses names.

6. It is an admitted position that the petitioner was arrested in connection with both the offences which has been considered for the

purpose of his detention. In respect of Crime No. 39/2025, the petitioner was released on bail on 11.05.2025 while in respect of Crime No. 75/2025, he was enlarged on default bail on 21.04.2025. The record also shows that the detention order came to be issued upon the petitioner on 11.05.2025 when he was continued to be in judicial custody. The order of detention was in fact served upon the petitioner on 20.05.2025 when he was actually walking out of the jail after submitting sureties in the bail granted to him in connection with the aforesaid offence. The chronology dates and events produced on record shows that proposal for detention was submitted on 08.04.2025, the proposal was forwarded on 15.04.2025 and culminated in the final order of detention on 11.05.2025, approval under Section 3(3) of the M.P.D.A Act followed on 21.05.2025 and the reference to the Advisory Board was made on 02.06.2025. After hearing the petitioner on 26.06.2025, the detention order came to be confirmed by the Advisory Board.

7. On behalf of the petitioner, the learned Advocate argued that the detention order suffers from non application of mind on several counts. The first and foremost when the order came to be passed, the petitioner was already in custody in connection with Crime No. 75/2025. He was also released on bail in Crime No. 39/2025. According to the learned Advocate for the petitioner, the Detaining Authority has not adverted to these vital judicial orders nor had recorded any satisfaction

about real and eminent possibility of his release and within likelihood of his indulging in prejudicial activities. He argued that preventive detention of a person already in custody is bad in law. He further argued that both the offences which has been relied upon by the Detaining Authority standing against the petitioners, the fact of both the cases disclose that the offence is of private nature between the two individuals. According to him, the same does not constitute acts prejudicial to the maintenance of public order. Even the in camera statements which has been taken into consideration by the Detaining Authority are vague and general in nature and do not disclose disturbance of community life or any public order situation. Thus, he has prayed that the detention order is absolutely bad in law and hence, liable to be quashed and set aside.

8. On the contrary, learned APP supported the impugned action by arguing that the petitioner is a habitual offender and a dangerous person who through his criminal activities have created fear and terror in the locality within the minds of the residents. Because of the fear of the petitioner, no person witnessing the activities of the petitioner are ready to come forward and lodge complaint or give statements against the petitioner. By pointing out the records placed before us, the learned APP argued that the necessary procedural requirements under Section 3, 8, 9 and 10 of M.P.D.A Act has been scrupulously followed. Furthermore even the Advisory Board has confirm the detention order. Thus, the Detaining

Authority was satisfied about the necessity of the detention proceedings against the petitioner and hence, prayed that the petition be dismissed.

9. Having heard and considered rival submissions and having perused and examine the entire records produced before us, we are of the view that the impugned detention order cannot sustain. The M.P.D.A Act is legislation providing, for preventive detention of certain categories of persons such as slumlords, bootleggers and “dangerous persons” with a view of preventing them from acting in any manner prejudicial to the maintenance of public order. Section 2(b-1) defines “dangerous person” to mean that a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code (now the corresponding provisions of the B.N.S, 2023) or under the Arms Act. The M.P.D.A Act under Section 3(1) empowers the State Government to direct such detention and Section 3(2) enables the District Magistrate to do so in emergent situation subject to its approval by the State within 12 days. Section 8 of the M.P.D.A Act mandates that grounds of detention must be communication to the detenu, as soon as may be, but not later than five days which can be extended up to ten days for reasons to be recorded. This is found to be necessary so as to afford the detenu the earliest opportunity of making a representation before the appropriate authority.

These provisions reflect the constitutional mandate of Article 22(5) of the Constitution of India stating that no person shall be deten preventively being afforded the earliest opportunity of making a representation against the order.

10. The first and the foremost striking infirmity is the failure of the Detaining Authority to apply its mind to the petitioner's custodial status and bail when the procedure was being initiated and the detention order was passed. The detention order merely states that the two crimes were under investigation and the petitioner is involved in serious offences. However, perusal of the detention order nowhere mentions or refers to the very fact that the petitioner was in judicial custody in connection with Crime No. 75/2025 and has been already granted default bail. The order further does not made any reference to the material on record suggesting that the petitioner after getting released from jail is likely to indulge himself in any kind of criminal activity which is likely to affect the public order. The law laid down by the Hon'ble Supreme Court in the case of **Rekha vs. State of Tamil Nadu 2011(5) SCC 244,**

7. A perusal of the above statement in Para 4 of the grounds of detention shows that no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. Neither the date of the alleged bail orders has been mentioned therein, nor the bail application number, nor whether the bail orders were passed in respect of the co-accused on the same case, nor whether the bail orders were passed in respect of other co-accused in cases on the same footing as the case of the accused. All that has

been stated in the grounds of detention is that "in similar cases bails were granted by the courts". In our opinion, in the absence of details this statement is mere ipse dixit, and cannot be relied upon. In our opinion, this itself is sufficient to vitiate the detention order

10. In our opinion, if details are given by the respondent authority about the alleged bail orders in similar cases mentioning the date of the orders, the bail application number, whether the bail order was passed in respect of the co-accused in the same case, and whether the case of the co-accused was on the same footing as the case of the petitioner, then, of course, it could be argued that there is likelihood of the accused being released on bail, because it is the normal practice of most courts that if a co-accused has been granted bail and his case is on the same footing as that of the petitioner, then the petitioner is ordinarily granted bail. However, the respondent authority should have given details about the alleged bail order in similar cases, which has not been done in the present case. A mere ipse dixit statement in the grounds of detention cannot sustain the detention order and has to be ignored.

27. In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must given, otherwise the bald statement of the authority cannot be believed.

The law laid down by the Hon'ble Supreme Court in the case

9. In view of the above, it can be held that there is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. However, if the detention order is challenged the detaining authority has to satisfy the Court the following facts:

(1) The authority was fully aware of the fact that the detenu was actually in custody.

(2) There was reliable material before the said authority on the basis of which it could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order.

(3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary.

In case either of these facts does not exist the detention order would stand vitiated. The present case requires to be examined in the light of the aforesaid settled legal proposition.

And the law laid down by the Hon'ble Supreme Court in the case of **Union of India vs. Paul Manickam 2003 (8) SCC 342**

14. So far as this question relating to the procedure to be adopted in case the detenu is already in custody is concerned, the matter has been dealt with in several cases. Where detention orders are passed in relation to persons who are already in jail under some other laws, the detaining authorities should apply their mind and show their awareness in this regard in the grounds of detention, the chances of release of such persons on bail. The necessity of keeping such persons in detention under the preventive detention laws has to be clearly indicated. Subsisting custody of the detenu by itself does not invalidate an order of his preventive detention, and the decision in this regard must depend

on the facts of the particular case. Preventive detention being necessary to prevent the detenu from acting in any manner prejudicial to the security of the State or to the maintenance of public order or economic stability etc. ordinarily, it is not needed when the detenu is already in custody. The detaining authority must show its awareness to the fact of subsisting custody of the detenu and take that factor into account while making the order. If the detaining authority is reasonably satisfied with cogent materials that there is likelihood of his release and in view of his antecedent activities which are proximate in point of time, he must be detained in order to prevent him from indulging in such prejudicial activities, the detention order can be validly made. Where the detention order in respect of a person already in custody does not indicate that the detenu was likely to be released on bail, the order would be vitiated. (See N. Meera Rani v. Govt. of T.N. and Dharmendra Suganchand Chelawat v. Union of India".) The point was gone into detail in Kamarunnissa v. Union of India. The principles were set out as follows: even in the case of a person in custody, a detention order can be validly passed: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or a possibility of release on bail.

Thus it is clear that when a person is in custody, an order of preventive detention can be passed only if the Detaining Authority is not only aware of this fact but also satisfy on cogent material that there is real possibility of his release on bail and that on such release, he will in all probability indulge in activities prejudicial to public order. The absence

of such consideration is fatal and renders the subjective satisfaction illusory. The second ground on which according to us, the detention order cannot sustain is lack of real nexus with the maintenance of public order. The Hon'ble Supreme Court time and again has explained in the case of **Dr. Ram Monohar Lohiya vs. State of Bihar AIR 1966 SC**

740

51. We have here a case of detention under R.30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under R. 30(1)(b) to prevent subversion of public order but not in aid of maintenance

of law and order under ordinary circumstances.

And the Hon'ble Supreme Court time and again has explained
in the case of **Arun Ghosh vs. State of West Bengal AIR 1970 SC**
1228

3. The submission of the counsel is that these are stray acts directed against individuals and are not subversive of public order and therefore the detention on the ostensible ground of preventing him from acting in a manner prejudicial to public order was not justified. In support of this submission reference is made to three cases of this Court: Dr. Ram Mano-ad har Lohia v. State of Bihar, 1966-1 SCR e 709 = (AIR 1966 SC 740), Pushkar Mukherjee v. State of West Bengal, W. P. No. 179 of 1968, D/- 7-11-1968 (SC) and Shyamal Chakraborty v. Commr. of Police, Calcutta, W. P. No. 102 of 1969, D/- 4-8-1969 (SC). In Dr. Ram Manohar Lohia's case 1966-1 SCR 709 = (AIR 1966 SC 740) this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individual which do not disturb the society to the extent of causing general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its Implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the

community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being way-laid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the Society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 (SC) drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total

up into a breach of public order. In Dr. Ram Manohar Lohia's case, 1966-1 SCR 709 = (AIR 1966 SC 740) examples were given by Sarkar and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another. No formula by which one case can be distinguished from another.

Thus, it is clear that "law and public order" are distinct concepts. Every breach of peace does not amount to a disturbance of public order. Public order is the life of the community as a whole. An act may affect law and order by disturbing the tranquility of few individuals without affecting public order. The acts and criminal activities attributed to the petitioner in both relied upon offences even if taken at face value are essentially personal disputes and assaults. The alleged closing of a few shops for a short duration in one incident cannot elevate the episode to the level of public disorder. Even the in camera statements are found to be vague and general in nature and does not disclose that the petitioners conduct or activity has disrupted the life of the community or created a situation of wide spread panic or terror.

11. The requirement of "habitual offender" has found necessitated in Section 2(b-1) of M.P.D.A Act is not satisfied from the

present material on record. Habituality in general meaning means repeated and persistent involvement over a continuous period of time. In the present case, two F.I.Rs of close proximate dates not been supported by any prior convictions or sustain pattern of similar acts does not constitute the habitual course of conduct required under the M.P.D.A Act. Mere reproduction of the word "habitual commits" in the grounds of detention cannot satisfy the statutory requirement.

12. We have also considered the procedural safeguards under the M.P.D.A Act. It appears that the formal time lines for approval, communication of grounds of detention and reference to the Advisory Board has been maintained. Thus, though there is compliance inform the same cannot cure a substantive illegality in the formation of subjective satisfaction. Preventive detention is not punitive to is preventive in nature, it is an extraordinary measure which if wrongly invoked violates fundamental right to personal liberty of the citizen guaranteed by Article 21 of the Constitution of India and hence has to be mandatorily followed both by substantive and procedural safeguards. As observed by the Supreme Court in **A. K. Roy vs. Union of India 1982 (1) SCC 271**, preventive detention is a jurisdiction of suspicion and must be exercised with extreme care and within strict constitutional boundaries.

13. Thus, on over all evaluation of the material on record, we satisfied that the detention of the petitioner does not meet the statutory

preconditions and constitutional safeguards. The District Magistrate's satisfaction that the petitioner is a dangerous person and his detention is necessary to prevent disturbance of public order is vitiated by non application of mind to the crucial facts of custody and bail, absence of material showing habituality and also failure to demonstrate that the incidents relied upon for any bearing on the maintenance of public order. The confirmation by the Advisory Board which is based on the same defective record cannot make the detention order sustainable. For these reasons we pass following order :-

ORDER

- I) The Writ Petition stands allowed.
- II) The detention order dated 11.05.2025 bearing No.2025/RB-Desk-1/POL-1/MPDA-06 passed by respondent No. 2 as well as the approval order dated 21.05.2025 and the confirmation order dated 11.07.2025 passed by respondent No.1, are hereby quashed and set aside.
- III) Petitioner – Ganesh S/o Bharat Giri shall be released forthwith, if not required in any other offence.
- IV) Rule is made absolute in the above terms.

(Hiten S. Venegavkar, J.)

(Smt. Vibha Kankanwadi, J.)

B. S. Joshi