



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1681 OF 2025

Swapnil S/o Dilip Chaudante,
Age-23 Years, Occu -Agriculture/Labour
R/o. Nai Abadi Mudkhed,
Tq. Mudkhed, Dist. Nanded

...Petitioner

VERSUS

1. The State of Maharashtra,
Through Secretary Home Department,
Mantralaya, Mumbai-32
2. The District Magistrate/Collector,
Nanded Dist. Nanded
3. Sub Divisional Police Officer,
Nanded, Dist. Nanded
4. Police Inspector,
Nanded Rural Police Station,
Tq. & Dist. Nanded

...Respondents

...

Mr. Anil M. Gaikwad, Advocate for the Petitioner.

Mr. S. P. Sonpawale, A.P.P. for Respondent Nos. 1 to 4.

...

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

Reserved on : **30.01.2026**

Pronounced on : **04.02.2026**

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 18.11.2025 bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-81, passed by 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 (hereinafter referred to as “**MPDA Act**”) as well as the confirmation order dated 26.12.2025, 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 “sand smuggler” within the meaning of Section 2(e-2) 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 Police Inspector, Police Station Nanded

Rural. The proposal has been routed through the Sub-Divisional Police Officer, Sub-Division Itwara and 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 three (3) past criminal cases against the petitioner, bearing Crime No. 146 of 2025 under Sections 303(2), 281, 3(5) of Bharatiya Nyaya Sanhita, 2023 (for short "BNS") read with Section 48(7) of the Maharashtra Land Revenue Code, 1966 (for short "MLRC") as well as Sections 3(1), 181 and 5 of Motor Vehicles Act dated 22.05.2025 registered with Loha Police Station, Crime No. 33 of 2025 under Section 303 (2), 3(5) of BNS read with Sections 4 and 21 of the Mines And Minerals (Development And Regulation) Act, 1957 dated 01.06.2025 registered with Malakoli Police Station and Crime No. 1043 of 2025 under Sections 303 (2), 3(5) BNS, read with section 48(7) (8) of the MLRC dated 02.11.2025 registered with Nanded Rural Police Station as well as Chapter Case No. 248 of 2029 under Section 126 of BNSS dated 21.08.2025 registered with Malakoli 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 would submit that, 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 of subjective satisfaction. To buttress his submission he relied on the judgment of the Hon'ble Apex Court in the case of ***Ameena Begam Vs. State of Telangana*** reported in **AIR 2023 SC 4273**, 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 so far as three offences bearing crime No.146 of 2025 dated 22.05.2025, Crime No 99 of 2025 dated 01.06.2025 & Crime No. 1043 of 2025 dated 02.11.2025 are concerned all these offences

have been registered under Sections 303(2), 281, 3(5) of the BNS read with Section 48(7) of the Maharashtra Land Revenue Code, 1966 as well as Sections 3(1), 181 and 5 of Motor Vehicles Act. He would submit that the allegations in the said complaint pertains to alleged illegal excavation and transportation of sand as well as rash and negligent driving, the only difference is about quantity of sand being transported. He thus submit that even taking the allegations of all the three crimes as it is, the same would not amount to the act prejudicial to the public order but at the most it could be said to be an act disturbing the law and order. He, therefore, submit that on the basis of these three crimes, the order of detention ought not have been passed, more so when the petitioner is only a driver of the vehicle.

7. Learned Counsel for the petitioner would further urge that so far as in-camera statements of witnesses 'A' and 'B' are concerned, perusal of these statements would show that those are cyclostyled without giving any details about dates, places and particulars about the alleged incidences. In short, the contention of the learned Counsel for the petitioner is that the in-camera statements are vague. It could not have been made basis for passing of the impugned order of detention. He would further submit that the in-

camera statements were also not verified properly and even material required for such verification was also not served on the petitioner which amounts to depriving the petitioner of making an effective representation as guaranteed under Article 22 (5) of the Constitution of India.

8. Per contra, the learned APP supports the impugned detention order 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 Nanded Rural 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 adhered to all the mandatory provisions contained in MPDA Act 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 AGP would further submit that the allegations made in the offences registered against the petitioner coupled with the in camera statements of witnesses 'A' and 'B' shows that the petitioner used to excavate and transport the sand illegally and even there was a threat not only to the peace living citizen but even the police personnel as well as the officers from Revenue Department as the petitioners even tried to drive the vehicle over these officers. He, therefore, submits that Respondent No.2-District Magistrate has rightly considered the entire material placed before it and has arrived at a subjective satisfaction, that the preventive detention of the petitioner is very much warranted.

10. In order to demonstrate that the authorities have scrupulously adhered to the procedure as contemplated under the MPDA Act he would submit that after passing the order of detention the same was forwarded to the Advisory Board. The proposal was placed before the Advisory Board on 01.12.2025. It is further submitted that the petitioner was heard by Advisory Board on 10.12.2025 and the same was forwarded to the State Government on 12.12.2025 and

after receipt of the opinion from the Advisory Board, the impugned order of detention has been confirmed by Respondent No.1-State Government on 26.12.2025, he therefore urged that the Writ Petition deserves to be dismissed.

11. Bare perusal of impugned detention order depicts observations made by Respondent No.2-District Magistrate that, the petitioner has been released on bail, however, he is likely to revert the similar activities prejudicial to the maintenance of public order in future 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 all the three 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 thus find that impugned detention order depicts non-application of mind at the hands of Respondent No.1-District Magistrate while appreciating the material as, although the order asserts that petitioner is on bail in all the pending cases, however, the record does not contained a single copy of any bail application or any bail order. As held by the Hon’ble Apex Court in the case of **Joyi Kitty Joseph** (*Supra*), **Shaik Nazneen** (*Supra*), as well as the **Ameena Begam** (*Supra*), wherein it has been held that, 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 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 detenue committing similar kind of offence if released on bail. 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 cyclostyled 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. 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 concern about law and order or a public order, in that regard the Hon'ble Apex Court in the case of ***Ram Manohar Lohia v. State of Bihar*** reported in ***1965 SCC OnLine SC 9***, while explaining the term 'Law and Order' and 'Public Order' observed thus :

"54. ... 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....

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.”

17. 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. 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.

18. 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 22.05.2025, 01.06.2025 and 02.11.2025, 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 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 18.11.2025 passed by Respondent No.2-District Magistrate, Nanded and the order of confirmation dated 26.12.2025 passed by Respondent No.1-State Government, are hereby quashed and set aside.
- iii. The Petitioner – Swapnil S/o Dilip Chaudante 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.)