



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 261 OF 2026

Gopal Madhukar Unwane,
Age : 24 Years, Occu : - Labour
R/o. Chaklamba, Tq. Gevrai
Dist. Beed

...Petitioner

VERSUS

1. The State of Maharashtra
Through its Section Officer,
Home Department (Special),
Mantralay, Mumbai-32
2. The District Magistrate, Beed
Dist. Beed
3. The Superintendent of Jail,
Central Prison, Chhatrapati Sambhajinagar, ...Respondents

...
Mr. Krushna S. Solanke, Advocate for the Petitioner.
Ms. A. S. Deshmukh, A.P.P. for Respondent Nos. 1 to 3.

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

Reserved on : 15.04.2026

Pronounced on : 30.04.2026

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 dated 17.11.2025 bearing No.2025/RB-Desk-1/Pol-1/MPDA-22, 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 28.11.2025 and the confirmation order dated 01.01.2026, 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, Chaklamba, Tq. Gevrai, Dist. Beed. The proposal has been routed through the Sub-Divisional Police Officer, Sub-Division Gevrai and

Superintendent of Police, Beed 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 in any manner prejudicial to public order. It is pertinent to note that, the basis for submission of proposal for detention of petitioner is registration of four (4) past criminal cases and one preventive action against the petitioner, which are summarised as follows :

Sr. No	Police Station	Cri. No.	Section	Date of registration	Charge-sheet No.	Court Case No.	Status
01	Shivajinagar Beed	284/2024	U/Sec. 307, 324, 323, 365, 506, 143, 147, 148, 149 IPC, r.w. sc. 3/25 of Arms Act	20/06/24	--	RCC No. 745/2025 22/09/25	Pending in Court
02	Georai	71/2025	U/Sec. 308 (3), 126 (2), 115 (2), 352, 351 (2), 351 (3), 3 (5) of BNS	--	98/25 15/5/25	RCC No. 216/2025 21/05/25	Pending in Court
03	Police Station Chaklamba	177/2025	U/Sec. 118 (1), 115 (2), 351 (2), 351 (3) BNS	20/05/25	-	-	On investigation
04	Police Station Chaklamba	298/2025	U/Sec. 119 (2), 118 (1), 115 (2), 352, 351 (2), 351 (3), 189 (2), 190, 191 (1), 191 (2) of BNS	16/08/25	--	-	On investigation

Preventive Action :-

Sr. No	Police Station	Chapter Case No.	Section	Date	Remark
1	Chaklamba	15/2025	129 BNSS	24/05/2025	Final Bond

However, the impugned detention order is based on two recent offences which are as follows :

Sr. No	Police Station	Cri. No.	Section	Date of registration	Status
1	Police Station Chaklamba	177/2025	U/Sec. 118 (1), 115 (2), 351 (2), 351 (3) BNS	20/05/25	On investigation
2	Police Station Chaklamba	298/2025	U/Sec. 119 (2), 118 (1), 115 (2), 352, 351 (2), 351 (3), 189 (2), 190, 191 (1), 191 (2) of BNS	16/08/25	On investigation

In addition to above crimes, two in-camera statements of Witnesses 'A' and 'B' are also made basis for submission of proposal for detention of petitioner.

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 *Ammena Begum Vs. State of Telangana and Ors.*; (2023) 9 SCC 587 and *Rushikesh Tanaji Bhoite Vs. State of Maharashtra and Ors.*; (2012) 2 SCC 72, 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. He also relied on the judgment rendered by this Court in the case of ***Shri. Pandurang @ Panda Narayan Garud Vs. The District Magistrate Pune and Ors.*** in Criminal Writ Petition No. 454 of 2022 dated 12.08.2022, more particularly on the paragraph No. 8, which reads thus :

“ 8. The above mentioned dicta is clear and unambiguous and supporting the contention of the Petitioner. Though the learned APP has sought to contend based upon the decision of the Division Bench of this Court in the case of Dharmendra Kamlakar Tangadi v. Commissioner of Police, Thane and Ors that non supply of bail order and application to the detenu cannot impair the right of the detenu to make effective representation, there is no answer to the first ground that the subjective satisfaction of the Detaining Authority is vitiated for non consideration of the application for bail and the bail order. It cannot be said that the application for anticipatory bail and the order of bail were not germane for consideration of the Detaining Authority. The reasons on which the detenu applied for bail and was granted bail by the ordinary court would reflect upon the need to pass the order of detention. Non-consideration of these vital documents would vitiate the subjective satisfaction of the Detaining Authority. In view of this legal position arising from the admitted facts on record, the Petitioner is entitled to succeed, as the impugned order of detention stands vitiated.”

6. It is further contended by the learned Counsel for the petitioner that as far as Crime bearing No.177 of 2025 is concerned,

the same is falsely registered against the petitioner, as the petitioner was released on bail in the said crime and petitioner was availing the legal remedies available to him, but the petitioner had no knowledge of the impugned order of detention passed against him. When the petitioner was sleeping in house in the mid night he was taken in custody therefore passing of detention order pursuant to said crime vitiates. Learned Counsel for the petitioner would further submit that as far as Crime bearing No.298 of 2025 is concerned, even the said crime has been falsely registered against the petitioner, this crime is nothing but a counter blast to the FIR which was registered by the mother of the petitioner against the informant namely Shyam @Dattatray Bhausahab Thore and other co-accused, even otherwise said crimes cannot be considered as an act prejudicial to the public order. To buttress his submission he relied on the judgment of Hon'ble Apex Court in the case of ***Nenavath Bujji and ors. Vs. State of Telangana and Ors.*** reported in (2024) 17 SCC 294, more particularly on the paragraph Nos. 32 and 33, which reads thus :

“ 32. We are of the view that mere registration of the two FIRs for the alleged offences of robbery, etc. could not have been made the basis to invoke the provisions of the 1986 Act for the purpose of preventively detaining the appellant herein on the assumption that he is a “GOONDA” as defined under Section 2(g) of the 1986 Act. What has been alleged against the appellant detenu could be said

to have raised the problems relating to law and order but we find it difficult to say that they impinged on public order. This Court has time and again, reiterated that in order to bring the activities of a person within the expression of “acting in any manner prejudicial to the maintenance of public order” the activities must be of such a nature that the ordinary laws cannot deal with them or prevent subversive activities affecting society. Inability on the part of the State's police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention.

33. The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression “law and order” is wider in scope inasmuch as contravention of law always affects order, “public order” has a narrower ambit, and could be affected by only such contravention, which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of “law and order” and “public order” is one of degree and extent of the reach, of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. In other words, the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. [See: Union of India v. Amrit Lal Manchanda [Union of India v. Amrit Lal Manchanda, (2004) 3 SCC 75 : 2004 SCC (Cri) 662] .J”

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 and even material required for such verification was not served on the petitioner which amounts 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 Chaklamba Police Station and adjoining areas remain in constant fear. She 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. She would further submit that Respondent No.2-District Magistrate has followed all the mandatory provisions before passing the impugned order of detention. She 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 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".

12. 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"

13. 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 one of the pending case, however, the record does not contain a single copy of any bail application or any bail order. As held by Hon'ble Apex Court in the case of ***Ameena Begum*** (supra), ***Rushikesh Tanaji Bhoite*** (supra), ***Joyi Kitty Joseph*** (supra) and ***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 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.

14. 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 more or less are copy-paste as well as vague as it can be seen that the allegations made in the said statements are general in nature. It is settled position of law that such vague statements that too without any proper verification cannot be made the basis of preventive detention.

15. In so far as the Crime bearing No.117/2025 registered for the offences punishable under Sections 118 (1), 115 (2), 351 (2), 351 (3) of the BNS, dated 20.05.2025 and Crime bearing No.298/2025 registered for the offences punishable under Sections 119 (2), 118

(1), 115 (2), 352, 351 (2), 351 (3), 189 (2), 190, 191 (1), 191 (2) of the BNS, dated 16.08.2025 are concerned, both are in respect of alleged voluntarily causing grievous hurt. 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.

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. 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' has observed 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."

17. In the light of observations of the Hon'ble Apex Court (supra), the underlying principle is that the activity of a person should be such that it will affect 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.

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 20.05.2025 and 16.08.2025, 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 17.11.2025 passed by Respondent No.2-District Magistrate, Beed as well as the approval order dated 28.11.2025 and the order of confirmation dated 01.01.2026 passed by Respondent No.1-State Government, are hereby quashed and set aside.
- iii. Petitioner – Gopal Madhukar Unwane shall be released forthwith, if not required in any other offence(s).
- iv. Rule is made absolute in the above terms.

(ABASAHEB D. SHINDE, J.)

(SANDIPKUMAR C. MORE , J.)

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