



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

CRIMINAL WRIT PETITION NO. 82 OF 2026

[Swapnil S/o Pralhad Gajbhiye **vs.** State of Maharashtra through Home
Department(Special) and anr.]

with

CRIMINAL WRIT PETITION NO. 117 OF 2026

[Afsar Khan Mohd Khan **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. Harshwardhan Chawhan, Advocate for petitioner in WP
82/2026

Mr. Mir Nagman Ali, Advocate for petitioner in WP 117/2026

Mr. S. S. Doifode and Mr. S. A. Ashirgade, APPs for the State/
respondents

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

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

Heard.

2] Despite our orders directing the respondents to place on record copy of order of conferment of powers and approval of detention order passed under Section 3 of the Maharashtra Prevention of Dangerous Activities Act, 1981 (for short, "Act of 1981"), the respondents have not placed the said orders before the Court. Nonetheless, the learned Additional Public Prosecutors appearing in matters submit that these orders are identical to the orders which were considered by this Court in earlier proceedings and were quashed.

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3] In an identical set of facts presented before this Court in the case of *Akshay Bhaskar Sahare Vs. State of Maharashtra & Anr. [Writ Petition No. 223/2025] with connected petitions*, this Court (*Coram: Anil L. Pansare and Siddheshwar S. Thombre, JJ.*), after going through the orders passed under Sections 3(2), 3(3) and 12 of the Act of 1981, in each case, found that the State Government has exercised these powers without providing sufficient reasons, wherein, circumstances prevailing in entire State of Maharashtra were treated identical. The Court took a view that such approach depict lack of application of mind resulting into violation of right to personal liberty guaranteed under Article 21 of the Constitution of India. The Court further held that detention order under Section 3(2) and subsequent approval under Section 3(3) of the Act of 1981 were not properly grounded and that power to issue order of conferment, which is vested with the State Government, only comes into play for a defined area and period and only if circumstances prevailing or likely to prevail are such that detention of a person would be justified. The Court also opined that such an order, if is to be made, it must be made while explicitly describing specific circumstances prevailing or likely to prevail during the time period, which should be tied to those circumstances.

4] With regard to approval orders, the Court noted that they were passed without recording grounds or reasoning and were issued by an official below the

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required rank. The confirmation orders, passed under Section 12 of the Act of 1981, were also passed as routine and were non-reasoned determinations that did not show why detention needed to continue for twelve months. The process, by which Section 12 confirmation was conveyed to the detenu, was also found improper. The Court also 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 Court also held that once order of conferment of powers under Section 3 by the State Government to its officers is found to be illegal, the order of detention would be void ab initio.

5] This judgment was challenged before the Hon'ble Supreme Court by way of *Special Leave Petition (Criminal) No.18690 of 2025 [State of Maharashtra & Anr. Vs. Akshay Bhaskar Sahare]*. The Supreme Court, after consideration, dismissed the same by order dated 21/11/2025.

6] That being so, we need not go through the orders of detention in each case presented before us to render a finding on merit. It is a different matter that on merit as well, the issue of public order, as defined under Section 2(a) of the Act of 1981, is not taken into consideration while passing detention order, in the cases under question. The orders of approval are also passed in a mechanical manner. Similar is the status of orders that are passed under Section 12, most

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importantly, orders under Section 12, conveyed to the petitioners, are passed by Section Officer, except in some cases, without giving reasons as required under Section 12. The order sans reason is unsustainable.

7] Accordingly, and since the issue involved is covered, for the reasons set out in order dated 30/9/2025 passed by this Court in Writ Petition No. 223/2025 with connected petitions, we allow the petitions. The orders of detention under Section 3(2), as also, the orders of confirmation under Section 12 of the Act of 1981 passed by the respondents, stand quashed and set aside. The petitioners shall be released forthwith, if not required in any other case.

(JUDGE)

(JUDGE.)

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