



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 78 OF 2026

Nishikant @ Babbi Raju Shirke,
Age-25 years, Occ. Unemployed,
R/o. Bhimnagar, Bhavsingpura,
Chhatrapati Sambhajanagar.

...Petitioner

VERSUS

1. The State of Maharashtra
Through the Chief Secretary(Special),
Home Department, Mantralaya,
Mumbai-400 032
2. The Commissioner of Police,
Chhatrapati Sambhajanagar.
3. The Jail Superintendent,
Kalamba Central Jail, Kolhapur,
Dist. Kolhapur.
4. The Police Inspector,
Cantonment Police Station,
Chhatrapati Sambhajanagar.

...Respondents

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Ms. H.F. Pawar a/w Mr. Suraj N. Pradhan, Advocate for the
Petitioner.

Mr. N.B. Patil, A.P.P. for Respondent Nos. 1 to 4.

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

Reserved on : 24.03.2026

Pronounced on : 27.03.2026

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 takes exception to the detention order dated 24.10.2025 bearing No. D.O.2025/CB/MPDA/DET-07/CR-70, passed by Respondent No.2-the Commissioner of Police, Chhatrapati Sambhajanagar 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**”), the approval order dated 28.10.2025 as well as the confirmation order dated 02.12.2025 bearing No. MPDA-1025/CR-602/Spl-3B, passed by Respondent No.1-State Government in exercise of powers under Section 12 (1) of the MPDA Act. By these impugned orders, the petitioner has been directed to be detained for a period of 12 months holding him as a “*dangerous person*” within the meaning of Section 2(b-1) of the MPDA Act, as after having found his activities prejudicial to the maintenance of public order.

4. The impugned detention order is based on the proposal

submitted by the Assistant Police Inspector, Police Station, Cantonment dated 15.10.2025. The proposal has been routed through the Assistant Police Commissioner, Cantonment Division and Deputy Commissioner of Police, Zone-1, Chhatrapati Sambhajinagar and eventually placed before Respondent No.2-the Commissioner of Police on 18.10.2025, who claims to have arrived at a subjective satisfaction that the petitioner's detention is necessary to prevent him from acting in manner prejudicial to public order. It is pertinent to note that, the basis for submission of proposal for detention of petitioner is registration of thirteen (13) past criminal cases, one (1) externment order and past detention order against the petitioner, the details of which are summarized as follows:

Sr. No.	Police Station	Crime No Under Section	Date of Registration of offences	Present Status
1	Cantonment	396/2020 U/s 326, 324, 323, 504, 147, 148, 149, 427, 504, 506 IPC	19.12.2020	Pending Trial
2	Cantonment	414/2022 U/s 324, 323, 504, 506, 34 IPC	19.11.2022	Pending Trial
3.	Cantonment	27/2023 U/s 324, 323, 504, 34 IPC.	17.01.2023	Pending Trial
4	Cantonment	107/2023 U/s 142, Maharashtra Police Act, 1951.	17.01.2023	Pending Trial
5	Cantonment	251/2023 U/s 142, Maharashtra Police Act, 1951.	14.06.2023	Pending Trial
6	Cantonment	318/2023 U/s 142, Maharashtra Police Act, 1951.	20.07.2023	Pending Trial
7	Cantonment	379/2023 U/s 142, Maharashtra Police Act, 1951.	22.08.2023	Pending Trial
8	Cantonment	555/2023 U/s 452, 354(A), 323, 504,	09.11.2023	Pending Trial

		506 IPC		
9	Cantonment	662/2023 U/s 142, Maharashtra Police Act, 1951.	14.12.2023	Pending Trial
10	Cantonment	28/2024 U/s 324, 504, 506 IPC	16.01.2024	Pending Trial
11	Begampura	29/2024 U/s 142, Maharashtra Police Act, 1951.	05.02.2024	Pending Trial
12	Cantonment	187/2025 u/s 118(1), 352, 115(2), 351(2), 351(3) of Bhartiya Nyaya Sanhita, 2023	26.04.2025	Pending Investigation
13	Cantonment	319/2025 u/s 118(2), 115(2), 352, 3(5) of Bhartiya Nyaya Sanhita, 2023	30.07.2025	Pending Investigation

Externment Proceeding :-

Sr. No.	Police Station	Externment Order No.	Status
1	Cantonment	Order No. DCP/ Zone-1/V-2/ Externment-43-22/Final Order/ 2023-524, Chhatrapati Sambhajinagar. Dt. 07.02.2023	Externment order has been dropped as action taken under MPDA Act, 1981.

Detention Proceeding:-

Sr. No	Police Station	Detention Order No.	Disposal
1	Cantonment	2024/CB/MPDA/DET-03/CR-06 Office of the Commissioner of Police, Chhatrapati Sambhajinagar. Date:- 20.02.2024.	Hon'ble High Court dismissed the writ petition and confirmed the detention order for one year.

However, the impugned order of detention is based only on two (2) recent offences, details of which are as follows :-

Sr. No	Police Station	Cr. No. & Under Section	Date of Registration of offences	Present Status
1.	Cantonment	187/2025 u/s 118(1), 352, 115(2), 351(2), 351(3) of Bhartiya Nyaya Sanhita, 2023	26.04.2025	Pending Investigation
2	Cantonment	319/2025 u/s 118(2), 115(2), 352, 3(5) of Bhartiya Nyaya Sanhita, 2023	30.07.2025	Pending Investigation

In addition to above recent two 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 assailed the impugned detention order primarily on two grounds. Firstly, it is contended that the impugned detention order is based on two criminal cases, namely Crime No. 187/2025 and Crime No. 319/2025, registered on 26.04.2025 and 30.07.2025 respectively. Both cases are individualistic in nature, arising out of private altercations and disputes, and do not have any bearing on public order. As regard to the Crime No. 187/2025 is concerned, the petitioner was not even arrested but only served with the notice under section 35(3) of Bharatiya Nagarik Suraksha Sanhita, 2023. After investigation, chargesheet in the said crime has been filed before the Ld. Judicial Magistrate First Class, Chhatrapati Sambhajnagar. So far as Crime No 319/2025 is concerned, petitioner has already been released on bail by the jurisdictional court, subject to certain terms and conditions. In such circumstances, the impugned order of detention suffers from non-application of mind and lacks the essential requirement of subjective satisfaction. He relied on the judgment of

the Hon'ble Apex Court in the case of *Joyi Kitti Joseph v. Union of India & Ors.*, reported in (2025) 4 SCC 476, wherein it has been held that, when bail has been granted by the competent court, particularly with conditions, the detaining authority is under an obligation to examine whether such conditions are sufficient to prevent the detenu from indulging in similar prejudicial activities. Failure to undertake such an exercise vitiates the detention order.

6. It is further contended by the learned counsel for the petitioner that, while granting bail to the petitioner vide order dated 30.08.2025 with regard to Crime No. 319/2005, learned JMFC, Aurangabad in the operative order has observed thus:-

- "1. The application is allowed.*
- 2. Accused be released on PB and SB of Rs. 50,000/- and one solvent local surety in the like amount subject to following terms and conditions-*
 - a. The accused is directed to attend cantonment police station on every sunday between 11am to 1pm till filing of the chargesheet and he shall co-operate with the investigating officer by remaining present for the purpose of investigation as and when directed.*
 - b. The accused shall not enter the vicinity where the injured resides till filing of the chargesheet.*
 - c. The applicant shall strictly refrain from indulging in similar or any other offences.*
 - d. Identity card of two near relatives be placed on record by the accused.*
 - e. The accused shall not travel beyond the state of Maharashtra without prior intimation to the police station.*
 - f. The Investigating officer shall be at liberty to move an application for cancellation of bail, if there is any breach of terms and conditions".*

Learned counsel for the petitioner would therefore submit that, although liberty was granted to the Investigating Officer, to seek

cancellation of bail for breach of terms and conditions imposed while granting bail, the respondent authorities, instead of availing the remedy of seeking cancellation of bail, chose to initiate proceedings under the MPDA Act and proceeded to pass the impugned order of detention.

7. The second limb of the argument advanced by learned counsel for the petitioner is that, the impugned order of detention reflects a mechanical exercise of power by the authorities, without due application of mind and without arriving at the requisite subjective satisfaction. It is contended that the authorities have failed to appreciate the well-settled distinction between acts affecting “public order” and those pertaining merely to “law and order.”

8. Per contra, learned APP supports the impugned detention order of detaining the petitioner. According to learned APP the petitioner is a habitual offender who creates terror and the residents within the jurisdiction of Cantonment Police Station and adjoining areas remain in constant fear. He would further submit that, Respondent No.2-the Commissioner of Police 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 also 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 affected the public order.

9. Learned APP would therefore submit that, Respondent No.2- the Commissioner of Police has rightly considered the entire material placed before him and has arrived at a subjective satisfaction that, preventive detention of the petitioner is very much warranted. He would further submit that, the authorities have followed the procedure prescribed under the MPDA Act as according to him, after passing the order of detention the same was forwarded to the Advisory Board. The proposal was placed before the Advisory Board on 28.10.2025, after hearing the petitioner on 19.11.2025 the same was forwarded to the State Government on 21.11.2025 and after receipt of the opinion from the Advisory Board, the impugned order of detention has been confirmed by Respondent No.1-State Government by an Order dated 02.12.2025. In short, the contention of learned APP is that, the procedure as contemplated under the MPDA Act has been scrupulously adhered to, he therefore urge that, the Writ Petition deserves to be dismissed.

10. After having heard learned counsel for the petitioner and

learned APP for the State Authorities, we find that the impugned detention order depicts observations made by Respondent No.2-the Commissioner of Police 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-the Commissioner of Police was aware that the petitioner has already been released on bail, in one of the crime, still on the basis of that crime the impugned detention order has been passed. The Hon'ble Apex Court in the case of **Joyi Kitty Joseph (Supra)** 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".

11. We also find that, the impugned order of detention is based on two Crimes and two in-camera statements. It is evident that the last Crime No. 319/2025, was registered on 30.07.2025, and the petitioner has been released on bail by the Court of competent jurisdiction, subject to certain conditions. While granting bail, the learned JMFC, Aurangabad, had expressly granted liberty to the Investigating Officer to move an application for cancellation of bail in the event of any breach of conditions by the petitioner. However, instead of availing such remedy, Respondent No. 2-the Commissioner of Police proceeded to pass the impugned order of detention. 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 No. 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”

12. 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. Similarly, it needs to be borne in mind, 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 observations of the Hon'ble Apex Court in the case of ***Ram Manohar Lohia v. State of Bihar*** reported in ***AIR 1966 SC 740***, while explaining the term 'Law and Order' and 'Public Order' which reads 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...”

13. 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 mere pendency of criminal cases without a live link to eminent disturbances of public order cannot justify the preventive detention.

14. 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 it can be seen that the alleged Crimes registered on 26.04.2025 and 30.07.2025

respectively, 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 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 order of detention dated 24.10.2025 bearing No. D.O.2025/CB/MPDA/DET-07/CR-70, passed by the Respondent No.2-the Commissioner of Police, Chhatrapati Sambhajanagar and the approval order dated 28.10.2025 as well as the confirmation order dated 02.12.2025 bearing No. MPDA-1025/CR-602/Spl-3B, passed by the Respondent No.1-State Government, are hereby quashed and set aside.
- iii. The Petitioner – Nishikant @ Babbi Raju Shirke 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.)