



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1079 OF 2025

Saksham s/o Gautam Tate
Age: 21 years, Occu.: Labour,
R/o. Sanghsen Nagar, Itwara,
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,
Chhatrapati Sambhajinagar,
Tq. And Dist. Chh. Sambhajinagar.

.. Respondents

...
Mr. Suraj R. Bagal, Advocate for the petitioner.
Mr. S. A. Gaikwad, APP for the respondents/State.
...

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

DATE : 08 SEPTEMBER 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Suraj S. Bagal for the petitioner and
learned APP Mr. S. A. Gaikwad 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 15.05.2025 bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-25 passed by respondent No.2 as well as the approval order dated 23.05.2025 and the confirmation order dated 03.07.2025 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 though eight offences were registered against the petitioner, yet for the purpose of passing the impugned order, only two offences were considered i.e. Crime No.483 of 2024 registered with Shivaji Nagar Police Station, District Nanded for the offences punishable under Sections 309(4), 3(5) of Bharatiya Nyaya Sanhita and Crime No.440 of 2024 registered with Itwara Police Station, District Nanded for the offences punishable under Sections 74, 78 of Bharatiya Nyaya Sanhita, 2023 and under Sections 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act"). In respect of Crime No.483 of 2024, the petitioner came to be released on bail on 08.12.2024, whereas in Crime No.440 of 2024, he was granted anticipatory bail on 05.02.2025. It appears that the sponsoring authority had made up its mind to take preventive action against the petitioner and, therefore, it has recorded the statements of

in-camera witnesses 'A' and 'B' on 08.02.2025. Though in Crime No.483 of 2024, bail order was passed and in Crime No.440 of 2024, anticipatory bail was granted, yet there is absolutely no consideration of the said fact in the impugned order. There was no application of mind by the learned District Magistrate while passing the impugned order. The statements of witnesses 'A' and 'B' at the most would create law and order situation and at any point of time there was no question of involvement of public order by the activities of the petitioner. The harsh step ought not to have been taken. Further, it appears that in the past preventive action was taken under Section 107 of the Code of Criminal Procedure in 2022, but thereafter there was no such action by the police authorities. The impugned order being illegal 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 of Mr. Rahul Kashinath Kardile, the District Magistrate, Nanded, wherein the details have been given as to what material which he has considered for holding the petitioner as dangerous person as defined under M.P.D.A. It has been stated by the learned District Magistrate that he had considered the two offences and the in-camera statements of witnesses 'A' and 'B'. The petitioner's age at present is 21 years and yet he is involved in eight offences. Certainly, if his criminal activities are not curtailed by taking harsh steps, the graph of his criminal activities would increase day by day. The State Government is duty bound to protect the innocent citizens from such criminal activities and, therefore, the action taken by the learned District Magistrate is perfectly legal. The bail orders on record and all the documents were considered before passing the impugned order. The said order was then approved by the State Government and then even the Advisory Board has upheld the same. Then the confirmation of the said order has been ordered on 03.07.2025. The petitioner was heard by the Advisory Board before granting approval.

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. As aforesaid, out of the eight offences involving the present petitioner, the learned District Magistrate has considered two offences. While considering the offence vide Crime No.483 of 2024 under Section 309(4), 3(5) of Bharatiya Nyaya Sanhita, 2023 registered with Shivaji Nagar Police Station, it can be seen that the said FIR is against two unknown persons between the age group of 25 to 30 years. Informant therein states that around 9.00 a.m. on 18.11.2024 when he was near Vasant Corner, two persons came on motorcycle, they were unknown to him and by showing knife, they snatched the bag containing cash of Rs.2,00,000/-. The learned District Magistrate has stated in the order that during investigation of the said crime, the investigating officer has conducted panchanama of the scene and recorded the statements of witnesses and then had arrested three persons. Amount of Rs.80,000/ has been recovered from the accused. Upon query, even the learned APP submits that the investigation papers were not before the learned District Magistrate. In fact, in the order, in paragraph No.3, the chart is given of the list of the offences, wherein apart from the date of bail order, Court Case number has been mentioned i.e. Regular Criminal Case No.567 of 2025 and the present

status is stated as Court pending. That means, the charge-sheet was also filed as per the said chart, but then in the order, paragraph No.4.1 gives different picture. In the Marathi version of the said order, it is stated that the said offence is still under investigation, whereas in English version it is stated that the case is Court pending. With the help of learned APP, we have confirmed the status online and he submits that the charge-sheet was filed on 16.04.2025. Now, when the FIR was against unknown persons, then whether the investigating officer has taken the help of Executive Magistrate and carried out the Test Identification Parade or not. Merely because some amount has been recovered, it cannot be stated that there is involvement. In fact, when the original papers have been produced before us, after going through the same, we could see that there is only the reference of a report based upon the statements of co-accused regarding the involvement of in all three persons, who were arrested and then they revealed names of two persons. The statement was then made that they had distributed the said booty that was received. Further, it appears that the said report is by Police Sub Inspector of Local Crime Branch, Nanded and it involves three offences i.e. Crime No.383 of 2024 registered with Bhokar Police Station, District Nanded, Crime No.483 of 2024 registered with Shivaji Nagar Police Station, District Nanded and Crime No.312 of 2024 registered with Umri Police Station, District Nanded. All these offences

are under Sections 309(4), 3(5) of the Bharatiya Nyaya Sanhita, 2023. We have gone deep into this aspect just to see that whether the material before the learned District Magistrate was sufficient to at least have an impression that his involvement in the crime is *prima facie* shown. Further, the learned District Magistrate has absolutely not considered the bail order dated 08.12.2024, which was on record, wherein even the conditions were imposed on the petitioner. As regards Crime No.440 of 2024 also it can be seen that though the FIR is against the petitioner by name, yet he was released on anticipatory bail by a competent Court on 05.02.2025. Now, when bail orders have been passed by the competent Court, the learned District Magistrate should go through the same and consider that the ordinary criminal law will not be sufficient to curtail the activities. 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 view of the decisions in ***Nenavath Bujji (Supra)*** and ***Ameena Begum (Supra)***, we would say that both the offences at the most have created

the law and order situation and the offences involved were against the individuals. There was no question of public order involved in the same.

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 is allowed.
- II) The detention order dated 15.05.2025 bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-25 passed by respondent No.2 as well as

the approval order dated 23.05.2025 and the confirmation order dated 03.07.2025 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner - Saksham s/o Gautam Tate 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