



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1039 OF 2025

Vishal s/o Laxman Argade
Age: 21 years, Occu.: Labour,
R/o. Pohner Road, Sirsala,
Tq. Parali, District Beed.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate,
Beed, Taluka and District Beed.
3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad,
District Aurangabad.

.. Respondents

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Mr. P. P. More, Advocate for the petitioner.
Mr. A. D. Wange, APP for the respondents/State.

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

DATE : 26 AUGUST 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. P. P. More for the petitioner and
learned APP Mr. A. D. Wange 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 18.03.2025 bearing No.2024/RB-Desk-1/Pol-1/MPDA-04 passed by respondent No.2 as well as the approval order dated 27.03.2025 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 though several offences were registered against the petitioner, yet for the purpose of passing the impugned order, three offences were considered i.e. **(i) Crime No.211 of 2024 dated 05.12.2024** registered with Sirsala Police Station, District Beed for the offences punishable under Sections 118(1), 115(2), 352, 354(2) of Bharatiya Nyaya Sanhita, 2023, **(ii) Crime NO.02 of 2025 dated 01.01.2025** registered with Sirsala Police Station, District Beed for the offences punishable under Sections 132, 115(2), 352, 351(2), 3(5) of Bharatiya Nyaya Sanhita, 2023 and **(iii) Crime No.38 of 2025 dated 07.02.2025** registered with Sirsala Police Station, District Beed for the offences punishable under Sections 189(2), 191(2), 190, 119(1), 324(4), 308(5), 115(2), 352, 351(2)

of Bharatiya Nyaya Sanhita, 2023 and under Section 135 of Maharashtra Police Act. Learned Advocate for the petitioner submits that the aforesaid three offences as well as the in-camera statements of witnesses 'A' and 'B' have been considered for passing the detention order. Perusal of the contents of all the three FIRs would show that at the most law and order situation would have been created and not the public order. As regards Crime No.211 of 2024 is concerned, the petitioner has been given notice under Section 35(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 and not arrested at all. Further, in respect of last two offences, though the petitioner has been released on bail, yet the bail orders have not been considered by the detaining authority while passing the detention order. Perusal of the statements of in-camera witnesses 'A' and 'B' would show that 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 relies on the affidavit-in-reply of Mr. Avinash Pathak, the District Magistrate, Beed/detaining authority. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. He further states that his order has been approved by the State Government and also by the Advisory Board. Thereafter, the confirmation has been given. 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 the detaining authority has considered three offences i.e. Crime No.211 of 2024 dated 05.12.2024, Crime No.02 of 2025 dated 01.01.2025 and Crime No.38 of 2025 dated 07.02.2025 and two in-camera statements for passing the detention order. As regards Crime No.211 of 2024 is concerned, the petitioner has been given notice under Section 35(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 and has not been arrested at all. As regards other two offences i.e. Crime Nos.02 of 2025 and 38 of 2025 are concerned, perusal of contents of both the FIRs would show that general public was not involved and at the most law and order situation would have been created and not the public order. Further, in

respect of these two offences, the petitioner has been released on bail on 04.01.2025 and 10.03.2025 by the competent Court, however, the detaining authority, while passing the detention order on 18.03.2025, has not considered the bail orders. 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. Further, as regards in-camera statements of witnesses ‘A’ and ‘B’ are concerned, the incidents in both the cases would show that they are

individual in nature and at the most law and order situation would have arisen 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 18.03.2025 bearing No.2025/RB-Desk-1/Pol-1/MPDA-04 passed by respondent No.2 as well as the approval order dated 27.03.2025 and the confirmation order dated 28.04.2025 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Vishal s/o Laxman Argade 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