



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1059 OF 2025

Shaikh Iliyas Shaikh Irfan,
Age : 23 Years, Occ. Labour,
R/o. Pakijanagar, Idgah Road,
Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Additional Chief Secretary,
Home Department, Mantralaya, Mumbai-32.
2. The District Collector/Magistrate,
Nanded, Dist. Nanded.
3. The Superintendent of Police,
Itwara Division, Nanded
Dist. Nanded.
4. The Sub-Divisional Police Officer,
Itwara Division, Nanded.
5. The Police Inspector
Police Station, Nanded Rural,
Dist. Nanded.
6. The Superintendent of Jail,
Harsool Central Prison,
Aurangabad.

..RESPONDENTS

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Advocate for the Petitioner : Mr. Avinash R. Borulkar
(Appointed through legal Aid)
A.P.P. for Respondent Nos. 1 to 6/State : Mr. V. M. Jaware

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**CORAM : SANDIPKUMAR C. MORE AND
ABASAHEB D. SHINDE, JJ.**

RESERVED ON : MARCH 27, 2026

PRONOUNCED ON: APRIL 02, 2026

FINAL ORDER (PER SANDIPKUMAR C. MORE, J) :-

1. Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the petitioner and learned A.P.P.

2. The petitioner has challenged the order of detention dated 25.01.2025 passed by respondent No.2/The District Magistrate, Nanded in exercise of powers under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Priates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (hereinafter referred to as "MPDA Act") as well as the approval order of the State Government dated 04.02.2025 vide its order No. MPDA-0225/CR-45/SPL.3B and the confirmation order dated 03.07.2025 vide its order No. MPDA-0225/CR-45/SPL.3B, by invoking the power of this Court under Article 226 of the Constitution of India.

Though the detention order under challenge is dated 25.01.2025, but after passing the same, the petitioner was absconding and after taking too much efforts, he was apprehended on 10.05.2025. On the same day, he was served

with the detention order with grounds of detention and detained in Central Prison, Chhatrapati Sambhajnagar.

3. The learned counsel for the petitioner submits that, the following offences are registered against the petitioner and one preventive actions is also taken against the petitioner.

Sr. No.	Police Station	C.R. No. & Under Section	Date of Registration	Present status
1.	Nanded Rural	191/2024 u/s. 3/25, 7/25 of Arms Act, 1959, 135 of Maharashtra Police Act 1951	13/03/2024	Under Investigation
2.	Nanded Rural	420/2024 u/s 395 of IPC, 4/25 Arms Act, 1959	25/05/2024	Under Investigation
3.	Nanded Rural	792/2024 u/s 4/25 Arms Act, 1959	31/08/2024	Pending trial
4.	Nanded Rural	842/2024 u/s 309(4), 3(5) of BNS, 4/25 Arms Act, 1959	18/09/2024	Under Investigation
5.	Airport	405/2024 u/s 310(2) of BNS, 2023	21/01/2024	Under Investigation

Preventive Action

Sr. No.	Police Station	Chapter Case No. & u/s	Date of Registration	Disposal
01.	Nanded Rural	374/2024 u/s 107 Cr. P.C.	12/04/2024	Chapter case closed

However, the Detaining Authority has considered mainly two offences viz. C.R. No. 405 of 2024 under Section 310(2) of

the Bharatiya Nyaya Sanhita, 2023 (for short, "B.N.S.") registered with Airport Police Station on 21.01.2024 and C.R. 842 of 2024 of Nanded Rural Police Station registered under Sections 309(4), 3(5) of BNS, 4/25 Arms Act, 1959 on 18.09.2024 to declare the petitioner as a "Dangerous Person".

According to him, there is no live link in the impugned order of detention and a clear-cut absence of subjective satisfaction involved in the same. According to him, the petitioner had also been released on bail in some of the crimes and in fact was not arrested in one of the crimes, but nothing is mentioned in the detention order about his being released on bail. Thus, there is no application of mind in passing the impugned order. He further submitted that, the nature of criminal act as alleged is not against public order, but it is individual in nature. Further, according to him, the statements of secret witnesses are stereotype in nature and the same can give rise to question of law and order, but certainly not the disturbance of the public order. He pointed out that the crime was registered against the petitioner only on his confession and initially it was against unknown persons. Thus, he prayed for setting-aside the impugned order of detention along with its confirmation. The learned counsel for

the petitioner, in addition to submissions, also placed reliance on the following judgments :-

- (i) ***Mrs. T. Devaki Vs. Govt. of Tamil Nadu (AIR 1990 Supreme Court 1086)***
- (ii) ***Nagpur Bench of this Court in the case of Himanshu S/o Dinesh Roy Vs. Commissioner of Police and another in Criminal Writ Petition No. 22 of 2023 dt. 03.04.2023***
- (iii) ***Nagpur Bench of this Court in the case of Akshay Bhaskar Sahaare Vs. State of Maharashtra and others in Criminal Writ Petition No. 223 of 2025 on 30.09.2025***

4. Per contra, the learned A.P.P. strongly opposed the submissions made on behalf of the petitioner by filing affidavit-in-reply of respondent No.2. According to him, the petitioner is definitely a “Dangerous Person” within the meaning of Section 2(b-1) of the M.P.D.A. Act. He pointed out that the letter issued to the deteneu contains reasons for his detention and due to his fear, the public at large is facing difficulty. According to him, the incidents in respect of secret witnesses had in fact taken place at public place, which is definitely indicative of breach of public order. He submitted that the impugned order has been passed after subjective satisfaction and accordingly approval is also there. Thus, he prayed for dismissal of the petition.

5. Admittedly, only two offences have been considered for passing the detention order of the petitioner, wherein it is alleged that the petitioner along with other accused threatened the informants and took away certain cash amount along with other articles. However, in the first crime registered with Airport Police Station Nanded bearing CR No. 405 of 2024, the offence was in fact registered initially against unknown persons, but only on confidential information, the involvement of the present petitioner was detected. Therefore, the possibility of implicating the present petitioner cannot be ruled out. Moreover, considering the nature of the alleged criminal act, it appears that it was against the individual and the public at large was not involved. Same is the case with second offence bearing C.R. No. 842 of 2024 of Nanded Rural Police Station. On going through the F.I.R in the said crime, it is again evident that three unknown persons were involved in the said crime and when the petitioner was taken in custody, he confessed about committing the crime along with other associates. Therefore, again his involvement in the said crime appears doubtful.

6. So far as, statements of secrete witnesses are concerned, both of them appear stereotype in nature, wherein general

criminal behaviour of the petitioner is discussed. It is important to note that in both the statements, those secret witnesses were unable to state the exact day and time of the incidents therein. Moreover, on going through those statements, it is clearly evident that though the same took place at public place, but there was no deterrence to the public at large. At the most, it may give rise to the question of maintenance of law and order.

7. In the case of ***Joyi kitty Josef Vs. Union of India & Others reported in 2025 AIR (SC) 1702*** the Hon'ble Apex Court has already held that, when a bail is granted with conditions to the detenu, then the detaining authority must apply its mind to those conditions and record its subjective satisfaction as to why they are insufficient to prevent alleged prejudicial activities. No such application of mind or subjective satisfaction is apparent from the impugned order. Failure to consider the bail conditions definitely indicates that the same were sufficient to deal with the criminal act of the petitioner.

8. In the case of ***Dr. Ram Manohar Lohia Vs. State of Bihar, (AIR 1966 SC 740)*** the Hon'ble Apex Court has differentiated breach of law and order and breach of public

order. Breach of public order involves disturbance affecting the even tempo of life of community, whereas law and order involves individual crimes not disrupting the broader public tranquility. In the instant matter, it appears that the criminal activities of the petitioner are against individuals, but not in deterrence to the public order. Therefore, for that reason also, the detention order appears to be without application of mind.

9. Though the learned A.P.P. strongly opposed the contentions raised on behalf of petitioner, but considering the fact that the preventive detention is not to punish for the past acts, but to prevent further conduct, it must be supported by cogent, proximate and relevant material and when such material is absent, the very foundation of the order falls. In the instant case, as discussed above, there is no sufficient material on record to categorize the petitioner as “Dangerous Person” within the meaning of provisions of the M.P.D.A Act, 1981, and therefore, even though the Advisory Board has confirmed the order, but in the light of the aforesaid discussion, we do not find the impugned order and its confirmation, as sustainable. In the result, we pass the following order.

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The detention order dated 25.01.2025, passed by respondent No.2-The District Magistrate Nanded, under Section 3(2) of the M.P.D.A. Act, 1981 as well as the approval order of the State Government dated 04.02.2025 and the confirmation order dated 03.07.2025 are hereby quashed and set aside.
- (iii) Petitioner- Shaikh Iliyas Shaikh Irfan shall be released forthwith, if no required in any other offence.
- (iv) Rule is made absolute in aforesaid terms.
- (v) High Court Legal Services, Sub Committee, Aurangabd shall pay Rs. 5,000/- (Rupees five thousand only) as fees of learned Advocate for appellant (appointed) as expeditiously as possible.

(ABASAHEB D. SHINDE)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE

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