IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

CR. WRIT PETITION NO. 556 OF 2026

Rajak Gafur Shaikh

Age: 51 Yrs, O/c Auto Driver
R/o H. No. 5, Thobade Wasti
Degaon Road, Solapur
[Presently detained at Yerwada Central Prison, Solapur] ...Petitioner

Versus

1. **Commissioner of Police, Solapur**

2. **The State of Maharashtra**
Through Addl. Chief Secretary to Government
of Maharashtra Mantralaya, Home Department
Mantralaya, Mumbai

3. **The Superintendent**
Yerawade Central Prison, Pune ...Respondents

Mr. Ritesh M. Thobde i/b Mr. Darshan Singh Rajpurohit for the Petitioner.
Dr. Ashvini A. Takalkar, APP for the State
Mr. Tukaram Ghadage, API, Crime Branch, Solapur City

CORAM : SHARMILA U. DESHMUKH &
ABHAY J. MANTRI, JJ.

DATE : NOVEMBER 05, 2026

JUDGMENT : ***(PER SHARMILA U DESHMUKH J)***

1. Rule. Rule made returnable forthwith. By consent, taken up for final disposal.

2. The Petition questions the order of detention bearing C.O. No. 07/CB/DP/2026 dated 11th June 2026 passed by the Respondent No. 1 under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (For short 'MPDA Act') as according to it, Respondent No. 1 believes the Petitioner is a dangerous person whose activities are prejudicial to the maintenance of public order.

3. Though a number of grounds have been raised in the present petition assailing the detention order, Mr. Thobde, learned counsel appearing for the Petitioner, would confine himself to grounds (d), (i), (j), (k) and (q). He would submit that the detention order is based on C.R. No. 356 of 2026 registered on 7th May 2026, in which the Petitioner was taken into custody on 7th May 2026 and two in-camera statements of witnesses 'A' and 'B'. He would submit that the detaining authority was conscious of the fact that the Petitioner was already in judicial custody. He submits that the detaining authority has observed that bail application is filed in C.R. No. 356 of 2026 and that the Court may grant conditional bail and there is every possibility that the Petitioner will indulge in dangerous activities, and considering the Petitioner's propensity towards criminality, there is an imminent possibility that he

will revert to similar activities which are prejudicial to the maintenance of public order in future. He would submit that the mere possibility of release on bail cannot constitute a valid ground for preventive detention and there must exist a real and imminent possibility of the detenu being released on bail, compelling reasons necessitating preventive detention notwithstanding such custody, and credible and cogent material showing that immediately after release, the detenu is likely to indulge in activities prejudicial to the maintenance of public order. He submits that the subjective satisfaction as regards the propensity towards criminality is based on the previous criminal antecedents which have not been relied upon while passing the order of detention.

4. He would further submit that the allegations in C.R. No. 356 of 2026 would indicate that there was a financial dispute which led to the allegation of assault and therefore, there is no question of the Petitioner's activities being prejudicial to the maintenance of public order. He would further submit that there is a difference between law and order and public order, and the in-camera statements would at the highest indicate a law and order situation, and allegations qua individuals.He would further point out that the confidential in-camera statements do not give any specific date or location and are stereotype statements, which shows that the same have been recorded only for the

purpose of supporting the detention order. He would further point out the affidavit-in-reply of the Respondent No. 1 stating that the past incidents have been mentioned to show habitual criminal nature of the Petitioner. He submits that, therefore, the satisfaction of imminent possibility of the Petitioner reverting to criminal activities is based on those very antecedents which were excluded while passing the order of detention. In support of his submissions, he relies upon the following decisions:

I. ***Arjun Sidram Salgar V. State of Maharashtra & Anr***[1]**;**
II. ***Mahesh Balasaheb Thorat V. Commissioner of Police, Pune City & Anr***[2]**;**
III. ***Rekha V. State of Tamil Nadu***[3]**;**
IV. ***Huidrom Konungjao Singh V. State of Manipur***[4]**;**
V. ***Champion R. Sangma v. State of Meghalaya***[5]**;**
VI. ***Khudiram Das v. State of West Bengal***[6]**;**
VII. ***Ameena Begum v. State of Telangana***[7]**;**
VIII. ***Dr. Ram Manohar Lohia vs. State of Bihar***[8]**;**
IX. ***Arun Ghosh vs. State of West Bengal***[9]**;**
X. ***Sushanta Kumar Bank VS. State of Tripura and Others***[10] and

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1 **Cri. W.P. No. 254 of 2025 [Bench: Circuit Bench at Kolhapur]**
2 **W.P.(St) No. 23283 of 2024**
3 **(2011) 5 SCC 244**
4 **(2012) 7 SCC 181**
5 **(2015) 16 SCC 253**
6 **(1975) 2 SCC 81**
7 **(2023) 9 SCC 587**
8 **AIR 1966 SC 740**
9 **(1970) 1 SCC 98**
10 **2022 SCC OnLine SC 1333**

XI. *Dhanya M. v. State of Kerala*[11]

5. *Per contra*, learned APP would submit that even one incident is sufficient for passing the order of detention, drawing support from the decision of the Hon'ble Apex Court in the case of ***Haradhan Saha & Another vs The State Of West Bengal & Ors***[12]. She would further submit that the detaining authority has arrived at a subjective satisfaction that after being released on bail, there is imminent possibility that the Petitioner would revert to criminal activities by taking into consideration the propensity towards criminality. She would submit that the subjective satisfaction is not based on the previous criminal antecedents, but on C.R. No. 356 of 2026 and the two in-camera statements. She would further submit that even in a case of a person in custody, a detention order can be validly passed.

6. We have considered the submissions and minutely perused the grounds of detention. Though multiple grounds were raised, Mr. Thobde has confined himself to grounds (d), (i), (j), (k) and (q) of the petition, which read as under:

> "d. The aforesaid principles have been authoritatively laid down by the Hon'ble Supreme Court in:
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> ***Rekha v. State of Tamil Nadu (2011) 5 SCC 244***, wherein it was held that preventive detention cannot be justified merely because bail may be granted and that compelling reasons supported by cogent material

11 **2025 SCC OnLine SC 1315**

12 **(1975) 3 SCC 198**

must exist.

Huidrom Konungjao Singh v. State of Manipur (2012) 7 SCC 181, wherein the Supreme Court reiterated that detention of a person already in custody is permissible only when there is a real possibility of release coupled with credible material indicating future prejudicial activities.

Champion R. Sangma v. State of Meghalaya (2015) 16 SCC 253, wherein the Court held that speculative apprehension regarding release on bail cannot justify preventive detention.

Accordingly, the impugned detention order deserves to be quashed.

i. The Petitioner submits that the allegations contained in C.R. No.356/2026, even if accepted in their entirety without admitting it to be true disclose at the highest a dispute between identified private individuals. The alleged incident is essentially an offence against specified individuals and does not demonstrate disturbance of the even tempo of public life. The distinction between "law and order" and "public order" is well settled. Every criminal offence or breach of peace does not automatically affect public order. Unless the alleged activity disturbs the community at large or affects the normal life of society, the provisions of preventive detention cannot be invoked.

j. The Hon'ble Supreme Court in ***Dr. Ram Manohar Lohia v. State of Bihar AIR 1966 SC 740*** clearly held that "law and order" is distinct from "public order" and that every breach of law does not amount to disturbance of public order. Similarly, in ***Kanu Biswas v. State of West Bengal 1972 AIR 1656*** the Supreme Court held that the true test is whether the act affects the even tempo of life of the community or merely affects individual persons. In the present case, the relied upon FIR nowhere alleges that public life came to a standstill, commercial establishments were compelled to remain closed, transport was paralysed or that the community at large was affected. Therefore, the alleged acts fall within the realm of ordinary law and order and not public order.

k. The Petitioner submits that the impugned detention order is further vitiated because the two in-camera statements relied upon by the Detaining Authority are unsupported by any independent corroborative material whatsoever. Neither statement is supported by any contemporaneous complaint, medical record, CCTV footage, seizure, independent witness, documentary evidence or any other objective material. The statements merely contain vague allegations regarding alleged incidents without any supporting evidence. The Hon'ble Supreme Court has consistently held that although confidential witnesses may be relied upon in an appropriate case, the Detaining Authority must independently satisfy itself regarding their truthfulness and reliability on the basis of credible material. Mere verification by a superior police officer cannot substitute objective satisfaction. In the absence of independent corroboration, the confidential statements could not legally form the sole foundation for depriving the Petitioner

> of his personal liberty under Article 21 of the Constitution. Consequently, the subjective satisfaction recorded by the Detaining Authority stands vitiated.
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> q. The Petitioner submits that a bare reading of the grounds of detention reveals repeated use of stereotyped expressions such as "dangerous person", "propensity towards criminality", "terror", "public order", and "imminent possibility" without recording any independent reasoning connecting the material with such conclusions. The subjective satisfaction is therefore merely a reproduction of the sponsoring authority's proposal and not an independent exercise undertaken by the Detaining Authority as mandated by law."

7. The subjective satisfaction of the detaining authority is based on C.R. No. 356 of 2026, registered on 7th May 2026 under Sections 109, 115(2), 352, 351(3), 3(5) of the Bharatiya Nyaya Sanhita, 2023, read with Section 4/25 of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951, and two in-camera statements.

8. The prevention detention has been ordered though the Petitioner was already in custody in connection with CR No 356 of 2026. In the case of ***Huidrom Konungjao Singh*** (supra) the Hon'ble Apex Court has held that there is no prohibition in law to pass a detention order in respect of a person who is already in custody in respect of a criminal case. However, if the detention order is challenged, the detaining authority has to satisfy the Court that:

> (a) The authority was fully aware of the fact that the detenu was actually in custody;
> (b) There was reliable material before the said authority on the basis of which it could have reasons to believe that there

was real possibility of his release on bail, and further on being released, he would probably indulge in activities which are prejudicial to public order; and

(c) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and, therefore, detention order was necessary.

9. The detaining authority's satisfaction in respect of the Petitioner's release in bail in paragraph 6 is reproduced hereinbelow:

> "I am aware that, you have filed bail application in C.R No. 356/2026 (i.e. Relied offence). The said bail application is pending before the Hon'ble Court, Solapur for hearing. Hence, you are still in Solapur Jail. Thus, there is a provision under section 483 of BNSS that the Hon'ble High Court or Sessions Court may grant conditional bail for accused. As the principle of Supreme Court states that **"Bail is rule and Jail is Exception"**. Also, punishment for the relied offence is not compulsorily death. Likewise, the weapons used while committing said offence has been seized from your associate. So, in future, if you get released on bail in the relied offence i.e. in CR.No. 356/2026 as mentioned in Para No.5-1, you will become a free person and there is every possibility that you will indulge in dangerous activities and taking into consideration your propensity towards criminality, there is an **'imminent possibility'** that you will likely to revert to the similar activities which are prejudicial to the maintenance of public order in future.
>
> From all these, it show your consistency in criminal activities. Thus, you have proved yourself as a **'Dangerous Person'** within the meaning of section 2 (b-1) of the M.P.D.A. Act, 1981. So, it has become necessary to detain you as early as possible, under the MPDA Act, 1981 to prevent you from acting in such a prejudicial manner to the maintenance of public order in future too."

10. In the case of ***Mahesh Balasaheb Thorat*** (supra), where there was similar consideration of bail being granted, the Hon'ble Division Bench took note of observations in catena of decisions to hold that the same cannot be the basis on which satisfaction can be arrived

at by the detaining authority. The Hon'ble Division Bench has held that merely recording that the Applicant was likely to be released on bail is not sufficient, and there must be cogent material for the detaining authority to arrive at a subjective satisfaction that the Applicant was likely to be released on bail.

11. In the affidavit in reply, the detaining authority has stated that the punishment for the offence registered against the petitioner is not compulsorily death and after considering the overall nature of allegations against the Petitioner and after considering the reliable material placed before him, the detaining authority has come to a conclusion that the petitioner would be granted bail by concerned Courts in future. The reply affidavit is silent as to the reliable material based on which the detaining authority came to a conclusion of imminent possibility of Petitioner being granted bail. The detention order does not mention any details about the reliable material perused by the detaining authority. The subjective satisfaction is not shown to be based on cogent material and stands vitiated.

12. The detaining authority has recorded a satisfaction based on the allegations in the CR No 356 of 2026 and two confidential in camera statements that the Petitioner’s activities in relation to those incidents are prejudicial to the maintenance of public order and affected not only

the witnesses but it also affected customers, passengers, nearby shopkeepers, residents and gathered people. The allegation in CR No 356 of 2026, even accepted in its entirety, is that the due to financial dispute between the son of the Petitioner and one Vijay Kamble , on 6th May, 2026, the Petitioner and his son approached Vijay Kamble and assaulted him. The complainant tried to intervene and the Petitioner and his son assaulted the complainant with sword but complainant dodged it and sustained injury to his forehead and left side of his nose. The son of the Petitioner threatened the gathered people due to which they ran away.

13. In so far as the in-camera statements are concerned, Witness 'A', who is alleged to run his own Chinese food cart at Solapur, has stated that in the fourth week of March 2026, the Petitioner along with his associates came to the witness holding weapons and demanded extortion money and assaulted the witness with a sword, which the witness managed to dodge. The associates then started pelting stones on the witness's cart and neighbouring shops, and on viewing this, the shopkeepers closed their shops and residents closed their houses, and the gathered people ran helter-skelter. While running, some of them fell down and few of them were injured, and vehicles got damaged.

14. In so far as Witness 'B' is concerned, it is alleged that in the fourth

week of April 2026, the witness, who allegedly is a rickshaw driver, was ferrying passengers in his autorickshaw, when the Petitioner along with his associates stopped the autorickshaw and demanded extortion money, and threatened and abused the passengers in the autorickshaw and compelled them to get down. The witness was assaulted with an iron rod and the autorickshaw came to be damaged. The Petitioner ordered the associates to assault the neighbouring people and the gathered people ran away helter-skelter, the shopkeepers closed their shops and some people got injured due to stone pelting.

15. The distinction between law and order and public order was succinctly set out by the Hon'ble Apex Court in **Mustakmiya Jabbarmiay Shaikh vs M.M. Mehta, Commissioner of Police & Ors 91995) 3 SCC 237** as under:

> "9. ..... It, therefore, becomes necessary to determine whether besides the person being a "dangerous person" his alleged activities fall within the ambit of the expression "public order". A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated 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 fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". If the activity falls within the category of disturbance of "public order" then it

> becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of Arun Ghosh V. State of W.B. (1970) 1 SCC 98 this Court had an occasion to deal with the distinction between law and order and public order. Hidayatullah, C.J. (as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amount only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Again in the case of Piyush Kantilal Mehta v. Commissioner of Police, 1989 Supp (1) SCC 322 this Court took the view that in order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land".

16. The allegation in the FIR and the two in camera statements shows that the incidents are directed towards the individuals having no adverse impact prejudicial to maintenance of public order. At the highest, the incidents shows temporary reaction to law and order situation and not every case of general disturbance to public tranquility affects public order. The allegation that the shopkeepers downed their shutters and residents closed their houses does not establish that

tempo of life of community was disturbed. The alleged incidents are such that can be dealt with by normal law enforcement provisions.

17. The possibility of the Petitioner indulging in activities which are prejudicial to public order is arrived at by taking into consideration the past criminal antecedents which did not form the basis of the detention order. In paragraph 7, the detaining authority has taken into consideration the Petitioner's propensity towards criminality as shown in the criminal antecedents which were stale offences and excluded from consideration while passing the order of detention. In the reply affidavit, the Respondent No. 1 has stated that the reference to the past incidents have been mentioned to show habitual criminal nature of the Petitioner.

18. The entire intent appears to be to continue the detention of the Petitioner though he was in custody and without satisfying the parameters in such cases as set out in the case of ***Huidrom Konungjao Singh*** (supra), which were required to be cumulatively satisfied.

19. In ***Haradhan Saha*** (supra), the Hon'ble Apex Court was considering the constitutional validity of Maintenance of Internal Security Act, 1971. It upheld the detention order based on single incident by observing that the future behaviour of the detenue based on his past conduct in light of surrounding circumstances is the real

ground of detention. In that case, the acts of the detenue were held to be prejudicial to the maintenance of supplies essential to the community.

20. There is no quarrel with the proposition laid down in ***Kamarunnissa*** (supra), that even in case of a person in custody a detention order can validly be passed provided the parameters are satisfied.

21. The conspectus of the above discussion is that the detaining authority while exercising powers under Section 3 of MPDA Act is required to arrive at subjective satisfaction that the act of the person to be detained is prejudicial to the maintenance of public order. In the present case, satisfaction is based on the possibility of release on bail, allegations in the FIR and two in camera statements. There was no cogent material on record to show imminent possibility of detenue being released on bail and the subsequent release on bail cannot support the detention order. The allegations in the FIR and two in camera statements alleges incidents which do not affect the public order and are not shown to be unable to be dealt with by the normal law enforcement provisions. The recording of propensity towards criminality is based on stale criminal antecedents, which were excluded from consideration while passing the detention order. The subjective

satisfaction arrived at by the detaining authority stands vitiated.

22. Hence the following order is passed:

O R D E R

(i) The Petition is allowed.

(ii) The impugned order of detention dated 11th June, 2026 passed under Section 3 of MPDA Act is quashed and set aside.

(iii) The Petitioner to be set at liberty forthwith, if not required to be detained in any other case.

23. Rule is made absolute in above terms.

[ABHAY J. MANTRI, J.] **[SHARMILA U. DESHMUKH, J.]**