



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1551 OF 2025

Sham Dashrath Waghmare,
Age : 34 years, Occ : - Labour
R/o. :- Antharwanpimpri
Tq. and Dist. Beed

...Petitioner

VERSUS

1. The State of Maharashtra
Through Section Officer,
Home Department (Special),
2nd Floor, Mantralay, Mumbai-32

2. The Collector and District Magistrate,
Office of the District Magistrate Office, Nagar Road
Beed Tq. And Dist. Beed

3. The Superintendent,
Harsool Central Jail, Chh. Sambhajanagar,
Tq. And Dist. Chh. Sambhajanagar

...Respondents

...
Ms. Sunita G. Sonawane, Advocate for the Petitioner.
Mr. N. B. Patil, A.P.P. for Respondent Nos. 1 to 3.

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

Reserved on : **16.01.2026**

Pronounced on : **27.01.2026**

JUDGMENT (PER : ABASAHEB D. SHINDE, J.) :

1. Heard.

2. Rule. Rule is made returnable forthwith. With the consent of the parties Writ Petition is taken up for final hearing at the stage of admission.

3. By this Writ Petition, the petitioner is taking an exception to the detention order and committal order dated 08.10.2025 bearing No.2025/RB-Desk-1/Pol-1/MPDA-16, passed by Respondent No.2- District Magistrate, Beed 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 (hereinafter referred to as “**MPDA Act**”) as well as the approval order dated 16.10.2025 and the confirmation order dated 14.11.2025, 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.

4. The impugned detention order has been passed on the proposal submitted by the Assistant Police Inspector, Police Station, Pimpalner, Taluka and District Beed. The proposal has been routed through the Superintendent of Police and eventually placed before 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 any

manner prejudicial to public order. The basis for passing the impugned detention order is registration of six (6) past criminal cases against the petitioner. A Chapter Case No. 18 of 2025 under Section 129 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”) registered on 09.06.2025, Crime No.143 of 2025 under Sections 366(2), 336(3), 336(4) of the Bharatiya Nyaya Sanhita, 2023 (for short “BNS”) as well as Crime No. 187 of 2025 under Sections 4 and 25 of the Arms Act registered with Pimpalner Police Station. In addition to above crimes, two in-camera statements of witnesses ‘A’ and ‘B’ are also made basis for passing of the impugned detention order.

5. Learned Counsel for the petitioner has contended that the impugned order of detention vitiates for more than one reason. According to the learned Counsel for the petitioner although the impugned detention order refers to release of petitioner on bail in pending cases, copies of bail application and the bail orders were admittedly neither placed on record nor has been considered by the Competent Authority, this lacks the basic principle for 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 judgments rendered by the Hon’ble Apex Court in the case of ***Joyi Kitty Joseph Versus Union of India***

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.

6. It is further contended by the learned Counsel for the petitioner that as far as Crime bearing No.187 of 2025 is concerned, the same is falsely registered against the petitioner. According to the learned Counsel for the petitioner so far as said offence under Sections 4 and 25 of the Arms Act is concerned, the same could not have been made basis for passing of the impugned detention order for want of notification under Section 4 of the Arms Act prohibiting the possession of the arms in certain areas therefore passing of detention order pursuant to said crime vitiates. She would further submit that as far as Crime bearing No.143 of 2025 registered for the offence punishable under Sections 336 (2), 336(3), 336(4) of the BNS dated 03.06.2025 is concerned, even the said crime has been falsely registered against the petitioner even otherwise said crimes cannot be considered as an act prejudicial to the public order.

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. She would further urge that the in-camera statements were not verified properly and even material required for such verification was not served on the petitioner which amount to depriving the petitioner of making any effective representation as guaranteed under Article 22(5) of the Constitution of India.

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 the learned APP the petitioner is a habitual offender who creates terror and the residents within the jurisdiction of Pimpalner Police Station and adjoining areas remain in constant fear. He would further submit that Respondent No.2-District Magistrate was subjectively satisfied that, if not prevented, the petitioner is most likely to indulge in further dangerous activities which are prejudicial to the maintenance of public order in the future. He would further submit that Respondent No.2-District Magistrate has followed all the mandatory provisions before passing the impugned order of detention. He would further submit that considering the statements of the in-camera witnesses 'A' and 'B', it is evident that there was threat and violence in both the incidents which would have directly affects the public order.

9. Learned APP further submits that Respondent No.2-District Magistrate has carefully examined entire material and has arrived at subjective satisfaction that the preventive detention of the petitioner is very much warranted. 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.

10. Having considered the rival submissions advanced by the learned Counsel for the petitioner and 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 safeguards enshrined under Article 22 of the Constitution of India needs to be followed scrupulously.

11. The impugned detention order depicts that Respondent No.2-District Magistrate has observed that even after releasing the petitioner on bail he is involved in committing such type of offences and therefore the detention of petitioner is necessary. In short Respondent No.2-District Magistrate was aware that the petitioner has already been released on bail in connection with the two crimes on the basis of which the impugned detention order has been passed.

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"

14. 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 as, although the order asserts that petitioner is on bail in both the pending cases, however, the record does not contained a single copy of any bail application or any bail order. As held by 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) 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 detainee is on bail, it must examine the bail orders themselves to assess the nature of offence, the conditions imposed by a Competent Court 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 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.

15. So far as the reliance placed on the two in-camera statements of witnesses 'A' and 'B' are concerned, as observed above, we find that both the statements are cyclostyle as well as vague as it can be seen that the allegations made in the said statements are general in nature. 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.

16. The second limb of argument of the learned Counsel for the petitioner is that, the basis for passing of the impugned detention order is Crime No.187 of 2025 dated 28.06.2025 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.

17. 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."

18. 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) y 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." (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."*

19. 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 within the said specified area 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.

20. In so far as the crime bearing No.143/2025 registered for the offences punishable under Sections 336 (2), 336(3), 336(4) of the BNS, dated 03.06.2025 is concerned, the same is in respect of all alleged forgery. In short, the said crime is individualistic in nature and definitely would not be prejudicial to public order, at the most it could be said to be causing disturbance to law and order.

21. 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 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."*

22. 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 without a live link to eminent disturbances of public order cannot justify preventive detention.

23. 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 incidents dated 03.06.2025 and 28.06.2025, 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 order of detention dated 08.10.2025 passed by Respondent No.2-District Magistrate, Beed as well as the approval order dated 16.10.2025 and the order of confirmation dated 14.11.2025 passed by Respondent No.1-State Government, are hereby quashed and set aside.
- iii. Petitioner – Sham Dashrath Waghmare 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.)