



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1652 OF 2025

Vivek Vidyasagr Gajbhare ... 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

...
Advocate for the Petitioner : Mr. Dhananjay S. Patil
APP for Respondent Nos. 1 to 3 : Mr. N. B. Patil

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

Date of reserved 11.03.2026

Date of pronouncement : 16.03.2026

JUDGMENT (ABASAHEB D. SHINDE, J.) :

1. Heard.
2. Rule. Rule is made returnable forthwith. With the consent of the parties the petition is taken up for final hearing at the stage of admission.



3. By this writ petition the petitioner seeks to challenge the detention order dated 14.10.2025 bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-70, passed by the 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 (for short the **MPDA Act**), as well as approval order dated 20.10.2025 and confirmation order dated 01.12.2025 bearing No. MPDA-1025/CR-596/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. A proposal came to be submitted by Police Inspector, Police Station Nanded Rural, Nanded, seeking preventive detention of the petitioner. The said proposal appears to have been routed through Sub-Divisional Police Officer, Sub-Division Itwara, Nanded and



Superintendent of Police, District Nanded and eventually placed before the respondent No.2 – District Magistrate, Nanded who claims to have arrived at a subjective satisfaction that the petitioner's detention is necessary to prevent him from acting in a manner prejudicial to public order. It is pertinent to note that, the basis for submission of proposal for detention of petitioner is registration of five (5) past criminal cases and one preventive action against the petitioner, which are summarised as follows :

Sr. No.	Police Station	C.R.No	Under Section	Date of filing	Date of arrest	Bail Date	Court Case No.	Present Status.
1.	Nanded Rural	914/2023	3/25, 7/25 Arms Act	31/12/2023	31/12/2023	15/01/2024	RCC No. 504/2024	Court Pending
2.	Itwara	244/2024	118(1), 352, 3(5), BNS, 4/25 Arms Act	16/07/2024	17/07/2024	17/07/2024	RCC No. 1512/2024	Court Pending
3.	Nanded Rural	913/2024	118(2), 118(1), 115(2), 352, 351(2), 351(3), 3(5), BNS	11/10/2024	18/10/2024	18/10/2024	RCC No. 2047/2024	Court Pending
4.	Nanded Rural	396/2024	334(1), 305(e), 3(5) BNS	27/10/2024	03/11/2024	03/11/2024	RCC No. 481/2025	Court Pending
5.	Kundalwadi, Dist. Nanded	67/2025	309(4), 3(5) BNS	19/04/2025	25/04/2025	02/06/2025	On investigation	On investigation

Preventive Action :-

Sr. No	Police Station	Chapter Case No	Section	Date	Present Status
1	Nanded Rural	17/2024	107 Cr.P.C.	17/01/2024	Closed

However the impugned detention order is based only on solitary offence which is as follows :

Sr. No.	Police Station	C.R.No	Under Section	Date of filing	Date of arrest	Bail Date	Court Case No.	Present Status.
1.	Kundalwadi, Dist. Nanded	67/2025	309(4), 3(5) BNS	19/04/2025	25/04/2025	02/06/2025	On investigation	On investigation



In addition to above crime, 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 learned counsel for the petitioner it is significant to note that, the last crime seems to be registered on 19.04.2025 and the order of detention is passed on 14.10.2025, the petitioner was released on bail on 02.06.2025, although the copy of bail application and the bail order was placed before the competent authority, those were not considered by the competent authority as it does not find place in order. According to the learned counsel for the petitioner this lacks the basic principle of subjective satisfaction and reflects improper material assessment. To buttress his submission he relied on the judgment of the Hon'ble Apex Court in the case of *Ameena Begum Vs. The State of Telangana and Ors.*; (2023) 9 SCC 587.

6. Learned counsel for the petitioner also submits that, the law laid down by the Hon'ble Apex Court in the matter of *Dhanya M. Vs. State of Kerala and others* is not only flouted but the entire activity



of detention order is in violation of law laid down by the Hon'ble Apex Court in the matter of *Vijay N Singh Vs. State of Bihar* reported in **1984 (3) SCC 14**, since the preventive detention action being a hard law it is therefore, imperative that application of the same is expected to be complied with in strict sense, however in the present case the mandatory requirements laid down under MPDA Act are not followed thereby putting the liberty of a person at stake.

7. Learned counsel for the petitioner further contended that, though crimes in which the petitioner has been enlarged on bail, an application seeking cancellation of bails have not been moved by the State, he mean to say that, when ordinary criminal law has sufficient means to address apprehension leading to the impugned detention order, still without resorting to the same, extra ordinary measures of the law are being resorted to. He would therefore submit in the light of this factual scenario the impugned order is unsustainable.

8. It is further contended by the learned counsel for the petitioner that as far as solitary offence considered while passing the impugned detention order, bearing Crime No.67/2025 is concerned, the same has been registered under



Sections 309(4), 3(5) of the Bhartiya Nyaya Sanhita, 2023 (for Short “BNS”). Perusal of the allegations in the said FIR would show that, it is individualistic in nature, therefore it could not be said to be an issue involving public order more than the issue of law and order.

9. 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 as can be seen that the authorities are claiming to have verified the in-camera statements on the same day on which those were recorded.

10. 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 learned APP the petitioner is a “dangerous person” within the meaning of Section 2 (b-1) and as a result of his dangerous activities the residents within the jurisdiction of Nanded Rural Police



Station and the adjoining areas remain in constant fear. He would further submit that the petitioner is involved in criminal activities with his accomplices and committed crimes like illegal possession of firearms, illegal possession and use of weapons, causing hurt, forcible theft etc, resultantly, the people are not ready to come forward to lodge complaints. He would further submit that the confidential inquiry was conducted and it is only after giving assurance of secrecy the two witnesses came forward to depose against the petitioner's criminal activities. It is further submitted that respondent No.2 – District Magistrate has carefully examined entire material and has arrived at a subjective satisfaction that the preventive detention of the petitioner is very much warranted.

11. Having heard learned counsel for the petitioner and the learned APP for the State, we are of the considered view that impugned detention order passed by respondent No.2 – District Magistrate depicts non-application of mind while appreciating the material. Though the order asserts that the petitioner is released on bail in all the pending cases, however, the record does not contain a single copy of any bail application or any bail order. As held by the Hon'ble Apex Court in the case of *Ameena Begum* (Supra), *Nenavath Buji and Ors. Vs. The State of Telangana and Ors.*; (2024)



17 SCC 294 and in the case of **Joyi Kitty Joseph Vs. Union of India (UOI) and Ors.; (2025) 4 SCC 476**, when a detaining authority takes into account the fact that the detinue is on bail it must examine the bail orders themselves to assess the nature of offences, the conditions imposed by competent Courts while releasing the accused on bail and also to ascertain as to whether there exists a real likelihood of detinue committing similar kind of offence if released on bail. We thus 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.

12. So far as the reliance placed on the in-camera statements of witnesses 'A' and 'B' are concerned, as observed above we find that those statements are vague since, those are general in nature without specifying the dates, time or places of alleged incidences as required by law. 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.

13. We find that, the basis for passing the impugned detention order is Crime No.67/2025 registered under Sections 309(4), 3(5) of BNS. Perusal of allegations of the said offence would show that on 19th April 2025, the complainant was alleged to have been attacked on a road between babhali bridge on the godavari river and shelgaon thadi, by three unknown bike-borne robbers who thrown chilli powder in his eyes and took away his smartphone, 30 to 40 thousand rupees cash from the pocket of his pant and also taken away his motorcycle. It is further alleged that during investigation the petitioner has confessed of committing this crime along with his other accomplices and handed over the stolen property. The FIR, the panchanama and the statements of co-accused which were the part of the record does not reveal that at the place of alleged incident the presence of public was at large. Had it been viewed by the people, in that case only the question of terror in the mind of people would arise. Here, we are not considering the other merits of the case, but only from the point of view of allegation whether the activity of the petitioner was dangerous to public.



14. It is trite law in view of judgment of the Hon'ble Apex Court in the case of ***Ram Manohar Lohia Vs. State of Bihar and Ors.*** reported in (1966) 1 SCR 709, while explaining the term 'Law and Order' and 'Public Order' the Hon'ble Apex Court observe 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."

15. 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. In other words the activities must not be minor which is peace of purely local significance, which primarily in the specific individual and only in secondary sense public interest. 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 merely on the allegation that the petitioner was alleged to have been found involved in the crime alleging extortion on the basis of his alleged confession, certainly do not have a live-link to eminent disturbances to public order and can not justify the preventive detention.

16. 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 incident dated 19.04.2025 being an individualistic act is not sufficient to hold that this act of petitioner is prejudicial to the public order.

17. In the light of above observations, we are of the considered view that the impugned detention order is unsustainable in law so also find that the approval order as well as the 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 detention order No. 2025/RB-1/Desk-2/T-4/MPDA/CR-70 dated 14.10.2025 passed by respondent



No.2 as well as the approval order dated 20.10.2025 and the confirmation order No. MPDA-1025/CR-596/Spl-3B dated 01.12.2025, passed by respondent No.1, are hereby quashed and set aside.

III. Petitioner – Vivek Vidyasagr Gajbhare 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.)

Narwade/