



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 73 OF 2026

[Swapnil @ Lalya Ashok Palkar **vs.** State of Maharashtra through its Secretary, Home Department(Special) and anr.]

Office Notes, Office Memoranda
of Coram, Appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. Mir Nagman Ali, Advocate for the applicant/petitioner
Mr. S. S. Doifode, A.P.P for the State/respondents

CORAM : **ANIL L. PANSARE AND**
NIVEDITA P. MEHTA, JJ.

DATE : **01-04-2026.**

Heard.

2. In response to previous orders, learned Additional Public Prosecutor has tendered across bar the order of conferment of powers under Section 3 of of the Maharashtra Prevention of Dangerous Activities Act, 1981 (for short "Act of 1981") dated 30-12-2025 as also the order of approval dated 23-1-2026 and the order of confirmation under Section 12 along with report of advisory board. Same is taken on record and marked collectively as 'A' for identification.

3. The petitioner is before the Court aggrieved by order of detention passed under Section 3 of the Act of 1981, which was approved and confirmed by the State Government.

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4. In a bunch of petitions with lead petition in the case of ***Akshay Bhaskar Sahare Vs. State of Maharashtra and anr. (Criminal Writ Petition No. 223/2025)***, this Court had vide order ***dated 30-9-2025*** condemned the manner in which the respondents had invoked the provisions of the Act of 1981. While setting aside the orders, this Court held that the order conferring powers under Section 3 of the Act of 1981 must identify specific circumstances prevailing or likely to prevail in the particular local area for which the powers of State Government are delegated to officers below.

5. This Court had also taken exception to the blanket/state wide portrayal of identical circumstances considering the scope of Section 3 of the Act of 1981. The High Court was required to make such comments because the order conferring powers included almost all the districts. This Court had reproduced sample order which reads thus :

“Date- 26th June, 2024.

ORDER

*No. MPDA - 0624/CR - 409/Spl - 3B:
Whereas the Government of Maharashtra is satisfied that having regard to the circumstances prevailing and which are likely to prevail in the Districts of Thane, Palghar, Raigad, Ratnagiri, Sindhudurg, Pune, Solapur, Kolhapur, Sangli, Satara, Nashik, Ahmednagar, Dhule, Nandurbar, Jalgaon, Chhatrapati Sambhajnagar, Jalna, Parbhani, Nanded, Hingoli, Beed, Dharashiv, Latur, Akola, Washim, Wardha, Yavatmal,*

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Buldhana, Amravati, Nagpur, Bhandara, Gondia, Chandrapur and Gadchiroli it is necessary that during the period commencing from 01st July, 2024 and ending on the 31st December, 2024, the District Magistrates of the said Districts may also, if satisfied as provided exercise the powers in sub-section (1) of 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 (Mah. No.IV of 1981) (hereinafter referred to as "the said Act");

Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 3 of the said Act, the Government of Maharashtra hereby directs that for the period commencing from 01st July, 2024 and ending on the 31st December, 2024, the District Magistrates Thane, Palghar, Raigad, Ratnagiri, Sindhudurg, Pune, Solapur, Kolhapur, Sangli, Satara, Nashik, Ahmednagar, Dhule, Nandurbar, Jalgaon, Chhatrapati Sambhajanagar, Jalna, Parbhani, Nanded, Hingoli, Beed, Dharashiv, Latur, Akola, Washim, Wardha, Yavatmal, Buldhana, Amravati, Nagpur, Bhandara, Gondia, Chandrapur and Gadchiroli may also, if satisfied as provided in sub-section (1) of Section 3 of the said Act, exercise the powers conferred on the State Government by sub-section (1) of Section 3 of the said Act.

*By order and in the name of the Governor of
Maharashtra,*

(Venkatesh Madhav Bhat)

*Joint Secretary to the Government of
Maharashtra, Home Department (Special)."*

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6. The aforesaid sample order indicates that almost in the entire State of Maharashtra, similar or identical circumstances were either prevailing or likely to prevail. Existence of such situation is fictitious, which in a way, also projects a poor status of law and order in the State. Accordingly, the High Court held that conferring powers of State Government to authorities below is unsustainable. Despite such a categorical finding, the Deputy Secretary to the Government of Maharashtra, Home Department (Special) has, on 30-12-2025 passed following order.

“ORDER

No.MPDA-1225/CR-673/Spl-3B:- Whereas the Government of Maharashtra is satisfied that having regard to the circumstances prevailing and which are likely to prevail in the Districts of Thane, Palghar, Raigad, Ratnagiri, Sindhudurg, Pune, Solapur, Kolhapur, Sangli, Satara, Nashik, Ahilyanagar, Dhule, Nandurbar, Jalgaon, Chhatrapati Sambhajnagar, Jalna, Parbhani, Nanded, Hingoli, Beed, Dharashiv, Latur, Akola, Washim, Wardha, Yavatmal, Buldhana, Amravati, Nagpur, Bhandara, Gondia, Chandrapur and Gadchiroli it is necessary that during the period commencing from 01 January, 2026 and ending on the 30th June, 2026, the District Magistrates of the said Districts may also, if satisfied as provided exercise the powers in sub-section (1) of Section 3 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 (Mah. No.LV of 1981) (hereinafter referred to as "the said Act");

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Now, therefore, in exercise of the powers conferred by sub-section (2) of Section 3 of the said Act, the Government of Maharashtra hereby directs that for the period commencing from 01 January, 2026 and ending on the 30th June, 2026, the District Magistrates Thane, Palghar, Raigad, Ratnagiri, Sindhudurg, Pune, Solapur, Kolhapur, Sangli, Satara, Nashik, Ahilyanagar, Dhule, Nandurbar, Jalgaon, Chhatrapati Sambhajinagar, Jalna, Parbhani, Nanded, Hingoli, Beed, Dharashiv, Latur, Akola, Washim, Wardha, Yavatmal, Buldhana, Amravati, Nagpur, Bhandara, Gondia, Chandrapur and Gadchiroli may also, if satisfied as provided in sub-section (1) of Section 3 of the said Act, exercise the powers conferred on the State Government by sub-section (1) of Section 3 of the said Act.

By order and in the name of the Governor of Maharashtra.”

7. Thus, an identical order is passed ignoring the law laid down by this Court. Such is an act which sets forth an insolent conduct of the authorities below.

8. The conduct continued while passing order of approval under sub-section (3) of Section 3 of the Act of 1981. This Court had in **Akshay Bhaskar Sahare** case (supra) held that order of approval must be substantive and not mechanical. The order should reflect consideration of the materials including grounds for detention. The Court had noticed that the order of approval did not disclose the grounds on which detention was approved nor did it reveal how approved period related to prevailing or likely circumstances.

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9. Thus, it was expected that the approval order will now be a reasoned order indicating application of mind. The order, however, reads as under.

“Date: 23.01.2026.

ORDER

No. MPDA-0126/CR-38/Spl-3B:- In exercise of the powers conferred by sub-section (3) of Section 3 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 Trafficer Act, 1981 (Mah.No.LV of 1981), the Government of Maharashtra hereby approves the order of District Magistrate, Akola D.O. No.Desk-2/HA/HOME/WS-02/2026, Dated 12th January, 2026 made in respect of Shri, Swapnil Alias Lalya Ashok Palkar, R/o. Panchsheel Nagar, washim Bypass, Old City, Akola, to be detained under the said Act.

By order and in name of the Governor of Maharashtra.

Sd/-

Under Secretary to the Government of Maharashtra, Home Department (Special)”

10. The aforesaid order is identical to the order that this Court had considered in **Akshay Bhaskar Sahare** case (supra). The only difference is that earlier order was passed by Section Officer and now the order is passed by the Under Secretary. Thus, the designation of the officer passing order has changed but the content remains same. What was, however, incumbent upon the State Government was not only to change hands but to change the mindset.

11. The lapses do not stop here but continue in assessment at confirmation stage. This Court had held that the confirming authority, while passing order under Section 12 of the Act of 1981, must re-assess circumstances as they exist on the date of conferment and record reasons for continuing detention and for duration fixed. The conferment authority was duty bound to record reasons as to why detention should be continued for a specific duration, particularly when the detention is extended to maximum permissible duration of twelve months. The order of confirmation, however, reads as under :-

“Date: 09.03.2026

ORDER

No.MPDA-0126/CR-38/Spl-3B-Whereas, the District Magistrate, Akola in exercise of the powers conferred by Section 3 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 Trafficer Act, 1981 (hereinafter referred to as the 'said Act'), issued an order on 12th January, 2026 directing that Shri. Swapnil Alias Lalya Ashok Palkar, R/o. Panchsheel Nagar, washim Bypass, Old City, Akola, be detained under the said Act;

And whereas, the Advisory Board appointed under the said Act, has opined that there is sufficient cause for the continued detention of the said detenu;

And whereas, the Government of Maharashtra after considering the opinion/report of the Advisory Board, has decided that it is necessary to confirm the detention of the said detenu;

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Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 12 of the said Act, the Government of Maharashtra hereby confirms the detention order issued by District Magistrate, Akola and directs that the detention of the said Shri. Swapnil Alias Lalya Ashok Palkar, be continued for a period of Twelve months from the date of detention.

By order and in name of the Governor of Maharashtra,

Sd/-

Under Secretary to the Government of Maharashtra, Home Department (Special)”

12. This is also an identical order as was tested in **Akshay Bhaskar Sahare** case (supra) which was set aside saying that order was passed without assigning reasons for continuation of detention for a specific period and without ascertaining whether the circumstances shall continue to prevail for the specified period.

13. In addition to above, the Court had explained the vitality of the Advisory Board as a Constitutional safeguard and noted that in these cases, the Board's role did not rectify the procedural deficiencies at other stages. The corrective steps appears to have been not taken in the present case as well.

14. The State Government had assailed the judgment of this Court before the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Akshay Bhaskar Sahare** in *SLP (Cri) No. 18690/2025*. The Supreme Court, vide order dated 21-11-2025, thought it proper to not interfere with the judgment. Thus, the

judgment of this Court attained finality on 21-11-2025. Despite such status, on 30-12-2025, the Deputy Secretary to the Government of Maharashtra has passed order of conferment of powers under Section 3 of the Act of 1981, which was followed by order of approval and order of confirmation of detention. These orders are absolutely identical to the order which this Court found fault with. The illegality, however, has continued, which according to us, is a blatant violation of judgment dated 30-9-2025 passed by this Court in bunch of petitions with lead petition in the case of ***Akshay Bhaskar Sahare Vs. State of Maharashtra and anr. (Criminal Writ Petition No. 223/2025)***. We accordingly issue notice to Ms. Madhuri Kumbhar, Under Secretary to the Government of Maharashtra, Home Department (Special) and Mr. Rajendra Tanaji Bhalwane, Deputy Secretary to the Government of Maharashtra, Home Department (Special) as to why proceedings under the Contempt of Courts Act should not be initiated for willful disobedience of the order, made returnable on 21-4-2026.

15. In the light to above and since the orders of conferment of powers, order of approval and order of confirmation passed under Sections 3(2), 3(3) and 12 of the Act of 1981 are apparently illegal, we set aside the said orders dated 30-12-2025, 23-1-2026 and 9-3-2026. The petitioner shall be set at liberty, if not required in any other case.

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16. Copy of the judgment in the case of ***Nenavath Bujji etc. Vs. State of Telangana and Others [2024 SCC OnLine SC 367]*** passed by the Hon'ble Supreme Court, the copy of the judgment dated 30-9-2025 passed by this Court in the case of ***Akshay Bhaskar Sahare Vs. State of Maharashtra and anr*** in Criminal Writ Petition No. 223/2025 and copy of the order passed in present petition shall be served upon the Advisory Board for taking appropriate measures in the matters of the preventive detention under the provisions of the Act of 1981.

(JUDGE)

(JUDGE.)

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