



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.988 OF 2025

Mohit @ Chiku s/o Ramesh Godbole
Age: 22 years, Occu.: Labour,
R/o. Degaonchal, 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, Tq. And Dist. Nanded.
3. The Superintendent of Jail,
Central, Jail, Harsool, Aurangabad,
District Aurangabad.

.. Respondents

...

Mr. Shailendra S. Gangakhedkar, Advocate for the petitioner.

Mr. G. A. Kulkarni, APP for the respondents/State.

...

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

DATE : 20 AUGUST 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Shailesh S. Gangakhedkar for the
petitioner and learned APP Mr. G. A. Kulkarni 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 19.06.2025 bearing No.2025-RB-1/Desk-2/T-4/MPDA/CR-39 passed by respondent No.2 as well as the approval order dated 30.06.2025 and the confirmation order, if any, 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, two offences were considered i.e. Crime No.13 of 2025 dated 09.01.2025 registered with Bhagyanagar Police Station, District Nanded for the offences punishable under Sections 118(1), 118(2), 352, 352(2), 189(2), 191(1), 191(3), 109 of Bharatiya Nyaya Sanhita, 2023, under Section 4 punishable under Section 25 of the Indian Arms Act and Crime No.38 of 2025 dated 28.01.2025 registered with Vazirabad Police Station, District Nanded for the offences punishable under Sections 118, 115(2), 352, 354(2), 189(2), 191(1), 191(3), 109 of Bharatiya Nyaya Sanhita, 2023 and under Section 4 punishable under Section 25 of the Indian Arms Act. Learned Advocate

for the petitioner submits that the impugned order would show that the material that was placed before the detaining authority was not sufficient to arrive at subjective satisfaction. Further, the detaining authority had simply considered that the earlier writ petition challenging the earlier detention order was allowed by this Court i.e. Criminal Writ Petition No.1730 of 2024 decided on 03.01.2025, but the observations and the law therein has absolutely not been considered. The detaining authorities are in fact without considering the law laid down are passing illegal orders. Therefore, those orders cannot be allowed to sustain. Here, in the present impugned order, two offences have been considered i.e. Crime No.13 of 2025 dated 09.01.2025 and Crime No.38 of 2025 dated 28.01.2025. The prosecution story in the those offences would show that the those offences are individual in nature and general public is not involved. At the most law and order situation would have been created. Further, in both the offences, the petitioner has been released on bail on 04.03.2025 and 27.02.2025 respectively by the competent Court, however, the detaining authority has not considered the bail orders. Further, the in-camera statements of witnesses 'A' and 'B' would show that at the most law and order situation would have been created and not the public order and, therefore, such illegal order deserves to be quashed and 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 relies on the affidavit-in-reply filed by Mr. Rahul Kardile, the District Magistrate, Nanded/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 30.06.2025. Learned APP submits that in spite of involvement of the petitioner in so many cases and though the earlier detention order as against him has been set aside by this Court, yet 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 while passing the impugned order the detaining authority has taken note of the earlier detention order dated 26.07.2024, which has been set aside by this Court in Criminal Writ Petition No.1730 of 2024 vide judgment and order dated 03.01.2025, however, the detaining authority has not considered the observations and the law therein. Though the earlier detention order was set aside, still the criminal activities of the petitioner have not been curtailed. Further, it is not stated as to whether any action in respect of externment has been taken as against the petitioner. When normal legal recourse is available, then the competent authority should not take recourse to the detention laws which are even as per the observations of the Hon'ble Supreme Court as a draconian provision and affects the fundamental rights of a person. Now, in the present impugned order, as stated above, two offences have been considered i.e. Crime No.13 of 2025 and Crime No.38 of 2025. Perusal of the contents of both the FIRs would show that the offences are individual in nature and general public was not involved. At the most, law and order situation would have been arisen and not the public order. Further, it appears that in respect of both these offences, the petitioner has been released on bail by the competent Court on 04.03.2025 and 27.02.2025 respectively,

however, the detaining authority has not considered the bail orders. 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 general public was 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 19.06.2025 bearing No.2025-RB-1/Desk-2/T-4/MPDA/CR-39 passed by respondent No.2 as well as the approval order dated 30.06.2025 and the confirmation order, if any, passed by respondent No.1, are hereby quashed and set aside.
- III) Petitioner – Mohit @ Chiku s/o Ramesh Godbole 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