



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.436 OF 2025

Atish Gangadhar Shinde
Age: 29 years, Occu.: Unemployed,
R/o. Dhanegaon, Tq. And Dist. Nanded.

.. Petitioner

Versus

1. The District Magistrate,
Nanded, District Nanded.
2. The State of Maharashtra
Through its Addl. Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
3. The Superintendent
Aurangabad Central Prison,
Aurangabad.

.. Respondents

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Mr. Ziya Pathan h/f Mr. G. R. Syed, Advocate for the petitioner.
Mr. A. D. Wange, APP for respondents/State.

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

DATE : 25 JUNE 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Ziya Pathan holding for Mr. G. R. Syed for the petitioner and learned APP Mr. A. D. Wange 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 25.01.2025 bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-07 passed by respondent No.1 as well as the approval order dated 04.02.2025 and the confirmation order dated 06.03.2025 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, two offences were considered i.e. Crime No.745 of 2024 registered with Nanded Rural Police Station, District Nanded for the offences punishable under Section 311 of Bhartiya Nyaya Sanhita and Crime No.176 of 2024 registered with Mudkhed Police Station, District Nanded for the offences punishable under Sections 109, 132, 3(5) of Bhartiya Nyaya Sanhita, under Section 4 punishable under Section 25 of the Arms Act and under Section 7 of the Criminal Law Amendment Act. Learned Advocate for the petitioner submits that two offences i.e. Crime No.745 of 2024 dated 19.08.2024

and Crime No.176 of 2024 dated 18.08.2024 as well as two in-camera statements have been considered by the detaining authority for passing the detention order. However, the order would demonstrate that there was no such material which would give subjective satisfaction to the detaining authority to pass the order of detention. The ordinary law was sufficient to take care of the alleged criminal activities of the petitioner. The bail order has not been considered by the learned District Magistrate. The in-camera statements were based on unbelievable story 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. Abhijit Raut, the then District Magistrate, Nanded, presently working as Joint Commissioner, SGST, Chhatrapati Sambhajinagar. It has been

stated in the affidavit-in-reply as to what was the material before him to arrive at the subjective satisfaction. Taking into consideration all the criminal activities of the petitioner it can be concluded that he was the dangerous person as defined under M.P.D.A. and unless detention, his criminal activities could not have been curtailed. The threat was apparent from the statements of the in-camera witnesses. Learned APP also submits that there was no delay at all committed by any authority in either forwarding the proposal or passing the order. The Advisory Board had heard the petitioner and then gave its approval to the order. Thereupon, the confirmation order of the detention has been passed by the respondent/State.

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. Here, though in the impugned order, in eight offences, it is stated that the involvement of the petitioner is quoted, however, for passing the order of detention, it appears that the learned District Magistrate considered two offences only i.e. Crime No.745 of 2024 and Crime No,176 of 2024. Perusal of the order would show that as regards the offence vide Crime No.745 of 2024 is concerned, the investigation was still pending when the order was passed, however, there is absolutely no mention about the date on which the petitioner was released on bail by the concerned Court. Though the petitioner in his petition has not given the date of the bail order, but

makes a categorical statement that in respect of Crime No.745 of 2024, he has been released on bail. In his order, the learned Magistrate has observed the date of arrest and it is stated that the petitioner is in magisterial custody. The impression that is given by the learned District Magistrate in the order is that the petitioner has not been released in connection with Crime No.745 of 2024. If he has not been released, then why the District Magistrate should take the action for detention would be then the question. Even in his affidavit-in-reply, he is then silent regarding the position whether the petitioner was released on bail or not. Further as regards Crime No.176 of 2024 registered with Mudkhed Police Station is concerned, the petitioner was arrested on 19.08.2024 and he has been released on bail on 23.10.2024. In the entire file, which is made available, we cannot see the bail order. The bail order has not been considered at all by the learned District Magistrate. 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, we would say that at the most law and order situation would have arisen and not the public order and, therefore, we conclude that there was no such material before the learned District Magistrate, which would have given him subjective satisfaction that only detention of the petitioner would curtail the criminal activities of the petitioner and the ordinary law will not give the same result. The fundamental rights of the citizen are then jeopardized because of such action, which is then deprecated by the Hon’ble Supreme Court by saying the law under the preventive detention as a draconian rule.

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 is allowed.
- II) The the detention order dated 25.01.2025 bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-07 passed by respondent No.1 as well as the approval order dated 04.02.2025 and the confirmation order dated 06.03.2025 passed by respondent No.2,, are hereby quashed and set aside.
- III) Petitioner - Atish Gangadhar Shinde 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