



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.446 OF 2025

Shaikh Amer @ AD s/o Shaikh Pasha
Age: 27 years, Occu.: Nil,
R/o. Govardhan Ghat, Nanded,
At present Farooq Nagar, Nanded,
Taluka and District Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
Through Addl. Chief Secretary,
Home Department (Special),
Mantralaya, Mumbai-32.
2. The District Magistrate,
Nanded, District Nanded.
3. The Superintendent,
Central Prison Harsul,
Taluka and District Aurangabad.

.. Respondents

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Mr. Prashant P. Giri, Advocate for the petitioner.
Mr. G. A. Kulkarni, APP for the respondents/State.

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

DATE : 30 JUNE 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Prashant P. Giri for the petitioner and
learned APP Mr. G. A. Kulkarni 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 04.10.2024 passed by respondent No.2 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-58 and the approval order dated 14.10.2024 as well as confirmation order dated 04.12.2024 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, two offences were considered i.e. Crime No.338 of 2024 registered with Nanded Rural Police Station, District Nanded for the offences punishable under Sections 457, 380 of Indian Penal Code and Crime No.784 of 2024 registered with Nanded Rural Police Station, District Nanded for the offences punishable under Sections 3, 7 punishable under Section 25 of the Arms Act. Learned Advocate for the petitioner submits that though the petitioner is stated to be involved in fourteen offences, only two offences i.e. Crime No.338 of 2024 and Crime No.784 of 2024 were considered for passing the detention order. Both these offences were

still under investigation. If the contents of both the FIRs are considered, then it can be seen that they would have raised only law and order situation at the most and not the public order. Further, it is stated that in Crime No.338 of 2024, the petitioner has been released on bail 30.09.2024 and in Crime No.784 of 2024 he has been released on 18.09.2024 by the competent Court. The detaining authority had not considered the bail orders passed by the competent Court, when in fact the detention order came to be passed on 04.10.2024. As regards statements of confidential witnesses 'A' and 'B' are concerned, at the most those statements would have raised law and order situation and not the public order.

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 relied on the affidavit-in-reply of Mr. Abhijit

Raut, the District Magistrate, Nanded/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.

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. The first and the foremost fact to be noted is that only two offences have been considered by the detaining authority i.e. Crime No.338 of 2024 dated 24.04.2024 and Crime No.784 of 2024 dated 28.08.2024. The incident in both the FIRs would show that general public was not involved. At the most law and order situation would have been arisen and not the public order. In fact, the petitioner has been released on bail in both the offences on 30.09.2024 and 18.09.2024 respectively, but the detaining authority has not considered the bail orders. 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. Perusal of the statements of witnesses ‘A’ and ‘B’ would show that general public was not involved. Those statements would have created at the most law and order situation 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) Writ Petition stands allowed.
- II) Detention order dated 04.10.2024 passed by respondent No.2 bearing No.2024/RB-1/Desk-2/T-4/MPDA/CR-58 and approval order dated 14.10.2024 as well as confirmation order dated 04.12.2024 passed by respondent No.1 are hereby quashed and set aside.
- III) Petitioner viz. Shaikh Amer alias AD Shaikh Pasha 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