



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.976 OF 2025

Prashik @ Parshya S/o. Dilip Odhane,
Age: 25 years, Occu: Labour,
R/o.R/o. Sangshesen Nagar, Nanded
Tq. & Dist. Nanded

... Petitioner

Versus

1. The State of Maharashtra
Through Secretary Home Department,
Mantralaya, Mumbai -32

2. The District Magistrate,
Office of District Collectorate,
Near Gandhi Statue, Station Road,
Nanded, Tq. & Dist. Nanded.

3. The Superintendent of Police,
Nanded, Tq. & Dist. Nanded.

4. The Police Inspector,
Police Station, Itwara, Nanded
Tq. & Dist. Nanded

... Respondents

.....

Ms. Pratiksha Magre, Advocate h/f Mr. Sunil G. Magre, Advocate for Petitioner
Mr. V.K. Kotecha, APP for Respondents Nos.1 to 4

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

DATE : 19 SEPTEMBER, 2025

JUDGMENT [Per Hiten S. Venegavkar, J.] :-

1. **Rule.** Rule is made returnable forthwith. With the consent of both the parties the petition is taken up for final hearing and final disposal at the admission stage itself.

2. We have heard both the learned Advocates at length.
3. The entire records of the detention proceeding including the grounds of detention, the proposal submitted by the police, the report of the superintendent of police, affidavit of district Magistrate and the report of the advisory board have been placed and have been carefully perused by us with the assistance of both the Advocates.
4. The brief facts of the present petition in a nutshell are that the petitioner Prakash @ Parshya Dilip Odhane challenges the legality and validity of a detention order dated 01.07.2025 bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-37 passed by the District Magistrate, Nanded in exercise of powers under section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act (hereinafter referred to as "MPDA" Act). By the said order, the petitioner was directed to be detained for a period of 12 months on the ground that he is a 'dangerous person' whose activities are prejudicial to the maintenance of public order.
5. The detention order came to be passed on a proposal initiated by respondent No.4, the Police Inspector of Itwara Police Station, Nanded. The proposal was routed through respondent No.3, the Superintendent

of Police and eventually placed before respondent No. 2 that is the District Magistrate, who claims to have arrived at a subjective satisfaction that the petitioner's detention was necessary to prevent him from acting in a manner prejudicial to public order. The order is found on eight past criminal cases registered against the petitioner and his associates, a chapter case under Section 107 of Cr.P.C. registered in the year 2023 and one externment proceeding initiated in the year 2025 and most specifically on C.R.No.191 of 2025, registered with Vimantal Police Station under Sections 4 and 25 of the Arms Act and Sections 135 and 142 of Maharashtra Maharashtra Police Act. In addition to the above, two in camera statements of witnesses 'A' and 'B' were also relied upon.

6. The Advocate for the petitioner has argued that the impugned detention order is vitiated on multiple counts. According to the learned Advocate for the Petitioner, although the order records that the petitioner is on bail in pending cases, copies of the bail applications and the bail orders were admittedly neither placed before us nor considered by the competent authority. It is submitted that this failure goes to root to the subjective satisfaction and is contrary to the law laid down in the case of ***Rekha Vs. State of T. Nadu tr. Sec. to Govt. and Ors.***, (2011) 5 SCC 244 and ***Huidrom Konungjao Singh Vs. State of Manipur and Ors.***, (2012) 7 SCC 181, which mandates a careful examination of bail orders and the conditions imposed therein. Subsequently, the petitioner's

Advocate has also ascertained that C.R.No.191 of 2025 is falsely registered. He took us through the pleadings in the petition stating that during the subsistence of an externment order dated 13.12.2024, he had kept himself outside the notified area, but was summoned through a WhatsApp call by one Head Constable by name Bajaji Yadirwar on the pretext of joining an investigation. Upon his arrival at Itwara Police Station, his signatures were allegedly obtained on blank papers and a false case was registered accusing him of breaching the externment order and also of unlawfully possessing a weapon. According to him, this solitary offence cannot be treated as a genuine act affecting public order. The learned Advocate for the petitioner further argued that two in camera statements are absolutely vague, lacking in specific dates, places or particulars and do not disclose any material warranting preventive detention. He further points out that the statements were not properly verified and the material required for such verification was not supplied to him, thereby disbelieving in making any effective representation as guaranteed under Article 22(5) of the Constitution of India.

7. The learned APP vehemently opposed the petition by arguing that respondent No.2, who is a District Magistrate has filed the detailed affidavit justifying his decision of detaining the petitioner for a period of twelve months. According to the prosecutor, the petitioner is a habitual offender who creates terror and that the residents of the jurisdiction of

Itwara Police Station and adjoining areas remain in constant fear. He further argued that the petitioner and his associates are involved in snatching money, committing thefts and dacoities and that people are afraid to come forward to lodge complaints. It is stated that a confidential inquiry was conducted and only after giving assurance of secrecy, two witnesses deposed about the petitioner's criminal activities. The District Magistrate submitted in his affidavit that he carefully examined all the material and arrived at a subjective satisfaction that preventive detention was imperative. He relies on Section 5A of the MPDA Act to argue that even if some of the grounds fail, the detention order is not invalidated so long as one ground survives.

8. We also want to note that the Head Constable Balaji Yadgirwar has also filed an affidavit denying that he called the petitioner to the Police Station for the purpose of interrogation. He admits making a WhatsApp call, but explains that it was only to gather the information about another criminal Kamlesh Patil and not to summon the petitioner. He also stated that presently he is attached to Shivajinagar Police Station, but at the relevant time, he was attached to the Local Crime Branch, and therefore, the duty of the Local Crime Branch was to keep watch on the criminals and also on the movements of the external criminals.

9. Having considered the rival submissions and giving anxious thought and scrutinizing the entire record, we find ourselves unable to sustain the impugned order of detention. Preventive detention, though permitted by the Constitution, is an exceptional measure which curtailed the fundamental right to life and liberty and must therefore be confirmed strictly to the procedure established by law and the safeguards enshrined in Article 22 of the Constitution of India.

10. The principal basis of the detention order is C.R. No.191 of 2025 which invokes Sections 4 and 25 of the Arms Act. Section 4 of the Arms Act empowers the State to issue a notification prohibiting the possession of certain weapons in specified areas. It is well settled that unless that exists and is produced such a notification applicable to the concerned area, no offence under Section 4 can be said to have been committed. A long line of decisions of this Court including ***Abuld @ Aslam Salim Shaikh vs. State of Maharashtra***, 2007 (2) Mh.L.J.(Cri.) 812 and ***Deelip Asaram Zagade vs. State of Maharashtra [Criminal Application No.3111 of 2018 decided on 18.02.2019 (Aurangabad Bench)]*** have reiterated that the absence of Section 4 notification is fatal to a prosecution or preventive action founded on such an offence.

11. In the case of ***Abuld @ Aslam Salim Shaikh*** (supra), it is observed as under:

"7. Section 3 of the Arms Act provides that no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds a licence for that purpose. Section 4 of Arms Act deals with weapons other than the firearms. It reads as follows:-

"4. If the Central Government is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms other than firearms should also be regulated, it may, by notification in the Official Gazette, direct that this section shall apply to the area specified in the notification and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder."

From this section it is clear that while for firearms in view of the provisions of section 3 of Arms Act, it is necessary to hold a valid licence normally no licence is required to possess any arms other than the firearm unless there is a Notification published in the Official Gazette by the Central Government for that purpose and made applicable to the particular area specified in the notification. If such a notification is issued for a specified area no person may acquire, possess or carry any such weapon, without necessary licence. Before a charge under section 4 read with section 25(1D) of the Arms Act could be framed, it was necessary for the prosecution to allege that there was such a notification issued by the Central

Government made applicable to the particular area in which the accused persons were found. In the present case in the charge-sheet nowhere there is any mention of any such notification under section 4 of the Arms Act. nor any evidence was led before the Court that there was any Notification issued by the Central Government prohibiting possession or carrying of any such weapon in particular area. In absence of any such Notification, merely because a person is found in possession of a weapon, other than the firearms, he cannot be prosecuted, convicted and sentenced under section 25 of the Arms Act."

12. In the case of **Dilip Asaram Zagade** (supra), the Division Bench of this Court has observed as under:

"13. Section 4 of the Arms Act reads as under :

"4. Licence for acquisition and possession of arms of specified description in certain cases :-

If the Central Government is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms other than firearms should also be regulated, it may, by notification in the Official Gazette, direct that this Section shall apply to the area specified in the notification and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder."

14. Whereas Section 25(1-B) (b) states that, whoever acquires, has in his possession or carries in any place specified by notification under Section 4 any arms of such class or description as has been specified in that notification, in contravention of that Section, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to three years and shall also be liable to fine.

15. In our view, to attract the provisions of Section 4 read with Section 25(1-B) (b) of the Arms Act, it has to be averred in the F.I.R. that the Central Government, by notification in the official gazette, has regulated possession of swords in the particular area (in this case village Shelapuri), Taluka Majalgaon, District Beed and same is an offence punishable under Section 25(1-B) (b) of the Act. Notification, if any, issued by the Central Government under Section 4 has also not been placed on record for our perusal. It would, therefore, be difficult to hold that the allegations in the report dated 29.6.2018 lodged by Vijay Ghodke, prima facie constitute an offence under Section 4 read with 25 of the Arms Act. On the contrary, for want of averments to this effect in the report, it has to be observed that no offence is made out from the so called F.I.R.”

13. In the present case, we specifically inquired with the learned APP whether any such notification under Section 4 of the Arms Act was issued for Nanded City and whether the same was placed before the District Magistrate. We were fairly informed that no such notification

exits. The detention record also barely sounds this fact. Consequently, the very foundation of the case under the Arms Act collapsed. The detention order, which places considerable reliance on this FIR, therefore suffers from a serious legal infirmity.

14. Apart from this, we found considerable merit in the contention of the petitioner that the District Magistrate failed to apply his mind to essential material. The order asserts that the petitioner is on bail in all the pending cases, but a record does not contain a single copy of any bail application or any bail order. It is trite law that when a detaining authority takes into account the fact that the detainee is on bail, it must examine the bail orders themselves to assess the nature of the offences, the conditions imposed by the competent Courts while releasing the accused on bail and whether there exists a real likelihood of the detainee committing similar acts if released. Failure to do so vitiates the subjective satisfaction as required under the provisions of the MPDA Act. The absence of such documents also means that the petitioner was denied the opportunity to make an effective representation, which is a constitutional mandate under Article 22 (5) of the Constitution of India.

15. We are equally unimpressed by the reliance on the in camera statements of witnesses 'A' and 'B'. Perusal of these witnesses' statements discloses that they are of a very general nature and do not

specify dates, times or places with the particularity required by law. There is nothing on record to show that the statements were properly verified or that the detaining authority applied his mind to their probative value. It is settled principle that such statements, if found vague or lacking verification, cannot be made the basis of preventive detention action.

16. We cannot overlook the peculiar and disturbing aspect of the alleged WhatsApp call made by Head Constable Balaji Yadgirwar. The petitioner's case is that he was lured into the city in good faith under the belief that he was required for the investigation of some other case and was then implicated in a false crime. Significantly, the Head Constable admits the above call to the petitioner on WhatsApp from the very number mentioned by the petitioner, though he ascribes different reasons. In our considered view, this explanation is unsatisfactory. In a system governed by the rule of law, such conduct on the part of a police officer which has the effect of curtailing the citizens' liberty by initiating a false case or by creating pretexts for preventive detention is wholly unacceptable and warrants departmental scrutiny.

17. Having regard to the serious allegations of impropriety against the Head Constable Balaji Yadgirwar and the admission in his affidavit that he contacted the petitioner on WhatsApp, we direct the Superintendent

of Police, Nanded to institute a departmental enquiry into the conduct of the said officer and to place a report before this Court within a period of six weeks from the date of uploading of this order.

18. We are conscious of the States' arguments based on Section 5-A of the MPDA Act that insufficiency of one ground does not invalidate the detention order if other grounds survive. However, this is not a case of some grounds falling on their merits; this is a case where the very basis of subjective satisfaction is vitiated by non-application of mind and non-existence of vital legal requirement namely the Section 4 notification. It is a settled law including the Hon'ble Supreme Court's ruling in ***Rekha Vs. State of T. Nadu*** (supra), where the detaining authorities satisfaction is itself impaired by non-consideration of relevant and vital material, Section 5-A cannot salvage the order. The preventive detention is not meant to punish for past acts, but to prevent future conduct that threatens public order. The eight criminal antecedents, though pending are under trial with the charge-sheets filed. Mere pendency of criminal cases or even a previous externment proceedings without a live link to imminent disturbances of public order cannot justify preventive detention. We found no material on record to demonstrate that the petitioner was likely to commit any specific act prejudicial to public order in the immediate future. The alleged incident of 17.05.2025 already found legally unsustainable, cannot provide such a live link.

19. In the light of the above discussion, we compelled to hold that the impugned detention order is unsustainable in law and also the approval of the State Government and further the confirmation by the Advisory Board. Hence, we proceed to pass the following order:-

ORDER

- I) The Writ Petition stands allowed.
- II) The detention order dated 01.07.2025 bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-37 passed by respondent No.2 as well as the approval order dated 11.07.2025 and the confirmation order, if any, passed by respondent No.1, are hereby quashed and set aside.
- III) Petitioner – Prashik @ Parshya S/o. Dilip Odhane 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

S.P. Rane