IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 435 OF 2026

Madhav s/o. Tulshiram Shivbhakte
Age : 21 years, Occ : Labour,
R/o. Balirampur,
Tq. & 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. & Dist. Nanded.

3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad
Dist. Aurangabad.

... RESPONDENTS

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Mr.Shailendra S. Gangakhedkar, Advocate for the Petitioner
Mrs.M.N.Ghanekar, APP for Respondent nos.1 to 3.

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CORAM : SANDIPKUMAR C. MORE &
VAISHALI PATIL-JADHAV, JJ.

RESERVED ON : 21.10.2026.
PRONOUNCED ON : 04.11.2026

JUDGMENT [Per : Vaishali Patil-Jadhav, J.] :

. Rule. Rule made returnable forthwith. Heard finally at the admission stage with the consent of learned advocates for the parties.

2. By this petition, the petitioner challenges the detention order dated 29.01.2026 bearing No. 2026/RB-1/Desk-2/T-4/MPDA/CR-11, passed by Respondent No. 2-District Magistrate, Nanded, in exercise of the powers under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons, Video Pirates, Sand Smugglers, Persons Engaged in Black-Marketing of Essential Commodities, Illegal Gambling, Illegal Lottery and Human Trafficker Act, 1981 (hereinafter referred to as "MPDA"), and the confirmation order dated 27.03.2026 bearing No. MPDA-0226/CR-82/Spl-3B, passed by Respondent No. 1-State Government, in exercise of the powers under Section 12(1) of the MPDA. By the impugned detention order, the petitioner is directed to be detained for a period of 12 months on the ground that the petitioner is a "dangerous person" within the meaning of Section 2(b-1) of the MPDA.

3. The record reflects registration of seven (07) criminal cases and two preventive actions taken against the petitioner. The reference chart showing the criminal record of the petitioner is reproduced hereunder :

Sr. No	Police Station	C.R. No.	Under Section	Date of filing	Date of arrest	Bail Date	Court Case No.	Present Status
1.	Nanded Rural	67/2023	457,380, 34 of IPC	07.02.2023	09.02.2023	17.05.2023	RCC No.523/24	Court pending
2.	Nanded Rural	299/2023	160 of IPC	24.04.2023	24.04.2023	24.04.2023	RCC No.1707/23	Court pending
3.	Nanded Rural	467/2023	452, 354-A, 506 of IPC	26.06.2023	27.06.2023	21.02.2024	RCC No.203/23	Court pending
4.	Nanded Rural	645/2023	4/25 of Arms Act	04.09.2023	04.09.2023	04.09.2023	RCC No.1532/23	Court pending
5.	Nanded Rural	738/2025	4/25 Arms Act	02.08.2025	02.08.2025	02.08.2025	RCC No.1451/25	Court pending
6.	Nanded Rural	1209/25	333, 352, 351 (2), 351 (3), 3 (5) BNS	18.12.2025	20.12.2025	20.12.2025	--	On investigation
7.	Nanded Rural	1210/25	109, 126 (2), 115 (2), 352, 351 (2), 352 (3), 189(2), 191 (2), 191 (3), 190 BNS 4/25 Arms Act	18.12.2025	19.12.2025	19.01.2026	--	On investigation

Preventive Action :-

Sr. No.	Police Station	Chapter Case No.	Section	Date	Present status
1.	Nanded Rural	24/2023	110 CrPC	19.03.2023	Closed
2.	Nanded Rural	287/2025	126 BNSS	04.08.2025	Closed

4. Learned advocate for the petitioner submits that out of the three recent crimes considered by the detaining authority for passing the impugned order, the petitioner was released on the very same day of his arrest in C.R. No. 738/2025, by serving a notice under Section 35(3) of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, "BNSS, 2023"), and in C.R. No. 1209/2025. Furthermore, in C.R. No. 1210/2025, the petitioner was arrested on 19.12.2025 and was subsequently released on bail by the competent court on 19.01.2026, with certain conditions.

Learned advocate submitted that the State did not move any application for the cancellation of bail in any of these cases, nor did the detaining authority record its subjective satisfaction as to why the conditions imposed by the courts or the immediate release on issuance of notice under Section 35(3) of the BNSS, 2023 were insufficient to prevent the alleged prejudicial activities of the petitioner.

Learned advocate also submitted that there is an unexplained delay of more than one month in passing the impugned order, as the last crime was registered on 18.12.2025, the proposal was forwarded on 22.12.2025, but the order of detention was passed only on 29.01.2026.

It was further submitted that the in-camera statements of witnesses A and B are mechanical and were recorded on 19.12.2025, when the petitioner was already in police custody, which completely negates the alleged apprehension of the witnesses, and that the alleged acts are individual in nature and do not amount to a breach of public order.

Learned advocate lastly submitted that the detention order is liable to be quashed and set aside and prayed for the release of the petitioner.

5. Per contra, learned APP while supporting the impugned order submitted that the petitioner is a “Dangerous Person” within the meaning of Section 2(b-1) of the MPDA, as he has committed serious offences under the Indian Penal Code, 1860 (for short, "IPC", Bharatiya Nyaya Sanhita, 2023 (for short, "BNS, 2023") and the Arms Act, 1959. His activities have created a reign of terror in the Nanded Rural area, and people are afraid to give statements against him openly. It was submitted that grant of bail does not preclude or invalidate the exercise of powers under the MPDA. The detaining authority was aware of the bail orders but found them insufficient to prevent the petitioner from acting in a prejudicial manner. After considering the gravity

of the petitioner's criminal activities, the in-camera statements of confidential witnesses were recorded and duly verified. The incidents occurred at public places, involved threats and violence, and directly disturbed public order.

Learned APP lastly submitted that the detaining authority has passed the detention order after applying its mind to the entire record and that the subjective satisfaction of the detaining authority is based on cogent material, and prayed for dismissal of the petition.

6. Heard learned Advocate Mr. Shailendra S. Gangakhedkar for the petitioner and learned APP Ms. M.N. Ghanekar for the respondents. With the assistance of the learned advocates, we have perused the petition, the affidavit-in-reply, citations and the record.

7. The detaining authority, while passing the impugned detention order, has mainly relied upon three offences, i.e., C.R. No.738/2025 registered on 02.08.2025 under Sections 4/25 of the Arms Act, 1959, C.R. No.1209/2025 registered on 18.12.2025 under Sections 333, 352, 351(2), 351(3), 3(5) of the BNS, 2023, and C.R. No. 1210/2025 registered on 18.12.2025 under Sections

109, 126(2), 115(2), 352, 351(2), 352(3), 189(2), 191(2), 191(3), 190 of the BNS, 2023 and Section 4/25 of the Arms Act, 1959, all registered with Nanded Rural Police Station, Nanded, along with two in-camera statements of confidential witnesses "A" and "B", to declare the petitioner a “Dangerous Person”.

8. Admittedly, three offences have been considered for passing the detention order against the petitioner, out of which, C.R. No.738/2025 is under Sections 4/25 of the Arms Act, 1959, wherein, it is alleged that, while patrolling at night the police received information that the petitioner was standing on the road with a weapon. Thereafter, the police went to the spot and seized the iron dragger in presence of two witnesses and filed the abovementioned F.I.R.

In C.R. No.1209/2025, it is alleged that the brother of the petitioner had committed murder of the brother of the complainant and thereafter, the brother of the petitioner was released on bail and the complainant filed a complaint that the petitioner and his brother are threatening them for withdrawing the complaint by entering into their house.

In C.R. No.1210/2025, it is alleged that the complainant was driving the auto rickshaw and one of his friend Gujjar was traveling by his auto-rickshaw towards his home. When they reached Zilla Parishad School, Balirampur, the petitioner and other accused persons started verbally abusing the complainant and there was some scuffle between Gujjar and some other accused persons. The allegation towards the petitioner is only that he, his wife and mother-in-law verbally abused the complainant and gave slaps and punches.

9. All of these offences are individual in nature, in between two private parties and, society as such is not involved in any of the offences. In F.I.R. No.1210/2025, other accused persons were found with deadly weapon. However, there is nothing on record to show that other accused were also dealt with similar preventive action as that of the petitioner. Moreover, it was revealed that the other associates of the present petitioner had created an atmosphere of terror. It appears that the aforesaid incident was individual in nature and for that purpose the petitioner was arrested and thereafter released on bail.

10. So far as, the statements of secret witnesses are concerned, both of them appear to be stereotype in nature wherein general criminal behaviour of the petitioner is discussed. Moreover, on going through those statements, it is clearly evident that though the same took place at public place, there was no deterrence to the public at large. The incidents described, even if accepted at face value, appear to be incidents affecting law and order, but not public order. The Hon'ble Supreme Court in the case of ***Ameena Begum Vs. The State of Telangana and Ors.*** reported in ***2023 INSC 788,*** has discussed the distinction between "law and order" and "public order" stating that the difference between the two is of degree and impact. An act may affect the law and order but not public order. It is only when the act affects the community at large or the even tempo of life of the people that it becomes a public order issue. The statements of confidential witnesses in the present case do not establish that the petitioner's activities had caused an impact on the public order.

11. Another ground is regarding the non-consideration of bail orders. The Hon'ble Supreme Court, in the case of ***Ameena Begum (supra)*** has observed as under:

"It is pertinent to note that in the three criminal proceedings where the Detenu had been released on bail, no applications for cancellation of bail had been moved by the State. In the light of the same, the provisions of the Act, which is an extraordinary statute, should not have been resorted to when ordinary criminal law provided sufficient means to address the apprehensions leading to the impugned Detention Order. There may have existed sufficient grounds to appeal against the bail orders, but the circumstances did not warrant the circumvention of ordinary criminal procedure to resort to an extraordinary measure of the law of preventive detention.

52. In Vijay Narain Singh vs. State of Bihar, Hon'ble E.S. Venkataramiah, J. (as the Chief Justice then was) observed:

> *32. ...It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an Accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the*

criminal court."

(emphasis supplied)

12. Applying the above principles to the facts of the present case, it emerges that in Crime No.738/2025 and Crime No.1209/2025, the petitioner was not arrested and was only served with notice under Section 35(3) of the BNSS, which shows that the detaining authority did not find it necessary to arrest the petitioner and detain him to prevent the further illegal activities. In Crime No.1210/2025, the petitioner was arrested on 19.12.2025 and was released on bail by the competent Court on 19.01.2026 by imposing certain conditions. The detaining authority while passing the impugned order, has merely noted the fact of the petitioner's release on bail without adverting to the bail order or examining the sufficiency of the conditions imposed therein. There is no discussion in the detention order as to why the conditions were insufficient to restrain the petitioner from acting in a manner prejudicial to the public order. There is nothing on record to show that the petitioner has violated bail conditions or the State has filed any application for cancellation of bail. This indicates that the remedies

available under the ordinary criminal law were not resorted to by the authorities to deal with the situation, and instead, the extra ordinary power of preventive detention was invoked. The Hon'ble Apex Court in the case of ***Shaik Nazneen Vs. State of Telangana and others*** reported in ***(2023) 9 SCC 633,*** has observed that if the detenu is a menace to society, the prosecution can seek cancellation of his bail and/or move an appeal to the Higher Court. Seeking shelter under the preventive detention law is not the proper remedy.

13. The Hon'ble Supreme Court, in ***Rekha Vs. State of Tamil Nadu*** reported in **(2011) 5 SCC 244**, has held that preventive detention is a serious encroachment on personal liberty, and the subjective satisfaction of the detaining authority must be based on cogent and relevant material. The Court further observed that if the ordinary criminal law is sufficient to deal with the situation, the detention order is liable to be quashed.

14. In the instant case, the detaining authority has failed to record any valid reason as to why the ordinary penal provisions under the BNS, 2023 were inadequate to prevent the petitioner's alleged activities. The reliance on a

case where the petitioner was in judicial custody for a long period and the non-consideration of bail conditions indicate that the authority mechanically applied its mind without examining the actual gravity and impact of the incidents. This failure shows the non-application of mind while arriving at the subjective satisfaction by the detaining authority. The material relied upon is insufficient to categorize the petitioner as a "Dangerous Person" within the meaning of the MPDA Act.

15. We are, therefore, of the considered view that the detention order and the subsequent approval and confirmation orders are unsustainable and are liable to be quashed and set aside. Accordingly, we pass the following order:

O R D E R

(i) The Writ Petition is allowed.

(ii) The detention order dated 29.01.2026 bearing No.2026/RB-1/Desk-2/T-4/MPDA/CR-11, passed by Respondent No. 2- District Magistrate, Nanded and the confirmation order dated 27.03.2026 bearing No. MPDA-0226/CR-82/Spl-3B, passed by Respondent No. 1- State Government, are hereby quashed and set aside.

(iii) The Petitioner- Madhav S/o Tulshiram Shivbhakte shall be released forthwith, if not required in any other offence.

(iv) Rule is made absolute in the above terms.

[VAISHALI PATIL-JADHAV]
JUDGE

[SANDIPKUMAR C. MORE]
JUDGE

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