



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

CRIMINAL WRIT PETITION NO.1492 OF 2025

Chandrashekhar @ Chandya s/o
Devrao Paikrao

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through Secretary, Home Department
Mantralaya, Mumbai - 32
2. The District Magistrate,
Office of District Collectorate,
Near Gandhi Statue, Station Road Nanded,
Tq. & Dist. Nanded
3. The Superintendent of Police,
Nanded, Tq. & Dist. Nanded
4. The Police Inspector,
Police Station, Itwara, Nanded,
Tq. & Dist. Nanded

... **RESPONDENTS**

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Advocate for the Petitioner : Ms. Pratiksha S. Magre
APP for Respondents : Mr. N.B. Patil

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

Date of reserved 13.01.2026

Date of pronouncement : 27.01.2026

JUDGMENT (ABASAHEB D. SHINDE, J.) :

1. Heard. Rule. Rule is made returnable forthwith. With the consent of the parties the petition is taken up for final hearing at the stage of admission.

2. By this writ petition the petitioner is taking exception to the detention order and committal order dated 01.07.2025 bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-38, passed by the respondent No.2 – 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 Pirates, Sand Smugglers, Persons Engaged in Black-Marketing of Essential Commodities, Illegal Gambling, Illegal Lottery and Human Trafficker Act, 1981 (for short the MPDA Act), as well as approval order dated 11.07.2025 and confirmation order dated 29.08.2025 passed by respondent No.1- State Government, in exercise of powers under Section 12(1) of the MPDA Act, by the impugned detention order, the petitioner has been 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 Act, holding his activities prejudicial to the maintenance of public order.

3. The impugned detention order has been passed on a proposal submitted by the respondent No.4 – Police Inspector, Itwara Police Station, Nanded. The proposal has been routed through respondent No.3 – Superintendent of Police and eventually

placed before the respondent No.2 – District Magistrate who claims to have arrived at a subjective satisfaction that the petitioner's detention is necessary to prevent him from acting in a manner prejudicial to public order. The basis for passing the impugned detention order is registration of eight (8) past criminal cases against the petitioner and his associates. A Chapter Case No.504/2023 dated 13.10.2023 under Section 107 of the Code of Criminal Procedure, 1973 (for short Cr.PC), registered in the year 2023 as well as another Chapter Case No.01/2024, dated 12.02.2024 under Section 55 of the Maharashtra Police Act, 1951 and Crime bearing No.191/2025 dated 17.05.2025, registered with Vimantal Police Station, Nanded under Sections 4 and 25 of Arms Act, as well as Sections 135 and 142 of the Maharashtra Police Act, 1951, registered in recent past. In addition to above crimes, two in-camera statements of witnesses 'A' and 'B' are also made basis for passing the impugned detention order.

4. Learned counsel for the petitioner has contended that the impugned order of detention vitiates for more than one reason. According to learned counsel for the petitioner although the impugned detention order refers to release of petitioner on bail in pending cases, copies of bail applications and the bail orders were

admittedly neither placed on record nor has been considered by the competent authority. According to the learned counsel for the petitioner this lacks the basic principle of subjective satisfaction as laid down by the Hon'ble Apex Court in the case of **Rekha Vs. State of Tamilnadu through Secretary to Government and Anr.; (2011) 5 SCC 244** and **Huidrom Konungjao Singh Vs. State of Manipur and Ors.; (2012) 7 SCC 181**, so also the recent decision rendered by the Hon'ble Apex Court in the case of **Joyi Kitty Joseph Vs. Union of India (UOI) and Ors.; (2025) 4 SCC 476**, wherein, it has been held 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.

5. It is further contended by the learned counsel for the petitioner that as far as the Crime bearing No.191/2025 is concerned, the same is falsely registered against the petitioner. To substantiate her contention she relied on the specific averments in the writ petition stating that when the petitioner was exiled pursuant to an externment order No.6948/2024 dated 30.12.2024, he had kept himself outside the notified area, however, he was

called through on Whatsapp Call by one Balaji Yadgirwar, Head Constable, under the pretext of interrogation as a part of an investigation of one of the crime. Upon his arrival at Itwara Police Station his signatures were allegedly obtained on blank paper and the said false case under Sections 4 and 25 of the Arms Act, as well as, under Sections 135 and 142 of the Maharashtra Police Act were registered, alleging that the petitioner has breached the externment order and also unlawfully possessing the weapon. Learned counsel however submits that in any case this solitary offence cannot be considered as an act of affecting public order.

6. While assailing the two in-camera statements, the learned counsel for the petitioner would urge that these statements are absolutely vague lacking the specific dates, places and particulars and do not disclose any material so as to warrant preventive detention. She would further urge that the in-camera statements were not verified properly and even the material required for such verification was not served on the petitioner, which amounts to depriving the petitioner of making any effective representation as guaranteed under Article 22(5) of the Constitution of India.

7. Per contra, the learned APP while supporting the

impugned detention order would submit that the affidavit-in-reply filed by respondent No.2 – District Magistrate justifies his decision of detaining the petitioner for a period of 12 months. According to learned APP the petitioner is a habitual offender who creates terror and the residents within the jurisdiction of Itwara Police Station and the adjoining areas remain in constant fear. He would further submit that the petitioner and his associates are involved in the incidences of snatching money, committing thefts and dacoits, resultantly, the people are not ready to come forward to lodge complaints. He would further submit that the confidential inquiry was conducted and it is only after giving assurance of secrecy the two witnesses came forward to depose against the petitioner's criminal activities. It is further submitted that respondent No.2 – District Magistrate has carefully examined entire material and has arrived at a subjective satisfaction that the preventive detention of the petitioner is very much warranted.

8. Learned APP has also urged that considering the provisions of Section 5A of MPDA Act, even if on some grounds the detention order fails, the entire detention order does not vitiate so long as one ground survives.

9. It would not be out of place to mention that an affidavit-

in-reply has been filed by the said Head Constable namely Balaji Yadgirwar, wherein, he has denied that he called the petitioner to the Police Station for the purpose of interrogation. He, however, admits that he called the petitioner through Whatsapp call but asserts that it was only to gather the information about another criminal namely Kamlesh Patil and not to summon the petitioner. He also stated in his affidavit-in-reply that presently he is attached to Shivajinagar Police Station, however, at the relevant time he was attached to Local Crime Branch, and therefore, the duty of the Local Crime Branch was to keep track on the criminals and also on movements of the externed criminals.

10. Having considered the rival submissions advanced by the learned counsel for the petitioner and the learned APP for the State authorities and after going through the entire record, we find that though the preventive detention is permitted by the Constitution of India as an exceptional measure which curtail the fundamental right of life and liberty without a trial, however, while doing so the procedure established by law and the safeguards enshrined under Article 22 of the Constitution of India needs to be followed scrupulously.

11. The basis for passing the impugned detention order is

Crime No.191/2025 registered under Sections 4 and 25 of the Arms Act. As per Section 4 of the Arms Act the Central Government is required to issue notification prohibiting the possession of certain weapons in specified area. It is settled position of law that unless that exists and is produced such a notification applicable to the concerned area, it cannot be said that an offence under Section 4 is said to have been committed. It is trite law by virtue of decision of this Court in the case of **Abdul @ Aslam Salim Shaikh Vs. State of Maharashtra; (2007) 2 Mh.L.J. (Cri.) 812**, as well as in the case of **Dilip Asaram Zagade Vs. State of Maharashtra;**(Criminal Application No.3111/2018) decided by this Court on 18.02.2019 (Aurangabad bench), wherein, this Court has reiterated that the absence of notification under Section 4 is not only fatal to prosecution but even to take preventive action based on such an offence.

12. It would be apposite to refer to the observations of this Court in the case of **Abdul @ Aslam Salim Shaikh** (supra) in paragraph 7 which reads thus :

"7. Section 3 of the Arms Act provides that no person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds a licence for that purpose. Section 4 of Arms Act deals with weapons other than the firearms. It reads as follows:-

"4. If the Central Government is of opinion that having regard to the circumstances prevailing in any area it is necessary

or expedient in the public interest that the acquisition, possession or carrying of arms other than firearms should also be regulated, it may, by notification in the Official Gazette, direct that this section shall apply to the area specified in the notification and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder."

From this section it is clear that while for firearms in view of the provisions of section 3 of Arms Act, it is necessary to hold a valid licence normally no licence is required to possess any arms other than the firearm unless there is a Notification published in the Official Gazette by the Central Government for that purpose and made applicable to the particular area specified in the notification II such a notification is issued for a specified area no person may acquire, possess or carry any such weapon, without necessary licence. Before a charge under section 4 read with section 25(1D) of the Arms Act could be framed, it was necessary for the prosecution to allege that there was such a notification issued by the Central Government made applicable to the particular area in which the accused persons were found. In the present case in the charge-sheet nowhere there is any mention of any such notification under section 4 of the Arms Act. Nor any evidence was led before the Court that there was any Notification issued by the Central Government prohibiting possession or carrying of any such weapon in particular area. In absence of any such Notification, merely because a person is found in possession of a weapon, other than the firearms, he cannot be prosecuted, convicted and sentenced under section 25 of the Arms Act."

13. Similarly, it would also be apt to rely upon the observations of Division Bench of this Court in the case of **Dilip Asaram Zagade** (supra), in paragraph Nos. 13 to 15 which reads thus :

"13. Section 4 of the Arms Act reads as under :

"4. Licence for acquisition and possession of arms of specified description in certain cases:-

If the Central Government is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms other than firearms should also be regulated, it may, by notification in the Official Gazette, direct that this Section shall apply to the area specified in the notification and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder."

14. Whereas Section 25(1-B) (b) states that, whoever acquires, has in his possession or carries in any place specified by notification under Section 4 any arms of such class or description as has been specified in that notification, in contravention of that Section, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to three years and shall also be liable to fine.

15. In our view, to attract the provisions of Section 4 read with Section 25(1-B) (b) of the Arms Act, it has to be averred in the F.I.R. that the Central Government, by notification in the official gazette, has regulated possession of swords in the particular area (in this case village Shelapuri), Taluka Majalgaon, District Beed and same is an offence punishable under Section 25(1-B) (b) of the Act. Notification, if any, issued by the Central Government under Section 4 has also not been placed on record for our perusal. It would, therefore, be difficult to hold that the allegations in the report dated 29.6.2018 lodged by Vijay Ghodke, prima facie constitute an offence under Section 4 read with 25 of the Arms Act. On the contrary, for want of averments to this effect in the report, it has to be observed that no offence is made out from the so called F.I.R."

14. After perusing the entire record, we do not find anything on record nor the learned APP is in a position to point out that any such notification under Section 4 of the Arms Act was ever issued for Nanded City nor he is able to point out that the same was placed

before the respondent No.2 – District Magistrate. We also find from the impugned detention order and the record available that this vital aspect is missing. Consequently, the reliance placed on the crime alleging offence under Section 4 of Arms Act itself collapsed. We find that the impugned detention order which is also based on the said FIR alleging offence under Sections 4 and 25 of the Arms Act itself suffers from the serious legal infirmity.

15. We are also of the considered view that impugned detention order depicts non-application of mind at the hands of respondent No.2 – District Magistrate while appreciating the material. Though the order asserts that the petitioner is on bail in all the pending cases, however, the record does not contain a single copy of any bail application or any bail order. As held by the Hon'ble Apex Court in the case of **Ameena Begum Vs. The State of Telangana and Ors.**; (2023) 9 SCC 587, **Nenavath Bujji and Ors. Vs. The State of Telangana and Ors.**; (2024) 17 SCC 294 as well as in the case of **Saksham s/o Gautam Tate Vs. The State of Maharashtra and Ors.**; (Criminal Writ Petition No.1079/2025) decided by this Court on 08.09.2025 (Aurangabad Bench), when a detaining authority takes into account the fact that the detenue is on bail it must examine the bail orders themselves to assess the nature of

offences, the conditions imposed by competent Courts while releasing the accused on bail and also to ascertain as to whether there exists a real likelihood of detainee committing similar kind of offence if released on bail. We thus find that non-consideration of all these vital aspects vitiates the subjective satisfaction as required under the provisions of the MPDA Act. In short absence of these documents shows that the petitioner was denied an opportunity to make an effective representation which is mandatory under Article 22(5) of the Constitution of India.

16. So far as the reliance placed on the in-camera statements of witnesses 'A' and 'B' are concerned, as observed above we find that those statements are vague as it can be seen that, those are general in nature without specifying the dates, time or places of alleged incidences as required by law. The record also depicts that there is no proper verification of these statements nor the detaining authority appears to have applied its mind to its credibility. It is settled position of law that such vague statements that too without any proper verification cannot be made the basis of preventive detention.

17. As far as the conduct of said Head Constable Balaji Yadgirwar, we have been informed across the bar that this Court

while deciding criminal writ petition filed by an associate of the petitioner namely **Prashik @ Parshya s/o. Dilip Odhane Vs. The State of Maharashtra and Ors.**; (Criminal Writ Petition No.976/2025) has already taken a cognizance, thereby, directing a departmental inquiry at the hands of Superintendent of Police, Nanded and, therefore, we do not wish to delve into that aspect. Suffice it to state that this Court while allowing the said writ petition vide judgment and order dated 19.09.2025 has already taken a note of it.

18. One of the submission advanced by the learned APP about Section 5A of the MPDA Act, needs consideration which contemplates that insufficiency of one ground does not invalidate the detention order if other grounds survive. It however needs to be considered that it is not the case of some grounds falling on merits moreover this is a case where the very basis of subjective satisfaction stands vitiated depicting non-application of mind and for want of mandatory requirement of issuance of notification under Section 4 of the Arms Act. In the light of law laid down by the Hon'ble Apex Court in the case of **Rekha Vs. State of Tamilnadu** (supra) where the detaining authority's satisfaction is itself impaired

by non-consideration of relevant and vital material, reliance placed on Section 5A is hardly of any aid.

19. It is settled position of law that the preventive detention is not mean to punish for past act but to prevent future conduct that threatens public order. It is equally required to be considered, as to whether, mere pendency of criminal cases or even a previous externment proceedings without a live link to eminent disturbances of public order justify preventive detention. Whether it is only a concern about law and order or a public order in that regard, it would be profitable to rely on the judgment of the Hon'ble Apex Court in the case of **Ram Manohar Lohia Vs. State of Bihar and Ors.; (1966) 1 SCR 709**, wherein, while explaining the term 'Law and Order' and 'Public Order' the Hon'ble Apex Court observe thus :

"54. We have here a case of detention under R. 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them ? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the

ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under R.30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

20. Thus, 'Public Order' refers to disturbances affecting community at large whereas, 'Law and Order' can encompass a broader range of disturbances, including those of local and minor nature. In other words the activities must not be minor which is peace of purely local significance, which primarily in the specific individual and only in secondary sense public interest. Thus the underline principle is that the activity of a person should be such

that it will affect the public order. The three circles referred to by the Hon'ble Apex Court had explained that the activities disturbing law and order may not necessarily disturb the public order. We find that merely because of pendency of criminal cases or even a previous externment proceedings without a live link to eminent disturbances of public order cannot justify preventive detention .

21. We find that there is no material placed on record to substantiate that the petitioner was likely to commit any specific act prejudicial to public order in the immediate future. As can be seen that the alleged incident dated 17.05.2025 having been found unsustainable, cannot be said to have such a live link. In the light of above, we are of the considered view that the impugned detention order is unsustainable in law so also find that the approval order and confirmation order of the State Government also do not sustain. Hence, we pass the following order :

ORDER

- I. The Writ Petition stands allowed.
- II. The impugned detention order No.2025/RB-1/Desk-2/T-4/MPDA/CR-38 dated 01.07.2025 passed by respondent No.2 as well as the approval order dated 11.07.2025 and the confirmation order dated 29.08.2025, passed by

respondent No.1, are hereby quashed and set aside.

III. Petitioner – Chandrashekhar @ Chandya s/o Devrao Paikrao shall be released forthwith, if not required in any other offence.

IV. Rule is made absolute in the above terms.

(ABASAHEB D. SHINDE, J.)

(SANDIPKUMAR C. MORE, J.)