



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 146 OF 2026

Shaikh Irfan Alias Kubda S/o. Shaikh Guddu
Age-28 Years, Occu - Labour
R/o. Navi Abadi, Nanded
Tq. & Dist. Nanded

...Petitioner

VERSUS

1. The State of Maharashtra,
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai-32
2. The District Magistrate,
Nanded, Tq. & Dist. Nanded
3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad
Dist. Aurangabad

...Respondents

...

Mr. Vaibhav D. Karande, Advocate for the Petitioner.
Mr. V.M. Jaware, A.P.P. for Respondent Nos. 1 to 3.

...

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

Reserved on : 10.03.2026

Pronounced on : 16.03.2026

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 is taking exception to the detention order and committal order dated 04.12.2025 bearing No. 2025/RB-1/Desk-2/T-4/MPDA/CR-83, 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 approval order dated 13.12.2025 and the confirmation order dated 23.01.2026 bearing No. MPDA-1225/CR-688/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 the proposal submitted by the Police Inspector, Police Station, Shivajinagar, Nanded dated 19.11.2025. The proposal has been routed through the Sub Divisional Police Officer, Nanded City

Division and Superintendent of Police and eventually placed before Respondent No.2-District Magistrate on 22.11.2025, 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 eight (8) past criminal cases and 3 chapter cases against the petitioner, the details of which are summarized as follows :-

Sr. No.	Police Station	C.R. No	Under Section	Date of Filing	Date of Arrest	Date of Bail	Court Case No.	Present Status
1	Shivajn agar	75/2022	392, 34 IPC, 4 and 25 of Arms Act.	23.02.2022	25.02.2022	01.03.2022	R.C.C. No. 472/2023	Court Pending
2	Shivajn agar	77/2022	3 and 25 of Arms Act.	24.02.2022	24.02.2022	25.02.2022	81/2024	Court Pending
3.	Shivajn agar	172/2022	452, 427, 504, 506, 34 of IPC	05.05.2022	10.05.2022	10.05.2022	R.C.C. No. 129/2024	Court Pending
4	Shivajn agar	274/2023	324, 323, 504, 506, 34 of IPC and 4 and 25 of Arms Act	19.08.2023	26.08.2023	26.08.2023	R.C.C. No. 117/2024	Court Pending
5	Shivajn agar	324/2023	4 and 25 of Arms Act	26.09.2023	26.09.2023	26.09.2023	R.C.C. No. 49/2024	Court Pending
6	Vazirabad	140/2025	308(4), 324(4), 351(2), 351(3), 189(2), 191(2), 191(3) of BNS and 4 and 25 of Arms Act.	04.04.2025	29.06.2025	30.06.2025	R.C.C. No. 1901/2025	Court Pending
7	Vazirabad	365/2025	308(2), 118(1), 115(2), 352, 351(2), 351(3) of BNS	23.08.2025	24.08.2025	24.08.2025	R.C.C. No. 1900/2025	Court Pending
8	Vazirabad	417/2025	308(2), 308(5), 352, 351(3), 3(5) of BNS; 4 and 25 of the Arms act	08.10.2025	08.10.2025	09.10.2025	R.C.C. No. 2173/2025	Court Pending

Preventive Action :-

Sr. No.	Police Station	Chapter Case No.	Date of Registration of offences	Under Section	Present Status
1	Shivajinagar	05/2023	15.03.2023	110 of CrPC	Closed
2	Shivajinagar	17/2024	01.07.2024	129 of BNSS	Closed
3	Vazirabad	47/2025	25.08.2025	129 of BNSS	Closed

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

Sr. No.	Crime No	Under Section	Date of Registration of offences	Police Station
1.	365 of 2025	308(2), 118(1), 115(2), 352, 351(2), 351(3) of Bhartiya Nyaya Sanhita, 2023	23.08.2025	Vazirabad
2.	417 of 2025	308(2), 308(5), 352, 351(3), 3(5) of BNS and 4 and 25 of the Arms act	08.10.2025	Vazirabad

In addition to above 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 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 *Joyi Kitty Joseph v. Union of India* reported in **2025 (4) Supreme Court Cases 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. Learned counsel for the petitioner further submits that the proposal for preventive detention was forwarded on 19.11.2025 on the basis of two(2) offences registered on 23.08.2025 and 08.10.2025 respectively. However, the order of detention has been passed on 04.12.2025, after an unexplained and inordinate delay of 57 days from the date of last prejudicial act of the petitioner. Such delay clearly demonstrates that the requisite live link between the alleged prejudicial activities and the necessity for preventive detention had been severed, particularly when both the in-camera statements were purported to have been recorded on 18.11.2025.

7. He further submits that the impugned order reflects a mechanical exercise of power by the authorities, without due application of mind, without arriving at the requisite subjective satisfaction, and without appreciating the well-settled distinction between acts affecting “public order” and those amounting merely to breaches of “law and order” He has placed reliance on the judgement of Hon’ble Apex Court in case of ***Ram Manohar Lohia v. The State of Bihar and Others*** reported in AIR 1966 SC 740.

8. It is further contended by learned Counsel for the petitioner that so far as two offences bearing Crime No.365 of 2025 dated 23.08.2025 and Crime No 417 of 2025 dated 08.10.2025 are concerned those are individualistic in nature. He thus submit that, even taking the allegations of both the crimes as it is, the same would not amount to an act prejudicial to the public order but at the most it could be said to be an act affecting the law and order. He therefore submit that, on the basis of these two crimes, the order of detention ought not have been passed. Insofar as the in-camera statements of witnesses ‘A’ and ‘B’ are concerned, a perusal thereof would reveal that the same are cyclostyled and lacks specific details such as dates, places, or particulars of the alleged incidents.

9. Learned counsel for the petitioner further contends that there

is no record in the proposal or surfaced from the detention order or ground for the detention which would demonstrate that, the action against the petitioner under normal law is found to be insufficient and ineffective to deter him from indulging in criminal activities. He also submits that the advisory board has totally ignored the law laid down by the Hon'ble Apex court in case of ***Nenavath Bujji Etc. Vs. The State of Telangana and Ors.*** reported in **AIR Online 2024 SC 167** wherein, it was held that, the Advisory Board cannot act as rubber stamp for detaining authorities.

10. 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 Shivajinagar Police Station and adjoining areas remain in constant fear. He would further 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 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.

11. Learned APP would therefore, submits that the authorities have duly complied with the procedure as contemplated under the MPDA Act as after passing the order of detention the same was forwarded to the Advisory Board. The proposal was placed before the Advisory Board on 13.12.2025, after hearing the petitioner on 07.01.2026 the same was forwarded to the State Government on 09.01.2026 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 Order dated 23.01.2026. In short, the contention of the learned APP is that the procedure as contemplated under MPDA has been scrupulously adhered to, he therefore urged that the Writ Petition deserves to be dismissed.

12. Another limb of argument of learned APP is that, the non consideration of bail applications and passing of bail order would not vitiate the impugned detention order as, it hardly matters whether bail application or bail orders are considered by detaining authority since, the detaining authority has categorically observed that the petitioner has been released on bail and he is free and would certainly engage in similar kind of criminal activities. Learned APP would therefore submit that, detaining authority has duly considered the aspect with regard to passing of bail orders, he

therefore submits that the contention of learned counsel for the petitioner in that regard can not be accepted. In support of his submission learned APP relied on the judgment of this court in ***Criminal Writ Petition No. 547 of 2024 dated 14.06.2024*** in case of ***Ravi Vyankatrao Dadhi Vs. State of Maharashtra and Ors .***

13. After having heard learned counsel for the petitioner and the learned APP for the state authorities, we find that, the impugned order of detention is based on two crimes and two in-camera statements, however it is pertinent to note that, there is delay of 57 days in between passing the impugned order of detention and the last prejudicial act of the petitioner. As it could be seen that, last Crime bearing No. 417/2025 has been registered on 08.10.2025 the proposal for detention of petitioner appears to have been submitted on 19.11.2025, whereas impugned order of detention has been passed on 04.12.2025.

14. So far as the aspect of delay is concerned, it would be profitable to rely on the judgment of this Court in ***Criminal Writ Petition No. 104 of 2024*** dated 26.04.2024 in the case of ***Rama Devchand Kumbhalkar Vs. State of Maharashtra and Ors.*** in para 11 which reads thus:

11. The Hon'ble Apex Court in the case of Pradeep Nilkanth Paturkar vs S Ramamurthi and others reported in AIR 1994 SC 656 has observed that the unexplained delay whether short or long, specially when the petitioner has taken a plea of delay, vitiates the detention order. In para 9 of the said exposition in Pradeep Nilkanth Paturkar's case (supra) the Hon'ble Apex Court has referred to its earlier decision in the case of T A Abdul Rahman V/s. State of Kerala reported in (1989) 4 SCC 741 in paragraph 15 as follows :-

“ The question whether the prejudicial activities of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the causal connection has been broken in the circumstances of each case.”

15. We are thus of the opinion that though Respondent No. 2-District Magistrate, Nanded asserts that there is live link between passing of impugned order of detention and last prejudicial act of petitioner, we however find that, the Respondent No. 2- District Magistrate, Nanded has utterly failed to explain the delay between the last prejudicial act of the petitioner and passing of impugned order of detention. In view of judgment of this court in the case of ***Rama Devchand Kumbhalkar (Supra)***, we find that the delay in

passing the impugned detention order whether short or long, failure on part of Respondent No. 2 to explain the said delay vitiates the impugned detention order, more so when the petitioner has specifically raised the ground of delay in between the last prejudicial act and passing of detention order.

16. We also find that the Respondent No.2-District Magistrate has categorically observed in the impugned order 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 two crimes on the basis of which the impugned detention order has been passed.

17. 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".

18. 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"

19. We thus find 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 the Hon'ble Apex Court in the case of **Joyi Kitty Joseph** (*Supra*) as well as **Shaik Nazneen** (*Supra*), 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. We therefore are of the view that the judgment of this court relied upon by learned APP in case of **Ravi Vyankatrao Dadhi** (*Supra*) may not be helpful.

20. 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.

21. So far as the contention of the learned APP that several crimes have been registered against the petitioner, we however find that the registration of crimes against the petitioner cannot be said to be an act prejudicial to the public order but at the most it could be said to be an act affecting law and order.

22. 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*** (*Supra*), 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..."

23. 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 preventive detention.

24. 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 two Crimes registered on 23.08.2025 and 08.10.2025 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 confirmation order of the State Government also does not sustain. Hence, we pass the following order:-

:: ORDER ::

- i. The Writ Petition stands allowed.
- ii. The impugned order of detention bearing No. 2025/RB-1/Desk-2/T-4/MPDA/CR-83 dated 04.12.2025 passed by Respondent No.2-District Magistrate, Nanded and the order of confirmation bearing No. MPDA-1225/CR-688/Spl-3B, dated 23.01.2026 passed by Respondent No.1-State Government, are hereby quashed and set aside.
- iii. The Petitioner – Shaikh Irfan Alias Kubda S/o. Shaikh Guddu 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.)