



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1444 OF 2025

Avinash @ Lakhan s/o Sahebrao Dhage
Age 30 years, Occu: Nil
R/o Ambedkar Nagar, Nanded
Tq. & Dist. Nanded

VERSUS

1. The State of Maharashtra,
Through the Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai 400 032
 2. District Magistrate & Collector,
Nanded
- ... **Respondents**

Mr. Shrikrishna B. Solanke, Advocate for the petitioner
Mr. S. P. Sonpawale, Addl. PP for the Respondents-State

**CORAM : SANDIPKUMAR C. MORE &
Y. G. KHOBRAGADE, JJ.**

RESERVED ON : 04.12.2025

PRONOUNCED ON : 19.12.2025

JUDGMENT (Per: Y. G. Khobragade, J.)

1. Heard Mr. S. B. Solanke, the learned counsel appointed through legal services sub-committee for the petitioner and Mr. S.P. Sonpawale, the learned APP for the Respondent- State.
2. Rule. Rule made returnable forthwith and heard finally at the admission stage with the consent of both sides.

3. By the present petition under Article 226 of the Constitution of India, the Petitioner, challenges the detention Order dated 14-05-2025 bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-19 passed by the Respondent No. 2 as well as the approval order dated 23-05-2025 and 07.07.2025 passed by the Respondent no. 1.

4. The learned Counsel appearing for the petitioner submitted that, the material which was supplied to the petitioner by the detaining authority shows about registration 7 offences crimes against the petitioner, but for the purpose of passing the impugned order, only one offence was considered i.e. Crime No. 155 of 2025 registered with Shivaji Nagar Police Station, Nanded for the offences punishable under sections 132 of Bhartiya Nyaya Sanhita 2023 and Sec. 4/25 of Arms Act. It is further canvassed that though the petitioner is stated to be involved in 7 offences and one chapter case, registered u/s 110 (E) (G) of Cri. P. C., for passing the detention order, only one offence Crime No. 155 of 2025 was considered, which is still under investigation. However, if the contents of FIR of Crime No. 155 of 2025 are considered, then it can be seen that it pertains to only law and order as he was allegedly found while carrying dangerous weapon on the occasion of Dr. Babasaheb Ambedkar birth anniversary procession and the petitioner allegedly catch hold shirt collar of the Police person, which does not amount to breach of public peace. So also, the petitioner already enlarged on bail on 15.04.2025 by the competent Court, but fact of

enlargement of the petitioner on bail has not been considered by the detaining authority.

5. The learned Counsel appearing for the petitioner further canvassed that, the detaining authority considered the Crime No. 159 of 2023 registered against the petitioner, however, contents of FIR of said crime appears out of enmity between the petitioner and the informant namely Rajesh Ashok Pandit. So far as Crime nos. 2/2021, 162/2021, 331/2021, 331/2023, 427/2023 and 340/2024 are concerned, some of them were registered due to previous enmity and some disputes were arose between two groups. In these crimes the petitioner and other accused persons were involved and said crimes do not breach public peace and order. Further the contents of FIR of above alleged crimes are not sufficient to declare the petitioner as dangerous person and he is not liable to be detained in the prison. However, the material supplied for detention of the petitioner shows that, the proposal was submitted by Shivaji Nagar, Nanded Police Station on 1-11-2024 and forwarded by the Sub-Divisional Officer on 11-11-2024 through the Superintendent of Police but no further action was taken for a considerable period. Thereafter the proposal dated 24-01-2025 was submitted on 16-04-2025 and based on order of detention dated 15-05-2025 and detained the petitioner in civil prison, which violated personal liberty guaranteed under Article 21 of the Constitution of India as well it is in violation of provisions of MPDA Act, 1981.

6. It is further canvassed on behalf of the petitioner that, the Respondent No. 1 confirmed the order of detention without providing opportunity of being heard. Therefore, impugned detention Order dated 14-05-2025 passed by the Respondent No. 2 as well as the approval order dated 23-05-2025 and 07-07-2025 passed by the Respondent no. 1 is illegal bad in law.

7. It is further canvassed on behalf of the petitioner that, the impugned order of detention passed on 14-05-2025 and confirmed by the Respondent no.1 on 23-05-2025 holding that, the Advisory Board appointed under the MPDA Act opined on 07-07-2025 about existing of sufficient cause for continuation of detention, but no date is prescribed for placing said proposal before the Advisory Committee. Sec. 10 of the MPDA Act provides for placing the order of detention before the Advisory Committee within period of three weeks from the date of detention of a person. However, impugned order dated 23-05-2025 and 07-07-2025 shows that detention orders were not placed before the Advisory Committee within period of 3 weeks. Therefore, impugned orders are illegal bad in law, hence, prayed for quash and set aside.

8. Mr. Rahul Kashinath Karlile, the learned District Magistrate filed Affidavit in reply and strongly opposed the petition demonstrating how and under what circumstances he had arrived at the subjective

satisfaction. Mr. S.P. Sonpawale, the learned APP appearing for the Respondents canvassed that, the petitioner is a dangerous person as defined under Sec. 2 (b-1) of MPDA Act and he has committed series of serious offences under chapter XVI and XVII of IPC and u/s 4/25 of Arms Act as well as under chapter VI and XVII of BNS, 2023. So also, due to dangerous activities of the petitioner, the people residing within the jurisdiction of Shivaji Nagar Police Station and adjoining areas remain constantly under fear and terror. The illegal and dangerous activities of the petitioner pose a serious threat to the lives of law-abiding citizens and have resulted in a disturbance of public peace and order.

9. The learned APP further canvassed that, in past the petitioner committed 7 offences of serious nature and one preventive chapter case No. 13 of 2024 was registered u/s 110 (E) (G) of Cri. P. C., which led for passing the impugned detention order, which has been approved by the State Government as well as the Advisory Board. Though 7 various serious crimes and one chapter case is registered against the petitioner, but criminal activities of the petitioner have not been curtailed. Therefore, the detaining authority taken into consideration the past criminal antecedents of the petitioner while passing the impugned order. Therefore, impugned order does not suffer any infirmity, illegality on part of the learned District

Magistrate while holding the petitioner as a dangerous person, hence, prayed for dismissal of the petition.

10. Having regard to rival submissions canvassed on behalf of both the sides, we have gone through the entire record. Needless to say that, under the impugned detention Order dated 14-05-2025, the petitioner is declared as a “Dangerous Person”, within the meaning of Sec. 2 (b-1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders Act, 1981 (in short MPDA). Admittedly, on going through the impugned order of detention dated 14.05.2025 passed by the Respondent no. 2 and approval order dated 25.05.2025 passed by the Respondent no. 1, it is seen that, following crimes and one chapter case is registered against the petitioner on different dates as under:

Sr. No.	Police Station	C.R. No.	Sections	Date of FIR	Dare of Arrest	Date of Bail	Court case No.
1	Shivaji nagar	06/2021	394, 397, 34 IPC, 4/25 Arms Act	02/01/21	02/01/21	03/04/21	SC No. 183/2021 Pending
2	Shivaji nagar	162/2021	326, 323, 504 IPC.	21/04/21	30/04/21	16/07/22	SC No. 164/2021 Pending
3	Shivaji nagar	159/2023	323, 323, 504, 506 IPC, 4/25 Arms Act	28/05/23	09/06/23	09/06/23	RCC No. 1344/2023 Pending
4	Shivaji nagar	331/2023	326, 323, 504, 506, 34 IPC	08/10/23	11/10/23	11/10/23	On Investigation

5	Shivaji nagar	427/2023	307, 120(B), IPC, 4/25 Arms Act	21/11/23	29/11/23	27/03/24	SC No. 68/2024
6	Shivaji nagar	340/2024	115(2), 118(1), 352,352(2), 3(5)BNS, 4/25 Arms Act.	21/08/24	-----	-----	On Investigation
7	Shivaji nagar	155/2025	132 BNS, 4/25 Arms Act	15/04/25	15/04/25	15/04/25	On Investigation
8	Shivaji nagar	13/2024	110(E) (G) Crpc	02/07/24	Chapter-Preventive Case		

11. On face of record it prima facie appears that, the learned competent Court passed an order on different dates and enlarged the petitioner on bail in all 7 above crimes. Not only this, but on 02-07-2024 the chapter case No. 13 of 2024 u/s 110 (E)(G) of Cri. P. C., has also been closed. The record further reveals that, while passing the impugned detention order dated 14-05-2025, the Respondent No. 2 detaining authority considered only one Crime No. 155 of 2025 registered against the petitioner with Shivaji Nagar Police Station, Nanded for the offences punishable under sections 132 of Bhartiya Nyaya Sanhita 2023 and Sec. 4/25 of Arms Act. On perusal of proposal for approval of detention order it reveals that, on 01-11-2024, the Police Station Shivaji Nagar, Nanded submitted the proposal on 01-11-2024 and the Sub-Divisional Officer forwarded said proposal on 11-11-2024 through the Superintendent of

Police, Nanded. However, no further action was taken for considerable period.

12. On face of record it appears that, after lapse of more than 2 months period from earlier proposal, on 16-04-2025, the Respondent authority submitted fresh proposal dated 24-01-2025 which is a cause for detention order dated 15-05-2025. It is pertinent to note that, on 23.05.2025 the State Government granted approval to detention of the petitioner u/s 3 (3) of the MPDA Act and subsequently on 07-07-2025, Respondent no. 1 confirmed the same only on the basis of Crime No.155 of 2025 registered against the petitioner. However, the respondents have not justified as to why earlier proposal of detention of the petitioner was not proceeded further and the Respondent detaining authority passed the impugned detention order only on the basis of registration of Crime no. 155 of 2025 on 15-04-2025.

13. In *Nenavath Bhujji-vs-State of Telangana & Ors., 2024 Mh.L.J. Online(Cri.)(SC)=2023 SCC onLine SC 367*, the Hon'ble Supreme Court reiterated that, illegal detention order cannot be sustained, therefore, strict compliance is required to be made, as it is a question of liberty of a citizen guaranteed under Article 21 of the Constitution of India and explained the roll of Advisory Board in paragraph Nos. 55,57 & 58 as under:

"55. What can be discerned from a bare perusal of the above-mentioned provisions is that the Advisory Board performs the most vital duty of independently reviewing the detention order, after considering all the materials placed before it, or any other material which it deems necessary. When reviewing the detention order along with the relevant materials, the Advisory Board must form an opinion as to the sufficiency of the cause for warranting detention. An order of detention passed under the Act, 1986 can only be confirmed if the Advisory Board is of the opinion that there exists sufficient cause for the detention of the detenu.

57. The legislature in its wisdom has thought it fit, to entrust the Advisory Board and no one else, not even the Government, with the performance of this crucial and critical function which ultimately culminates into either the confirmation or revocation of a detention order. The Advisory Board setup under any preventive detention law in order to form its opinion is required to; (i) consider the material placed before it; (ii) to call for further information, if deemed necessary; (iii) to hear the detenu, if he desires to be heard and; (iv) to submit a report in writing as to whether there is sufficient cause for "such detention" or whether the detention is justified.

58. An Advisory Board is not a mere rubber-stamping authority for an order of preventive detention. Whenever any order of detention is placed before it for review, it must play an active role in ascertaining whether the detention is justified under the law or not. Where it finds that such order of detention is against the spirit of the Act or in contravention of the law as laid down by the courts, it can definitely opine that the order of detention is not sustainable and should not shy away from expressing the same in its report."

14. In **Ameena Begum-Vs- State of Telangana & Ors, (2023) 9 SCC 587**, 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 order. The detention order being silent on that aspect, we interfere with the detention order only on the ground that the detaining authority having not considered the conditions imposed by the jurisdictional Court while granting the bail for very same offence, which led to the preventive detention.

15. Needless to say that, sec. 2(b-1) of MPDA Act, provides definition of “dangerous Person”, who either by himself or as a member 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 IPC or any of the offences punishable under Chapter V of the Arms Act. In case in hand it prima facie appears that, the impugned order of detention is passed on 14-05-2025 and confirmed by the Respondent no. 1 on 23.05.2025 holding that, the Advisory Board appointed under the MPDA Act opined on 07-07-2025 about existing of sufficient cause for continuation of detention of the petitioner. However, said proposal does not prescribe date about placing the proposal before the Advisory Committee.

16. Section 10 of the MPDA Act provides that, every case where a detention order has been made is required to be placed before the State Government before the Advisory Board within the period of three weeks from the date of the order of detention. However, impugned orders dated 23-05-2025 and 07-07-2025 do not disclose that, the detention order dated 14-5-2025 was placed before the Advisory Committee within period of 3 weeks. Further, the material placed on record does not reveal that, the Respondent No. 2 detaining authority having subjective satisfaction for detention of the petitioner on the basis of material placed before him. Therefore, we are of view that, there is no strict compliance of provisions of MPDA Act, while passing the impugned order of detention dated 14-5-2025 as well as approval order dated 23-5-2025 and confirmation order dated 07-07-2025.

17. As regards statements of witnesses 'A' and 'B' are concerned, the incident in both the cases would show that both the witnesses know the petitioner since long but said statements are appears stereo type and general public was not involved and no public peace and order breached. Therefore, taking into consideration the above facts and circumstances of the case as well as decisions of the Hon'ble Apex Court, we are of view that the impugned orders are not sustainable in eyes of law and liable to be quashed and set aside.

18. In view of above discussions, we are inclined to allow this petition and proceed to pass the following order:

ORDER

- (1) The Writ Petition is allowed.
- (2) The detention Order dated 14.05.2025 bearing No.2025/ RB-1/ Desk-2/T-4/ MPDA/CR-19 passed by the Respondent No. 2 as well as approval order dated 23.05.2025 and confirmation order dated 07.07.2025 passed by the Respondent no. 1 are hereby quashed and set aside.
- (3) The Petitioner Avinash @ Lakhan Sahebrao Dhage shall be released forthwith, if not required in any other offence.
- (4) Rule is made absolute in the above terms.
- (5) Since, Adv. S. B. Solanke, appointed for the petitioner through legal services sub-committee, his legal fees is payable as per Rules.

(Y. G. KHOBRAGADE, J.)

(SANDIPKUMAR C. MORE J.)

JPChavan