



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.301 OF 2025

Bhushan Raghunath Sapkale
Age: 32 years,
R/o. At-Khedi Khurd,
Taluka and District Jalgaon

.. Petitioner

Versus

1. District Magistrate, Jalgaon,
Jalgaon.
2. The State of Maharashtra
Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department,
Mantralaya, Mumbai.
3. The Superintendent
Yerwada Central Prison,
Pune.

.. Respondents

...

Mr. Rupesh Jaiswal, Advocate h/f Ms. Jayshree Tripathi, Advocate for the petitioner.
Mrs. P. R. Bharaswadkar, APP for the respondents/State.

...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 12 JUNE 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Rupesh Jaiswal holding for learned Advocate Ms. Jayshree Tripathi for the petitioner and learned APP Mrs. P. R. Bharaswadkar 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 27.09.2024 bearing No.Dandapra/KAVI/MPDA/38/2024 passed by respondent No.1 as well as the approval order dated 08.10.2024 and the confirmation order dated 18.12.2024 passed by respondent No.2, 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, four offences were considered i.e. (i) Crime No.105 of 2021 registered with Jalgaon Taluka Police Station, District Jalgaon for the offences punishable under Sections 341, 323, 504, 506 of Indian Penal Code, (ii) Crime No.531 of 2021 registered with Jilha Peth Police Station, District Jalgaon for the offences punishable under Section 302 read with Section 34 of Indian Penal Code, (iii) Crime No.80 of 2024 registered with Savda Police Station, District Jalgaon for the offences punishable under Section 142 of the Maharashtra Police Act, 1951 and (iv) Crime No.283 of 2024 registered with Jilha Peth Police Station, District Jalgaon for the offences

punishable under Section 3 punishable under Section 25 and under Section 27 of Indian Arms Act, under Section 142 of the Maharashtra Police Act. Learned Advocate for the petitioner submits that though the petitioner as per the impugned order was involved in all seven offences, the detaining authority has considered only four offences. As regards first two offences i.e. Crime No.105 of 2021 dated 18.04.2021 and Crime No.531 of 2022 dated 24.08.2022 are concerned, there was absolutely no live link between these two offences and the detention order. As regards the other two offences i.e. Crime No.80 of 2024 dated 24.04.2024 and Crime No.283 of 2024 dated 28.08.2024 are concerned, it can be seen that those offences were personal i.e. individualistic and public was not affected by the alleged acts of the petitioner. He submits that though the petitioner has been released on bail in all of the four offences, which were considered, yet the bail orders have not been considered at all. Even the statements of in-camera witnesses 'A' and 'B' would show that at the most the alleged acts would have caused law and order situation 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. She 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. Ayush Prasad, District Magistrate, Jalgaon/detaining authority, who tries to demonstrate as to how he had arrived at the subjective satisfaction. Learned APP submits that the activities of the petitioner were repeatedly going on and even the preventive actions under Sections 107 and 110 (e)(g) of the Code of Criminal Procedure had not stopped him from committing further offences. The impression about the petitioner in the mind of public could be reflected from the in-camera statements of witnesses ‘A’ and ‘B’. Due to the fear of the petitioner they had not lodged any report. As the petitioner was not curtailing his activities, which were detrimental to the public at large, the detaining authority had no option but to declare him as dangerous person and direct him to be detained.

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 Crime No.105 of 2021 is registered on 18.04.2021 and Crime No.531 of 2022 is registered on 24.08.2022 and the order of detention has been passed on

27.09.2024. Therefore, it can be said that there was no live link between those two offences and the order of detention. As regards Crime No.80 of 2024 dated 24.04.2024 and Crime No.283 of 2024 are concerned, the incidents in both the offences would show that general public was not involved. At the most, law and order situation would have been created and not the public order. It is further to be noted that in 2017, 2018, 2021 and 2022, preventive actions under Section 107 and under Section 110(e)(g) of the Code of Criminal Procedure were taken. Whether those were taken to the logical end or not has not been mentioned. Further, it is to be noted that in all the four offences, which were considered, the petitioner has been released on bail, however, while passing the detention order, there is absolutely no reference to the said bail order by the detaining authority and there is no discussion as to why the conditions those were imposed while granting bail to the petitioner are not sufficient to take care of and curtail the criminal activities of the petitioner. 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. As regards the statements of in-camera witnesses ‘A’ and ‘B’ are concerned, the incidents in both the cases would show that general public was not involved. At the most, law and order situation would have been created 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 27.09.2024 bearing No.Dandapra/KAVI/MPDA/38/2024 passed by respondent No.1 as well as the approval order dated 08.10.2024 and the confirmation order dated 18.12.2024 passed by respondent No.2, are hereby quashed and set aside.
- III) Petitioner – Bhushan Raghunath Sapkale shall be released forthwith, if not required in any other offence.
- IV) Rule is made absolute in the above terms.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm