



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

CRIMINAL WRIT PETITION NO.1516 OF 2025

Shaikh Mehboob @ Goru S/o
Shaikh Babu

... **PETITIONER**

VERSUS

1. The State of Maharashtra
Through its Secretary,
Home Department, Mantralaya, Mumbai
2. The District Magistrate,
Nanded, Tq. & Dist. Nanded
3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad
Dist. Aurangabad

... **RESPONDENTS**

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Advocate for the Petitioner : Mr. Dhananjay S. Patil
APP for Respondent Nos. 1 to 3 : Mr. M. A. Aher

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

Date of reserved 04.03.2026

Date of pronouncement : 10.03.2026

JUDGMENT (ABASAHEB D. SHINDE, J.) :

1. Heard.
2. 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.

3. By this writ petition the petitioner is taking exception to the detention order dated 28.08.2025 bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-52, 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 05.09.2025 and confirmation order dated 17.10.2025 bearing No. MPDA-0925/CR-496/Spl-3B 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.

4. The impugned detention order has been passed on a proposal submitted by Police Inspector, Police Station Nanded Rural, Nanded. The proposal has been routed through Sub-Divisional Police Officer, Sub-Division Itwara, Nanded and Superintendent of Police, District

Nanded and eventually placed before the respondent No.2 – District Magistrate, Nanded 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 record reflects registration of eight (8) past criminal cases with one preventive action and also one preventive detention order passed under the MPDA Act against the petitioner which is later on quashed and set-aside by this Court. The ready reference chart showing criminal record of the petitioner, is reproduced hereunder :

Sr. No.	Police Station	C.R.No	Under Section	Date of filing of the case	Arrest Date	Bail Date	Court Case No.	Prasent Status.
1.	Nanded Rural	785/2021	452,354,34 IPC	02/11/2021	02/11/2021	03/11/2021	RCC No. 150/2022	Court Pending
2.	Nanded Rural	267/2022	307 IPC	04/05/2022	04/05/2022	05/11/2022	SC No. 155/2022	Court Pending
3.	Nanded Rural	195/2023	307, 506 IPC	22/03/2022	22/03/2022	13/09/2023	SC No. 97/2023	Court Pending
4.	Nanded Rural	17/2024	326, 324, 504, 506, 34 IPC., 4/25 Arms Act	06/01/2024	29/01/2024	29/01/2024	RCC No. 1393/2025	Court Pending
5.	Nanded Rural	148/2024	394, 34 IPC	24/02/2024	18/03/2024	22/03/2024	RCC No.497/2024	Court Pending
6.	Nanded Rural	164/2024	397, 34 IPC	04/03/2024	10/03/2024	24/04/2024	RCC No. 982/2024	Court Pending
7.	Nanded Rural	491/2024	3/25, 7/25 Arms Act	17/06/2024	17/06/2024	20/08/2024	RCC No. 1125/2024	Court Pending
8.	Nanded Rural	659/2025	3/25, 7/25 Arms Act	12/07/2025	12/07/2025	22/08/2025	On investigation	On investigation

Preventive Action :-

Sr. No	Police Station	Chapter Case No	Section	Date	Present Status
1	Nanded Rural	400/2023	107 Cr.P.C.	25/09/2023	Closed
2	Nanded Rural	MPDA Proposal No 04/2024	MPDA	26/08/2024	Closed

5. 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. To buttress his submission he relied on the judgment of this Court in the case of ***Santosh @Chingya Sainath Tarte Vs. The District Magistrate and Ors.*** in Criminal Writ Petition No. 1490 of 2025 dated 04.02.2026 (Aurangabad Bench).and more particularly para. Nos. 12 and 13 which reads thus :

“12. The Hon’ble Apex Court in the case of Joyi Kitty Joseph Versus Union of India and Ors.; (2025) 4 SCC 476 has observed thus :-

32. Likewise, in the present case, we are not concerned as to whether the conditions imposed by the Magistrate would have taken care of the apprehension expressed by the detaining authority; of the detenu indulging in further smuggling activities. We are more concerned with the aspect that the detaining authority did not consider the efficacy of the conditions and enter any satisfaction, however subjective it is, as to the conditions not being sufficient to restrain the detenu from indulging in such activities.

33. Aameena Begum vs. State of Telangana, (2023) 9 Supreme Court Cases, 587, noticed with approval Vijay Narain Singh v. State of Bihar (1984) 3 Supreme Court Cases 14 and extracted paragraph 32 from the same (Vijay Narain Singh): (SCC pp.35-36).

"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... 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 scrutinizing 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)

34. The criminal prosecution launched and the preventive detention ordered are on the very same allegations of organised smuggling activities, through a network set up, revealed on successive raids carried on at various locations, on specific information received, leading to recovery of huge cache of contraband. 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.

35. 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 of smuggling".

*"13. It would also be apt to refer to the decision of the Hon'ble Apex Court in the case of **Shaik Nazneen Vs. State of Telangana and others** reported in (2023) 9 SCC 633, more particularly paragraph 19 which reads thus :-*

"19. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case"

6. It is further contended by the learned counsel for the petitioner that so far as solitary offence which has been considered while passing the impugned detention order bearing Crime No.659/2025 is concerned, it has been registered under Sections 3, 7 and 25 of the Arms Act. He would also submit that previously also Crime bearing No.491/2024 was registered against the petitioner for the same charges and the same was made basis for passing previous detention order dated 26.08.2024 under MPDA Act and the same was quashed and set aside by this Court vide its judgment dated 08.05.2025 in Criminal Writ Petition No. 2062 of 2024 (Aurangabad Bench). He relied upon para. 8 of the said judgment which reads thus :

“ 8. Perusal of the second offence i.e. Crime No.491 of 2024 would show that the petitioner was found possessing a pistol. That fact was revealed when secret information was received at the police station and the informant along with the other police officers went for patrolling and arrested the petitioner around 13:45 hours on 17.06.2024. It is stated that in his personal search, a country made pistol was found to his waist and two cartridges were found in the pocket of his pant. The FIR, the panchanama and the statements of witnesses which were the part of the record do not show that the place of keeping pistol was visible to the public at large. If it would have been seen by the people, then only there was question of terror in the mind of people. Here, we are not considering the other merits of the case, but only the angle of the allegation that the activity of the petitioner was dangerous to the public. If the said pistol was in a

sealed state attached to his waist, then people would not have gathered about it and, therefore, from the facts of the said case, there could not have been a subjective satisfaction for the District Magistrate to arrive at the conclusion. Further, the petitioner has been released on bail in respect of that offence on 21.08.2024, however, the bail order has not been considered by the detaining authority. 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."

7. 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. He would further urge that the in-camera statements were not verified properly as can be seen that the authorities are

claiming to have verified the in-camera statements on the same day on which those were recorded.

8. 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 famous with the title “*Slumlord*”, who creates terror and the residents within the jurisdiction of Nanded Rural Police Station and the adjoining areas remain in constant fear. He would further submit that the petitioner is involved in criminal activities with his accomplices and committed crimes like home invasion and indecent assault, attempted murder, grievous bodily harm, robbery with assault, robbery, illegal possession of a weapon, its use and possession of a firearm, etc, 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.

9. Having heard learned counsel for the petitioner and the learned APP for the State, we are 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 detinue 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 detinue 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.

10. 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.

11. We find that, the basis for passing the impugned detention order is Crime No.659/2025 registered under Sections 3, 7, and 25 of the Arms Act. Perusal of the allegations of the said offence would show that the petitioner was found standing on the side of the road under the bridge possessing a pistol . That fact was revealed when secret information was received at the police station and the

informant along with the other police officers went for patrolling and arrested the petitioner around 15:10 hours on 12.07.2025. It is stated that in his personal search, a village pistol was found with a live cartridge on his waist. The FIR, the panchanama and the statements of witnesses which were the part of the record does not show that the place of keeping pistol was visible to the public at large. If it would have been seen by the people, then only the question of terror in the mind of people would arise. Here, we are not considering the other merits of the case, but only from the point of view of allegation whether the activity of the petitioner was dangerous to public. It is trite law in view of judgment of the Hon'ble Apex Court in the case of ***Ram Manohar Lohia Vs. State of Bihar and Ors.*** reported in (1966) 1 SCR 709, 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."

12. 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 on the allegation that the petitioner was alleged to have been found having pistol attached to his waist that too without the same being visible to the public at large certainly do not have a live-link to eminent disturbances to public order and can not justify the preventive detention.

13. 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 12.07.2025 having been found unsustainable, it cannot be said to have such a live link. We find that even on this occasion the petitioner was found carrying pistol attached to his waist which is not sufficient to hold that this act of petitioner is prejudicial to the public order. Thus the case of petitioner is squarely covered by the observations of this Court in paragraph no. 8 of the judgment and order dated 08.05.2025 in Criminal Writ Petition No. 2062 of 2024 (Supra).

14. In the light of above observations, we are of the considered view that the impugned detention order is unsustainable in law so also find that the approval order as well as the 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-52 dated 28.08.2025 passed by respondent No.2 as well as the approval order dated 05.09.2025 and the confirmation order No. MPDA-0925/CR-496/Spl-3B

dated 17.10.2025, passed by respondent No.1, are hereby quashed and set aside.

III. Petitioner – Shaikh Mehboob @Gorya S/o Shaikh Babu 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.)

habeeb/