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

# CRIMINAL WRIT PETITION NO. 223/2025

(Akshay Bhaskar Sahare Vs. State of Maharashtra & Anr.)

## WITH CRIMINAL WRIT PETITION NOS. 227/2025, 272/2025, 309/2025, 324/2025, 348/2025, 388/2025, 408/2025, 435/2025, 440/2025, 449/2025, 454/2025, 480/2025, 503/2025, 508/2025, 510/2025, 520/2025, 521/2025, 522/2025, 525/2025, 555/2025, 560/2025, 575/2025, 579/2025, 593/2025, 598/2025, 612/2025, 639/2025, 687/2025, 734/2025

| Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders. | Court's or Judge's orders. |
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WRIT PETITION NO. 223/2025
Mr. M.N. Ali, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. S.S. Doifode, A.P.P. for the State.

WRIT PETITION NO. 227/2025
Mr. S.K. Lambat, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. S.S. Doifode, A.P.P. for the State.

WRIT PETITION NO. 272/2025
Mr. Shahrukh Shafik Sheikh, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. S.S. Doifode, A.P.P. for the State.

WRIT PETITION NO. 309/2025
Mr. A.A. Krishnan, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. S.A. Ashirgade, A.P.P. for the State.

WRIT PETITION NO. 324/2025
Mr. M.N. Ali, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. S.S. Doifode, A.P.P. for the State.

WRIT PETITION NO. 348/2025
Mr. M.N. Ali, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. A.B. Badar, A.P.P. for the State.

WRIT PETITION NO. 388/2025
Mr. M.N. Ali, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. K.R. Lule, A.P.P. for the State.

WRIT PETITION NO. 408/2025
Mr. Prateek Sharma with Mr. Pradyumna Sharma, Counsel for the petitioner/s.

Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. I.J. Damle, A.P.P. for the State.

WRIT PETITION NO. 435/2025

Mr. G.B. Mate, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. S.S. Doifode, A.P.P. for the State.

WRIT PETITION NO. 440/2025

Mr. M.N. Ali, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. S.A. Ashirgade, A.P.P. for the State.

WRIT PETITION NO. 449/2025

Mr. A.M. Gopale, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. S.A. Ashirgade, A.P.P. for the State.

WRIT PETITION NO. 454/2025

Mr. M.N. Ali, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. A.B. Badar, A.P.P. for the State.

WRIT PETITION NO. 480/2025

Mr. S.N. Singh, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Ms R.V. Sharma, A.P.P. for the State.

WRIT PETITION NO. 503/2025

Mr. P.J. Mehta, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. A.R. Chutke, A.P.P. for the State.

WRIT PETITION NO. 508/2025

Mr. P.R. Agrawal, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. S.A. Ashirgade, A.P.P. for the State.

WRIT PETITION NO. 510/2025

Mr. K.S. Motwani, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. A.R. Chutke, A.P.P. for the State.

WRIT PETITION NO. 520/2025

Mr. S.H. Mansuri, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. A.B. Badar, A.P.P. for the State.

WRIT PETITION NO. 521/2025

Mr. N.S. Padia, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. I.J. Damle, A.P.P. for the State.

WRIT PETITION NO. 522/2025

Mr. N.S. Padia, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. A.R. Chutke, A.P.P. for the State.

WRIT PETITION NO. 525/2025

Mr. M.N. Ali, Counsel for the petitioner/s.

Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. S.S. Doifode, A.P.P. for the State.

WRIT PETITION NO. 555/2025

Mr. Sarnath Sahoo, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. S.A. Ashirgade, A.P.P. for the State.

WRIT PETITION NO. 560/2025

Mr. M.N. Ali, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Ms R.V. Sharma, A.P.P. for the State.

WRIT PETITION NO. 575/2025

Mr. Joseph Bastian, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Ms R.V. Sharma, A.P.P. for the State.

WRIT PETITION NO. 579/2025

Ms M.M. Agrawal, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. S.S. Doifode, A.P.P. for the State.

WRIT PETITION NO. 593/2025

Mr. M.N. Ali, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. K.R. Lule, A.P.P. for the State.

WRIT PETITION NO. 598/2025

Mr. M.N. Ali, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. I.J. Damle, A.P.P. for the State.

WRIT PETITION NO. 612/2025

Mr. M.N. Ali, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. A.B. Badar, A.P.P. for the State.

WRIT PETITION NO. 639/2025

Mr. Anshuman Deshmukh, Counsel for the petitioner/s (through V.C.).
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. I.J. Damle, A.P.P. for the State.

WRIT PETITION NO. 687/2025

Mr. M.N. Ali, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. A.R. Chutke, A.P.P. for the State.

WRIT PETITION NO. 734/2025

Ms F.N. Haidari h/f Mr. R.M. Daga, Counsel for the petitioner/s.
Mr. D.V. Chauhan, Senior Counsel/Government Pleader with Mr. A.B. Badar, A.P.P. for the State.

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CORAM : ANIL L. PANSARE AND
SIDDHESHWAR S. THOMBRE, JJ.

ARGUMENTS WERE HEARD ON : SEPTEMBER 11, 2025
ORDER IS PRONOUNCED ON : SEPTEMBER 30, 2025

These petitions originate from orders issued pursuant to the provisions of the Maharashtra Prevention of Dangerous Activities Act, 1981 (for short "Act of 1981"). The petitions herein raise substantial questions regarding the manner in which the fundamental right guaranteed under Article 21 of the Constitution of India, namely the right to personal liberty, is being restricted/ infringed.

2] As such, it is well settled that personal liberty can be curtailed and can only be curtailed in accordance with the procedure established by law, however it requires strong legal justification for any restriction, balanced with other societal interests.

3] Thus, deprivation of personal liberty must follow a legally prescribed procedure. The petitioners, however, have approached this Court with a grievance that the orders of preventive detention, approval thereof and confirmation orders are passed in a mechanical manner.

4] Rule. Rule made returnable forthwith. Heard by consent of the parties. We have, accordingly, heard learned Counsels for the petitioner/s, and Mr. D.V. Chauhan, learned Senior Counsel/Government Pleader assisted by A.P.P.s for the State.

5] For the sake of convenience, we will refer to the facts of Writ Petition No.223/2025. We must note here that both the learned Senior Counsel/Government Pleader and the learned Additional Public Prosecutors have acknowledged that in all cases, the order of conferment under sub-section (2) of Section 3, the order of approval under sub-section (3) of Section 3, and the order of confirmation under Section 12 are identical in form and substance in all the cases. Therefore, a reference to one such order or note shall be deemed to encompass all similar orders or notes issued in the respective cases.

6] The petitioners have challenged the orders of detention passed under Section 3, as also, the confirmation orders passed under Section 12 of the Act of 1981. The orders are said to be passed for preventing the petitioners from acting in any manner prejudicial to the maintenance of public order. The petitioners, however, contended that in none of the cases, the respondents have justified that the circumstances prevailing were such that the petitioners could be said to have acted or are likely to act in a manner prejudicial to the maintenance of public order.

7] We will, accordingly, examine whether the acts of the petitioners were such that would require preventive detention. Prior thereto, we would like to go through the relevant provisions and scheme of the Act of 1981. The orders of preventive detention are passed

under Section 3 of the Act of 1981, which reads as under :

> *"3. (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.*
>
> *(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section :*
>
> *Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed six months, but the State Government may, if satisfied as aforesaid that it is necessary so to amend such order to extend such period from time to time by any period not exceeding three months at any one time.*
>
> *(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."*

8] Thus, sub-section (1) stipulates that the State Government is authorized to issue an order of detention against an individual, provided it is satisfied that such detention is imperative to prevent the individual from engaging in conduct prejudicial to the maintenance of public order.

9] Sub-section (2) provides that the State Government may empower District Magistrate or Commissioner of Police to exercise powers conferred by sub-section (1). The State Government is, however, required to record a satisfaction that the circumstances prevailing or likely to prevail in any area are such, that would require conferment of powers of the State Government upon the jurisdictional District Magistrate or Commissioner of Police in order to prevent any person from acting in a manner prejudicial to the maintenance of public order.

10] Proviso to sub-section (2) stipulates that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed six months, but the State Government may amend such order to extend such period from time to time not exceeding three months at any one time. In other words, the State Government, by such order, may confer its powers under sub-section (1) of Section 3 upon District Magistrate or Commissioner of Police for a period, not exceeding six months with a rider of permissible

extension from time to time, but not exceeding three months at one time.

11] Thus, the State Government will have to record a satisfaction that in a particular area, within the local limits of jurisdiction of District Magistrate or Commissioner of Police, the circumstances prevailing or likely to prevail are such that would require preventive detention of a person, if contingency so arises. The order of detention must, therefore, explicitly disclose the existence of such circumstances or the reasonable likelihood thereof, wherein the possibility of an individual or individuals acting in a manner detrimental to the maintenance of public order is manifest. In such situations, where the contingency materializes, the officers empowered under sub-section (2) of Section 3 shall be vested with the necessary authority and powers conferred by the State Government to prevent the individual(s) from engaging in conduct as described in sub-section (1).

12] Sub-section (3) of Section 3 provides that when an order is passed under sub-section (2), the officer concerned shall forthwith report the said fact to the State Government, together with the grounds on which the order has been made, as also, such other particulars that would have bearing on the matter. Sub-section (3) further provides that no such order shall remain in force for more than twelve days unless, in the meantime, it has been approved by the State Government.

13] Thus, overall reading of Section 3 indicates that the prime responsibility of passing order of preventive detention lies with the State Government. A stop gap arrangement, however, has been made in terms of sub-section (2), where certain officers are empowered to pass such an order of preventive detention, which is valid only for twelve days, within which time, the State Government is under an obligation to approve the order so passed under sub-section (2).

14] Thus, it is incumbent upon the State Government to exercise its discretion in matters of preventive detention. In this regard, the order of approval must encompass considerations analogous to those mandated under sub-section (1), such that the approval process reflects the same evaluative criteria as would be required for issuing an order under sub-section (1). The approval order, therefore, should be predicated on the same substantive and procedural considerations as are requisite for the issuance of an order under sub-section (1), ensuring compliance with the principles of law and due process inherent in the exercise of such powers.

15] In context with above, our attention has been invited by the petitioner's Counsel to the order passed by the State Government conferring its powers upon the District Magistrate or Commissioner of Police of the concerned area, as also, the order of approval to contend that both the orders are passed mechanically. One of the reasons attributed in support of argument is

that these two orders, which the State Government has passed, are identical in all the matters/petitions.

16] We have gone through both the orders to find that what is argued is correct. It will be, therefore, appropriate to reproduce both the orders, which will speak for themselves. The order of the State Government, conferring its powers under sub-section (1) upon District Magistrate, reads as under :

*"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 Sambhajinagar, 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 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.LV 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 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,*

*(Venkatesh Madhav Bhat)*
*Joint Secretary to the Government of Maharashtra, Home Department (Special).”*

17] Thus, the State Government has picked up a sentence from sub-section (2) saying that the Government of Maharashtra is satisfied that having regard to the circumstances prevailing or are likely to prevail in as many as thirty-four Districts, i.e., all the Districts in Maharashtra for the period commencing on 1/7/2024 and ending with 31/12/2024 are such, which would require conferment of powers of the State Government upon the concerned District Magistrates.

18] The order, if accepted, would mean that during the period from 1/7/2024 till 31/12/2024, the

circumstances that are prevailing or are likely to prevail in the entire State of Maharashtra are such, where persons (not known to anybody) are likely to act in a manner deterrent to maintenance of public order or will act so in future and, therefore, powers of the State Government could be exercised by respective District Magistrate, depending on a contingency that may arise. Such an order, in our view, is a classic example of what can be termed as a mechanical way to assess the situation. What is provided under sub-section (2) is that the State Government will have regard to the circumstances prevailing or likely to prevail in any area within the local limits of jurisdiction of District Magistrate. Thus, the situation is fact based in a particular area. The order of conferment, therefore, should describe the circumstances that are prevailing in an area or likely to prevail in that area, where there is likelihood that a person/s will act in a manner prejudicial to the maintenance of public order, instead, the State Government has picked up first sentence of sub-section (2), and conferred its powers to all District Magistrates in Maharashtra. Such conferment of powers in itself is a reason to hold that the order of conferment is passed mechanically.

19] On this point, a profitable reference can be made to the judgment of the Hon'ble Supreme Court in the case of *Abhay Shridhar Ambulkar Vs. S.V. Bhave, Commissioner of Police And Others [(1991) 1 SCC 500].* The petitioner therein was detained under the provisions of the National Security Act, 1980, which are *pari materia* the provisions of the Act of 1981. The order of detention

was issued by Commissioner of Police, Greater Bombay. The order was issued under Section 3(2) of the Act of 1980 with a view to prevent the petitioner therein from acting in any manner prejudicial to the maintenance of public order. One of the challenge was to the validity of the Government order conferring powers upon Commissioner of Police to exercise powers of the State Government. The Supreme Court reproduced Section 3 of the Act of 1980, and held as under :

> *"7. The power to make an order of detention primarily rests with the Central Government or the State Government. The State Government however, being satisfied with certain circumstances may order that the District Magistrate or the Commissioner of Police may also make an order of detention in respect of matters relating to the security of the State or public order or maintenance of supplies and services essential to the community against any person within their respective areas. The State Government can make such an order which shall not in the first instance exceed three months but it may extend such period from time to time making fresh order for a further period again not exceeding three months at one time. It may be noted that the conferment of this power on the District Magistrate or the Commissioner of Police is not to the exclusion of but in addition to the powers of the government to exercise its own power.*
>
> *8. The first paragraph of the order dated January 6, 1990 states that government was satisfied that having regard to the circumstances prevailing or likely to prevail in Greater Bombay Police Commissionerate it is necessary that during the period*

*commencing on January 30, 1990 to April 29, 1990 the Commissioner should also exercise the powers conferred under sub-section (2) of Section 3 of the Act. This is indeed no more than a reproduction of the terms of sub-section (3) of Section 3. But sub-section (3) refers to two independent circumstances namely: (1) the prevailing circumstances, (ii) the circumstances that are likely to prevail. The former evidently means circumstances in praesenti that is prevalent on the date of the order and the latter means the anticipated circumstances in futuro. If the government wants that the District Magistrate or the Commissioner of Police should also exercise the powers for the current period, it has to satisfy itself with the prevailing circumstances. If the government wants that the District Magistrate or the Commissioner of Police should also exercise the powers during the future period, it must be satisfied with the circumstances that are likely to prevail during that period. This seems to be the mandate of sub-section (3).*

*9. The subjective satisfaction for the exercise of power under sub-section (3) of Section 3 must be based on circumstances prevailing at the date of the order or likely to prevail at a future date. The period during which the District Magistrate or the Commissioner of Police, as the case may be, is to exercise the power provided by sub-section (2) of Section 3 is to be specified in the order which would depend on the existence of circumstances in praesenti or at a future date. If the subjective satisfaction is based on circumstances prevailing at the date of the order, the choice of period, which must not exceed three months, would have to be determined from the date of the order. If the conferment of power is considered necessary because of circumstances likely to prevail during the*

*future period, the duration for the exercise of power must be relatable to the apprehended circumstances. Therefore, the specification of the period during which the District Magistrate or Commissioner of Police is to exercise power under sub-section (2) of Section 3 would depend on the subjective satisfaction as to the existence of the circumstances in praesenti or futuro. Since very drastic powers of detention without trial are to be conferred on subordinate officers, the State Government is expected to apply its mind and make a careful choice regarding the period during which such power shall be exercised by the subordinate officers, which would solely depend on the circumstances prevailing or likely to prevail. The subjective satisfaction cannot be lightly recorded by reproducing both the alternative clauses of the statute. The subjective satisfaction on the prevailing circumstances, or circumstances that are likely to prevail at a future date is the sine qua non for the exercise of power. The use of the word 'or' signifies either of the two situations for different periods. That, however, is not to say that the power cannot be exercised for a future period by taking into consideration circumstances prevailing on the date of the order as well as circumstances likely to prevail in future. The latter may stem from the former. For example, there may be disturbances on the date of the order and the same situation may be visualised at a future date also in which case the power may be conferred on the subordinate officers keeping both the factors in mind; but in that case the two circumstances would have to be joined by the conjunctive word 'and' not the disjunctive word 'or'. The use of the disjunctive word 'or' in the impugned government order only indicates non-*

> *application of mind and obscurity in thought. The obscurity in thought inexorably leads to obscurity in language. Apparently, the government seems to be uncertain as to the relevant circumstances to be taken into consideration, and that appears to be the reason why they have used the disjunctive word "or" in the impugned order."*
>
> (Emphasis now)

20] Thus, the Supreme Court held that power to make an order of detention primarily rests with the Central Government or the State Government. The Court then mentioned about the circumstances under which the State Government could confer powers upon District Magistrate or Commissioner of Police. The Court highlighted necessary ingredients of sub-section (2) to confer powers. The Court held that if the Government wants that District Magistrate or Commissioner of Police should exercise powers during present or future period, it must be satisfied with the circumstances that are prevailing or likely to prevail during that period.

21] Thus, there are two set of circumstances; one is, prevailing, and other is, likely to prevail. The State Government, therefore, will have to specify in the order or otherwise as to what are the circumstances that are prevailing that would require District Magistrate or Commissioner of Police to exercise powers of the State Government. Depending on such circumstances, the State Government will have to then determine the period for which powers should be conferred upon the officers mentioned in sub-section (2).

22] Another set of circumstances will cover the circumstances that are likely to prevail in future. In such an eventuality, the State Government must specify in the order or otherwise the future date/period where such circumstances are likely to prevail, that would require the officers mentioned in sub-section (2) to exercise powers of the State Government. The duration of such exercise shall be contingent upon the nature and anticipated persistence of the circumstances likely to prevail in future.

23] Therefore, the period is relatable to the circumstances, which are prevailing or are likely to prevail. The order conferring such powers must, therefore, explicitly describe the nature of the circumstances that are prevailing or are likely to prevail within the particular area concerned.

24] It is in this context, the Supreme Court held that specification of period during which District Magistrate or Commissioner of Police is to exercise powers under sub-section (2) would depend on the subjective satisfaction as to the existence of the circumstances in *praesenti* or *futuro*. Most importantly, the Supreme Court held that since very drastic powers of detention, without trial, are to be conferred on subordinate officers, the State Government is expected to apply its mind and make a careful choice regarding period during which such powers shall be exercised by the subordinate officers, which would solely depend on the circumstances prevailing or likely to prevail. The Court then cautioned that subjective satisfaction cannot

be lightly recorded by reproducing both the alternative clauses of the statute. Such a finding, as regards alternative clauses, is recorded by the Supreme Court because in the order of conferment before it, the State Government picked up first sentence of sub-section (2) as it is, where the word 'or' is used between the words 'circumstances prevailing' and 'likely to prevail'. The Court then held that subjective satisfaction on the prevailing circumstances or the circumstances that are likely to prevail at a future date, is *sine qua non* for exercising of powers. The Court also noted that in a given case, the situation/circumstances may be such that later circumstances may stem from the former circumstances. Accordingly, the Court held that in such a situation, two circumstances would have to be joined by the conjunctive word 'and', not the disjunctive word, 'or. In the matter before the Supreme Court, the Government's use of the term, 'or' to connect the circumstances was construed as indicative of a failure to exercise due diligence or a lack of application of mind.

25] It appears to us that taking note of the aforesaid judgment, the State Government has made only one modification in the order of conferment, *viz.,* the word 'or' is now replaced by 'and'. Such modification, without describing either prevailing circumstances or the circumstances, which are likely to prevail, will not be sufficient to contend that the order of conferment is passed by considering all relevant aspects. In fact, the order indicates that the prevailing circumstances and the circumstances, that are likely to prevail, are identical in

all the Districts. Such an order of conferment is contrary to the spirit of Section 3(2) of the Act of 1981 and has potential of arbitrary use to detain any person under the garb of preventive detention. The order of conferment is thus unsustainable.

26] Taking clue from the judgment of the Supreme Court in *Abhay Shridhar Ambulkar's* case (supra), the Co-ordinate Bench of this Court in the case of *Lawrence Kaitan Koli Vs. S.V. Bhave, Commissioner of Police and another [1991 SCC OnLine Bom 104],* while dealing with Section 3 of the Act of 1981, held as under :

> *"11. Since the Supreme Court has interpreted section 3 of the National Security Act and found from the scheme the correct interpretation which is succinctly laid down in the said ruling and in view of the fact that section 3 of the M.P.D.A. Act, 1981, is pari materia similar to section 3 of the National Security Act, 1980, we have no hesitation to hold that at the time of conferment of power upon a District Magistrate or a Commissioner of Police, the Government must be satisfied on one or the other of the alternate circumstances, namely, the circumstances prevailing at the time of the order of the circumstances which, according to the Government, are likely to prevail in future. The use of the disjunctive word 'or' clearly indicates a wavering mind on the part of the State Government which would vitiate the order of conferment.*
>
> *12. In the present case, the Order No. DDS. 1390/1/SPL. 3(B) dated 9th July 1990 issued by the Home Department (Special and published in the Maharashtra Government Gazette, Part IV-B, dated 19th*

> *July 1990, is therefore, vitiated for non-application of mind.*
>
> *13. It, therefore, follows that since there was no valid conferment of power on the 1st respondent, then the order of detention issued on 12th July 1990, Annexure 'A' to the petition, in pursuance of the order of conferment dated 9th July 1990, is void ab initio.*
>
> *14. The contention of the learned Public Prosecutor that the State Government had approved the said order under sub-section (3) of section 3 of the M.P.D.A. Act does not hold any water. If the order itself is void ab initio, no amount of approval by the Government will make it valid. The power of approval as provided under sub-section (3) of section 3 of the M.P.D.A. Act is in the nature of superintendence or revisional power of the State Government in order to have a check on the authorities to whom a drastic and wide power of the State Government has been delegated. However, mere approval by the State Government would not validate an order which is void ab initio."*

27] Thus, the Co-ordinate Bench held that non-application of mind, while making order of conferment, would vitiate such order. Secondly, the order of detention, made under sub-section (2) in pursuance of such order of conferment, will be *void ab initio*. The Co-ordinate Bench has then declined to accept the argument of the State Government that since it has approved the order of detention in terms of sub-section (3), the order of detention may not be set aside. The Co-ordinate Bench held that if the order itself is *void ab initio*, no amount of

approval by the Government will make it valid. Similar is the case here.

28] As such, the petitions should be allowed on this count itself, however, we have noticed similar mechanical approach resorted to by the State Government, while granting approval under sub-section (3), as also, while confirming order of detention under Section 12. Accordingly, we proceed to examine the said issue.

29] Sub-section (3) of Section 3 provides that the order passed under sub-section (2) thereof, shall remain in force for not more than twelve days, unless, in the meantime, it has been approved by the State Government.

30] As noted above, power to make an order of detention primarily rests with the State Government. By way of sub-section (2), power of the State Government is conferred upon District Magistrate or Commissioner of Police to deal with the emergent situation that may arise to detain a person with a view to prevent him from acting in any manner prejudicial to the maintenance of public order. Such an exercise of powers of the State Government, by its officers, is, therefore, subject to approval by the State Government, that too, within twelve days of making order by the officers.

31] The approval order is thus as important as the detention order, and it must correctly show the facts and reasons considered under the law. Before approving a detention order, the Government must carefully check the

grounds for detention prepared by its officer and record its own satisfaction. This satisfaction is a subjective decision of the Government, and it does not need to be explained in great detail. However, this does not mean that the Government can approve the order casually without any reasoning. Some form of reasoning must be shown either in the approval order itself or must exist in official records.

32] In the cases before us, the order of approval is such that bare reading of order reflects non application of mind. One such order reads as under :

*"Date :- 30.10.2024.*

*ORDER*

*No. MPDA – 1024/CR – 713/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 and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (Mah. No. LV of 1981) the Government of Maharashtra hereby approves the order of District Magistrate, Yavatmal, D.O.No.Home/ Pol/Dest-12/ws/2322/2024, Office of District Magistrate, Yavatmal, dated 23rd October, 2024 made in respect of Akshay Bhaskar Sahare, R/o Javai Nagar, Talav Fail, Yavatmal to be detained under the said Act.*

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

*Section Officer to the Government of Maharashtra, Home Department (Special)."*

33] As could be seen, the State Government has assigned no reason why the order passed by the District Magistrate, Yavatmal, has been approved. The requirement under sub-section (3) is that the officer mentioned in sub-section (2) is duty bound to report the order of preventive detention to the State Government, together with the grounds on which the order has been made and such other particulars, which have bearing on the matter. These details are furnished to the State Government to facilitate it to examine the correctness of the order passed under sub-section (2) so that approval could be granted. The order of approval must, therefore, reflect consideration to such material. Further, the approval order should be passed by the officer, who represents State Government, naturally a responsible officer of the rank above the District Magistrate, who has passed detention order. Here, the order of approval, as also, the order of conferment, is passed by Section Officer. We are saying so because the respondents have not placed before us any other order of approval or material showing that the order has been passed by someone else other than the Section Officer, who is, as such, below the rank of District Magistrate.

34] The learned A.P.P. argued that the approval order was passed by the Additional Chief Secretary, not by a Section Officer. However, no proof has been provided to support this claim. The alleged order of the Additional Chief Secretary has been not produced nor was it served

to the petitioners. It is unclear why this approval order was not communicated to the petitioners, as this prevents them from knowing whether proper procedure was followed before their detention, especially since there was no trial. The approval order dated 30/10/2024 was thus passed without proper consideration and is indefensible. This is another reason why the petitions should be allowed.

35] Next comes, the order of confirmation, which the State Government is required to pass under Section 12, which reads as under :

> *"12. (1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the State Government may confirm the detention order and continue the detention of the person concerned for such period, not exceeding the maximum period prescribed by section 13, as it thinks fit.*
>
> *(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the State Government shall revoke the detention order and cause the person to be released forthwith."*

36] On reading the provisions, what transpires is that under sub-section (1), the State Government has discretion to either confirm or revoke the detention order. If the detention order is to be confirmed, the State Government will have to determine the period for which the detention should be continued, which will not exceed the period prescribed by Section 13 (which is twelve

months from the date of detention). As regards sub-section (2), the State Government has no option but to revoke the detention order, if, in the opinion of Advisory Board, there is no sufficient cause for detention of person concerned.

37] Thus, under sub-section (1), despite there being opinion of the Advisory Board that there is sufficient cause for detention of a person, the State Government has discretion to either confirm the detention order or to revoke the same, whereas, if the opinion of the Advisory Board is otherwise, the State Government has no option but to revoke the detention order. Thus, the provision under Section 12 recognizes the importance of liberty of a person, as guaranteed under Article 21 of the Constitution of India. Accordingly, a discretion is given to the State Government to revoke the order of detention, even if the Advisory Board's opinion is in favour of detention.

38] It is thus clear that the discretion to confirm a detention order must be used carefully and with proper reasoning. The confirmation order should clearly state why continuing the detention is necessary, based on the situation at the time the order is passed. The State Government must consider both the circumstances that existed when the detention order was first made under Section 3, and those that exist at the time of confirmation under Section 12. If the main purpose of detention has already been achieved, the Government should release the person. But if detention is to continue, the

Government must explain why it is still necessary, showing its satisfaction based on the circumstances expected to continue. The Government must also estimate how long those circumstances will prevail and accordingly, the period of continued detention prescribed.

39] Unfortunately, the orders of confirmation are passed as mechanically as orders of conferment of powers as also orders of approval of detention under Sections 3(2) and 3(3) of the Act of 1981.

40] As such, Mr. D.V. Chauhan, learned Senior Counsel/Government Pleader, argued that where the Advisory Board has opined that there is sufficient cause for detention of a person, the State Government, if is inclined to accept the opinion, need not assign additional reasons to confirm the order. We are, however, not impressed with the argument for two reasons; firstly, the discretion is given to the State Government with a view to assess the situation at the time of passing confirmation order as to whether the circumstances are such that would require continuation of detention. If the circumstances are not such as were prevailing at the time of passing detention order, then the State Government may revoke the detention order, despite there being opinion in favour of detention. Another reason is that the situation/circumstances may be such that continuation of detention may be required for a period shorter than 12 months. It is for this reason that there is provision under Sub Section (1) where, while confirming the order of detention, the State Government has to determine the

period for which detention of a person should be continued. Needless to say that determination of period will require application of mind, which should be reflected in the order. Unfortunately, the order of confirmation is passed in routine manner that too by way of remark on a note sheet maintained by the department. One such note/order is placed before us. The note/order reads as follows :

> *"After considering all the facts of the case, police report and opinion of the Advisory Board dated 2/5/2025, the detention order is confirmed and the detention of detenu be continued for a period of twelve months from the date of detention."*

41] As observed, the order of confirmation does not specify any reasons justifying the decision nor does it provide reasons to continue detention for full twelve months. Such remarks or orders have been issued uniformly across all petitions. We shall revisit this order shortly; however, prior to that, it is pertinent to examine the procedural framework adopted by the Government.

42] One such note sheet is placed before us. The Desk has prepared a note referring to the opinion of Advisory Board. The note indicates that one Mrunal Mayur Gajbhiye (petitioner in Writ Petition No. 435/2025) has been detained in terms of order dated 29/8/2025 (correct date is 29/8/2024). The order of approval was made on 9/9/2024, i.e., within twelve days of making order of detention. The petitioner was detained on 1/4/2025, i.e., after about seven months. The report

of Advisory Board dated 2/5/2025 was received by the State Government on 2/5/2025. The note then records that the Advisory Board has given its opinion that there is sufficient cause for detention of detenu. The note, however, does not mention that the papers relating to the detention order, approval order and the Advisory Board's report, are being placed for perusal.

43] The note further indicates that the file was to reach the confirming authority through Desk Officer Mr. Padole, thereafter Under Secretary Ms Swapna Deshpande and then Deputy Secretary Shri Rajendra Bhalwane. The note, however, has been placed before the Section Officer, and thereafter, directly before the Additional Chief Secretary, the confirming authority. The Section Officer has made following remarks.

> *"After considering all the facts of the case, police report and opinion of the Advisory Board dated 2/5/2025, the detention order is confirmed and the detention of detenu be continued for a period of twelve months from the date of detention."*

44] As seen, the order of confirmation has been passed by the Section Officer and, if not, he has at least proposed the order that the Additional Chief Secretary may pass. In turn, the Additional Chief Secretary, in the form of making remark, has reiterated what has been proposed by the Section Officer. The remark does not indicate independent application of mind by the Additional Chief Secretary. On the top of it, this remark/order is never conveyed to the detenu. In fact,

upon query made by us to the learned A.P.P. Mr. Doifode, he appeared clueless whether to term the aforesaid remark as an order under Section 12 or a remark on the note-sheet.

45] Further, this remark/order is made on 13/5/2025, which is after a lapse of more than eight months of passing detention order. The Additional Chief Secretary has not mentioned as to why in the case, where order of detention was passed on 29/8/2024, the detention should be continued for twelve months from 13/5/2025. There is nothing in the order to indicate that the circumstances prevailing on 29/8/2025 were still prevailing or likely to prevail for another twelve months. The officer has not considered the facts of the case, which disclose that detention order was passed on 29/8/2024 but the petitioner was arrested on 1/4/2025, i.e., after seven months. The officer ought to have enquired as to why did it require seven months to detain the petitioner and what steps were taken in the meantime, and most importantly, whether the circumstances then prevailing were the same on the date of passing confirmation order. The note, which we have referred to, is now marked Article 'X' for identification, and is kept with the record in Writ Petition No. 223/2025.)

46] Thus, in the matter of curtailing personal liberty of a person, the State Government applied the process of a routine administrative matters, where the method of arriving at a decision is based on formulation of note by a junior officer, which moves upward to the

authorized officer through several officers. We wonder how, in the matter of personal liberty, the State Government can act in such an arbitrary manner. Such a course is unacceptable.

47] The confirming authority, in matters of preventive detention, should apply his mind independently to the material placed before him, while taking decision under Section 12. Needless to say that the officer can always take assistance of the concerned officials, if so required.

48] On the point of importance of period for continuation of detention, the Supreme Court, in the case of *Ameena Begum Vs. State of Telangana And Others [(2023) 9 SCC 587],* noted that seldom, it was found that order of detention continued for less than maximum period permissible under the relevant law. The Court then referred to couple of judgments, and having observed uncanny consistency of authorities continuing detention orders under preventive detention laws for maximum permissible span of twelve months from the date of detention as a routine procedure, without slightest application of mind, expressed its view to dissuade continuation of detention order till the maximum permissible duration, unless some indication is provided therefor by the Government concerned in the confirmation order. The Court observed that the term 'maximum period' in Section 13 vests the Government with discretion, allowing it to be exercised, while considering whether the detention is to be continued for

the maximum period of twelve months or any lesser period. The Court then highlighted the importance of assigning reason for continuation of detention for a certain period. The following are the relevant findings.

> *"73. Discretion, it has been held by this Court in Bangalore Medical Trust v. B.S. Muddappa [(1991) 4 SCC 54], is an effective tool in administration providing an option to the authority concerned to adopt one or the other alternative. When a statute provides guidance, or rule or regulation is framed, for exercise of discretion, then the action should be in accordance with it. Where, however, statutes are silent and only power is conferred to act in one or the other manner, the authority cannot act whimsically or arbitrarily; it should be guided by reasonableness and fairness. A legislature does not intend abuse of the law or its unfair use.*
>
> *74. …*
>
> *75. True it is, Deepak v. State of Maharashtra [(2023) 14 SCC 707] was not a case arising our ot preventive detention laws. However, in situations where discretion is available with authorities to decide the period of detention, as articulated by Lord Halsbury in Susannah Sharp vs. Wakefield, 1891 AC 173 at p. 179 (HL), this discretion should be exercised in accordance with "the rules of reason and justice, not according to private opinion; according to law, and not humour; it is to be, not arbitrary, vague, and fanciful, but legal and regular".*
>
> *76. ….*
>
> *77. Having held thus, we are not unmindful of the decision in Vijay Kumar v. Union of India [(1988) 2 SCC 57] where this Court*

*rejected the contention that the Government had not applied its mind while confirming the detention of the appellant for the maximum period of 1 (one) year from the date of detention as prescribed in Section 10 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Dealing with the contention that some reason should have been given why the maximum period of detention was imposed and while holding it to be without merit, the main judgment of the Presiding Judge of the Bench reasoned that Section 10 does not provide that any reason has to be given in imposing the maximum period of detention and that in confirming the order of detention it may be reasonably presumed that the Government has applied its mind to all relevant facts; thus, if the maximum period of detention has been imposed, it cannot be said that the Government did not apply its mind to the period of detention. It was also held that in any event Section 11 enables revocation and/or modification of the order by the Government at any time and in the circumstances, the appellant was in the least prejudiced. The concurring judgment also took the same view that the authority is not required to give any special reason either for fixing a shorter period or for fixing the maximum period prescribed under Section 10.*

*78. Much water has flown under the bridge since then. It is no longer the law that an administrative authority is under an obligation to give a reasoned decision only if the statute under which it is acting requires it to assign reasons. On the contrary, it is only in cases where the requirement has been dispensed with expressly or by necessary implication that an administrative authority is relieved of the obligation to record reasons. Further,*

*the presumption of official acts having been validly performed cannot be pressed into service for upholding the period for which the detention would continue if the order of detention itself suffers from an illegality rendering it unsustainable. That apart, the reasoning of no prejudice being suffered by the detenu because a power of revocation/ modification is available to the Government would not be of any consolation if such power were not exercised at all. In such a case, the prejudice would be writ large. The decision in Vijay Kumar is, therefore, distinguishable.*

*79. Viewed reasonably, the period of detention ought to necessarily vary depending upon the facts and circumstances of each case and cannot be uniform in all cases. The objective sought to be fulfilled in each case, whether is subserved by continuing detention for the maximum period, ought to bear some reflection in the order of detention; or else, the Government could be accused of unreasonableness and unfairness. Detention being a restriction on the invaluable right to personal liberty of an individual and if the same were to be continued for the maximum period, it would be eminently just and desirable that such restriction on personal liberty, in the least, reflects an approach that meets the test of Article 14. We, however, refrain from pronouncing here that an order of detention, otherwise held legal and valid, could be invalidated only on the ground of absence of any indication therein as to why the detention has been continued for the maximum period. That situation does not arise here and is left for a decision in an appropriate case.*

*80 to 82 ....*

*83. However, according to Mr. Dave, the decision in Pesala Nookaraju [(2023) 14*

*SCC 641] answered the issue under consideration. Reference was made to a sentence in para 47 where this Court held that:*

> *"47. ... The Act does not contemplate a review of the detention order once the Advisory Board has opined that there is sufficient cause for detention of the person concerned and on that basis, a confirmatory order is passed by the State Government to detain a person for the maximum period of twelve months from the date of detention."*

*84 and 85 ....*

*86. On the merits of the matter, we find the Court in Pesala Nookaraju to have found the impugned order of detention to be perfectly valid. This is borne out by paras 68 and 64, which we quote hereunder:*

*"68. .... if the detention is on the ground that the detenu is indulging in manufacture or transport or sale of liquor then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Prohibition Act but if the liquor sold by the detenu is dangerous to public health then under the 1986 Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on the material available to it that the liquor dealt with by the detenu is liquor which is dangerous to public health to attract the provisions of the 1986 Act and if the detaining authority is satisfied that such material exists either in the form of report of the chemical examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.*

*74. In the case on hand, the detaining authority has specifically stated in the grounds of detention that selling liquor by the appellant detenu and the consumption by the people of that locality was harmful to their health. Such statement is an expression of his subjective satisfaction that the activities of the detenu appellant is prejudicial to the maintenance of public order. Not only that, the detaining authority has also recorded his satisfaction that it is necessary to prevent the detenu appellant from indulging further in such activities and this satisfaction has been drawn on the basis of the credible material on record."*

*87. ....*

*88. Having read the decision in Pesala Nookaraju, it seems to us that the Court may not have considered it necessary to deal with the contention having formed a firm opinion on the materials on record that the appellant was indulging in activities of selling liquor to consumers which is harmful for health and, thus, prejudicial to maintenance of public order. It is on such basis that satisfaction of the detaining authority for ordering detention commended acceptance of the Court.*

*89. On the contrary, we have come to the conclusion on facts that the activities attributed to the appellant's husband as such cannot be branded as prejudicial to maintenance of public order. The decision in Pesala Nookaraju, therefore, is distinguishable and does not assist Mr. Dave. We have, thus, no hesitation to reject the contentions of Mr. Dave."*

(Emphasis now)

49] Thus, the Court took note of the decision in *Vijay Kumar's* case, wherein the Supreme Court took a view that the confirming authority is not required to give any special reason for fixing time of detention, to render a finding that with passage of time, the importance of speaking order in administrative decision is well recognized. The Supreme Court held that it is no longer a law that an administrative authority is under an obligation to give a reasoned decision only if the statute under which it is acting requires it to assign reason. On the contrary, it is held that only in cases, where the requirement has been dispensed with expressly or by necessary implications that an administrative authority is relieved of obligation to record reasons. The Court then held that by applying the test of reasonability, the period of detention ought to necessarily vary, depending upon the facts and circumstances of each case, and cannot be uniform in all cases. The Court further observed that detention, being a restriction upon the fundamental and inviolable right to personal liberty guaranteed under the Constitution, must, when extended to its maximum permissible duration, be justified by a rationale that aligns with the principles of equality before the law and non-arbitrariness as mandated by Article 14. It was emphasized that such restrictions should, at a minimum, reflect an approach that satisfies the requirements of substantive equality and non-discrimination. However, the Court refrained from holding that an order of detention, which is otherwise deemed legal and valid,

could be invalidated solely on the ground of the absence of explicit reasoning within the detention order explaining why the detention has been extended to the maximum permissible period. This is because the factual circumstances necessary for such a determination did not present themselves in the case before it, and therefore, the question was left open for consideration in an appropriate case where such issues may arise.

50] We are of the considered view that it is incumbent upon this Court to determine the consequences arising from the issuance of orders found to be unsustainable under Sections 3(2) and 12 of the Act of 1981. In light of the foregoing discussion, the consequence of such unsustainable orders would be that the order of detention cannot be upheld and, consequently, the second course of action prescribed under Section 12(1) shall automatically be invoked, namely, the revocation of the detention order. The rationale behind this is clear; once the order of confirmation is rendered illegal or invalid, the continued detention of the individual ceases to have any legal justification. Therefore, the detenu must be released forthwith, unless required in any other case.

51] At the cost of repetition, we mention here that the circumstances prescribed under sub-sections (2) and (3) of Section 3 are most crucial. The State Government, on the basis of circumstances prevailing or likely to prevail, should confer upon its officers, the powers of the State Government for a particular period.

Usually, with passage of time, the circumstances would change and, therefore, while confirming the order of detention, the confirming authority will have to ascertain the situation on the date of confirming the order of detention, and accordingly, take a decision whether to continue detention, and if yes, for how long. In a given case, the State Government may find that the circumstances are likely to prevail for few or more months and accordingly, the order continuing detention should be justified, however, in the present case, the State Government has applied uniform criteria, in all the districts, to continue the order of detention for twelve months, which itself is sufficient reason to hold that the order of confirmation is passed mechanically i.e. without application of mind. The order of confirmation, therefore, is unsustainable in law.

52] The aforesaid finding can be also substantiated in terms of the Supreme Court judgment in case of ***Sunil Batra vs Delhi Administration and ors. [(1978) 4 SCC 494]*** wherein it was held that administrative authorities must provide reasons for decisions affecting fundamental rights, reinforcing the need for transparency and accountability.

53] The situation could be viewed from another angle as well. As stated, the remark/order made by the Additional Chief Secretary is never served upon the detenu, instead, the order, as passed/proposed by the Section Officer, is conveyed to the detenu. One such order is reproduced hereunder :

*"Date:- 17.12.2024*

*ORDER*

*No. MPDA - 1024/CR - 712/Spl - 3B:- Whereas the District Magistrate, Yavatmal in exercise of powers conferred by 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 (hereinafter referred to as the 'said Act'), issued an order on 23rd October, 2024 directing Akshay Bhaskar Sahare, R/o. Javai Nagar, Talav Fail, Yavatmal, 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;*

*Now, therefore, in exercise of powers conferred by sub-section (1) of Section 12 of the said Act, the Government of Maharashtra hereby confirms the detention order issued by the District Magistrate, Yavatmal and directs that the detention of Akshay Bhaskar Sahare, be continued for a period of Twelve months from the date of detention.*

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

*Section Officer to the Government of Maharashtra, Home Department (Special).*"

54] Thus, the heading of the document is ‘ORDER’. The Section Officer has referred to the detention order passed under Section 3, thereafter, the opinion of Advisory Board, and lastly, the decision of the State Government to confirm the detention. After doing so, it is the Section Officer, who has passed the order under Section 12(1) by which he has not only confirmed the order of detention, but continued the same for a period of twelve months.

55] As such, the argument of Mr. D.V. Chauhan, learned Senior Counsel/Government Pleader and the learned A.P.P.s is that the Section Officer has, by way of aforesaid communication, conveyed the decision taken by the State Government. However, and from the perspective of detenu, what is conveyed to him is an order passed by the Section Officer. It is nobody’s case that the remark/decision taken by the State Government, and the reasons thereof has been conveyed to the detenu. He is, therefore, unaware of the grounds on which confirmation order was passed, as also, the reasons why his detention is continued for a period of twelve months.

56] We may note here that since none of the petitioners was made aware of the decision taken by the State Government, they have all challenged the order/ communication made by the Section Officer. Further the detenu is not made aware of the grounds on which the State Government has taken a decision to confirm the order of detention, as also, the grounds on which his

detention is continued for twelve months. The petitioners, therefore, have been deprived of their valuable right to know the reasons for curtailing their personal right, that too, without trial. Such a communication is hit by Article 21 read with Article 14 of the Constitution of India and is thus unsustainable in law.

57] Learned Government Pleader/Senior Counsel invited our attention to judgment of the Constitution Bench in the case of ***Hardhan Saha .Vs. State of West Bengal; [1975 (3) SCC 198]***, to contend that the principles of natural justice have been followed in the instant case while passing various orders because procedure led down under the provisions of the Act of 1981 have been followed.

58] The Constitution Bench in context with the challenge to the validity of the Act of 1971, the provisions of which are pari materia the provisions of the Act of 1981. observed that an opportunity of making a representation cannot be equated with an opportunity of oral hearing or hearing before the Court and the procedure of judicial trial. The Court further held that duty to consider the representation made by detenu does not mean a personal hearing or the disclosure of the reasons and that the procedural reasonableness, which the petitioners therein invoked while challenging the vires of the Act 1981 cannot have any abstract standard or general pattern of reasonableness. The Court also held that elaborate rules of natural justice are excluded either expressly or by necessary implication where the

procedural provisions are made in the statute or where the disclosure of relevant information to an interested party would be contrary to the public interest.

59] The reliance on the above judgment is misplaced. The observations made by the Supreme Court were in context with the challenge to the validity of the Act of 1971. The grounds of challenge, amongst others, were reasonableness and adherence to the rights guaranteed under Articles 14, 19, 21 and 22 (5) of the Constitution of India. The Constitution Bench, while declining to grant relief, made aforesaid observations wherein the Court noted that opportunity of making representation in context with the provisions of the Act were reasonable and that elaborate rules of natural justice are excluded where the procedural provisions are made in this regard. Thus, criteria of reasonableness and adherence to the provisions of the Constitution were considered in the light of the challenge to vires of the Act of 1981.

60] In the present case, we are dealing with the encroachment of rights of an individual in the background of their alleged activities having potential to disturb public order. We have noted procedural lapses at each level resulting into deprivation of fundamental rights of each petitioner. In fact, the question is not whether reasonable opportunity of hearing was given to the detenu. The issue pertains to strict compliance of the provisions of the Act of 1981, which according to us, has been mechanically complied.

61] Another facet of the process is the role of Advisory Board, which is equally important. The Supreme Court in the case of *Nenavath Bujji etc. Vs. State of Telangana and Others [2024 SCC OnLine SC 367]* has, at length, dealt with the role of the Advisory Board. The Court, taking aid of Article 22(4), observed that the Advisory Board (s), under preventive detention legislation, are not a superficial creation but one of the primary constitutional safeguards available to the detenu against the order of detention. They are tasked with independently reviewing detention orders to ensure that such orders are not passed in a routine or mechanical manner. The Supreme Court observed that the Advisory Board must play an active role in ascertaining the legality of the detention and can opine that the order is unsustainable, if it is against the law or Courts' precedents. The Court expected Board's scrutiny to be robust, ensuring that detention orders are justified by law and not merely based on the detaining authorities' subjective satisfaction.

62] Accordingly, we have gone through the Board's opinion. It consists of two parts. The first part refers to the order of detention, grounds of detention, recent activities of detenu, in-camera statements of two witnesses and a fact that the detenu and the concerned police officer were heard and that the Board has carefully perused the material placed before it to render a one line finding that there are sufficient grounds for further

detention of the detenu. Part two consists of opinion, which reads as under :

> *"The Advisory Board is of the opinion that there is sufficient cause for continuing detention of the above named detenu under Section 3 of the Act of 1981."*

63] In all cases before us, the opinion is formed in the manner as stated above. The Board's role, however, is to independently review detention order to ensure that such orders are not passed in a routine or mechanical manner. In the instant case, the orders under Section (3) viz. order of conferment of powers and order of detention, are passed in routine and mechanical manner. There is, thus, scope for the Board to play a pro-active role in terms of Article 22(4) of the Constitution of India. Nonetheless, considering the stature of the Members of the Board, we have no doubt that henceforth, the order of detention will be reviewed in terms of *Nenavath Bujji's* case.

64] We are, however, more concerned about the role played by the officers of the State Government. Considering the scheme of the Act of 1981, we are of the view that at each level, the officer/authority concerned is under an obligation to consider material for the purpose of passing orders at each level. At the first instance, the State Government, while conferring powers upon the officers mentioned in sub-section (2) of Section 3 will have to specify that in a particular area, the circumstances prevailing are such or are likely to prevail, where there is possibility of a person/s acting in any manner prejudicial

to the maintenance of public order, and the contingency may arise, where the officers mentioned in sub-section (2) will be required to be equipped with the powers, which otherwise are exercised by the State Government. The District Magistrate or the Commissioner of Police will have to then consider the material to form an opinion whether the circumstances are prevailing or whether they are likely to prevail, where a person/s is likely to act in a manner prejudicial to the maintenance of public order, and if so, whether there is any other alternative but to detain him.

65] Thus, the order of conferment of powers must describe the circumstances, which are likely to prevail in a particular area for exercising powers of the State Government by the officers mentioned in sub-section (2). It is so because the provisions under the Code of Criminal Procedure, 1973 (for short "the Code")/Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "B.N.S.S."), are otherwise sufficient to take appropriate measures to prevent the crime.

66] Section 149 of the Code (Section 168 of the B.N.S.S.) provides that every police officer is empowered to interpose and make his best efforts in preventing a cognizable offence. Section 150 of the Code (Section 169 of the B.N.S.S.) provides that every police officer, on receiving information of a potential design to commit any cognizable office, shall communicate such information to the officer to whom he is subordinate to, and to any other such officer, who has the authority to deal with the

prevention of crime of such cognizable offence. Section 151(1) (Section 170(1) of the B.N.S.S.) provides that a police officer by knowing or receiving a design that has a potential to commit any cognizable offence, may arrest such person so designing, without warrant or orders from a Magistrate, provided it appears to the police officer that commission of offence cannot be prevented by any other way. Section 152 of the Code (Section 171 of the B.N.S.S.) deals with prevention of injury to public property, public landmarks or other marks used for navigation.

67] Thus, there are sufficient measures in the Code to prevent the crime. The order of conferring powers must, therefore, describe the circumstances prevailing or likely to prevail, which otherwise cannot be dealt with in terms of the provisions of the Code/B.N.S.S. The scheme of the Act of 1981 is to prevent a person from disturbing public order, which is altogether different from activities which can be prevented by invoking the provisions of the Code/B.N.S.S. The anticipated act must be relatable to the circumstances prevailing in a particular area or are likely to prevail in future.

68] The Act of 1981 was brought into force on the premise that circumstances existing in the state of Maharashtra would require provisions of law for prevention of communal, antisocial and other dangerous activities and for matters connected therewith. Section 2(a) defines the expression, “acting in any manner

prejudicial to the maintenance of public order", which reads as under:

> *"2. In this Act, unless the context otherwise requires,*
>
> *(a) "acting in any manner prejudicial to the maintenance of public order" means*
>
> *(i) propagating, promoting, or attempting to create, or otherwise functioning in such a manner as to create, feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community or language of any persons or class of persons;*
>
> *(ii) making preparations for using, or attempting to use, or using, or instigating, inciting or otherwise abetting the use of any lethal weapons (including firearms and explosives, inflammable or corrosive substances), where such preparations, using, attempting, instigating, inciting or abetting, disturbs, or is likely to disturb, public order;*
>
> *(iii) attempting to commit, or committing, or instigating, inciting or otherwise abetting the commission of, mischief within the meaning of section 425 of the Indian Penal Code (XLV of 1860) in respect of public property or means of public transportation, where the commission of such mischief disturbs, or is likely to disturb, public order;*
>
> *(iv) committing offences punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the*

*commission of such offences disturbs, or is likely to disturb, public order."*

69] Thus the Act targets individuals like slumlords, bootleggers, drug offenders, video pirates and other dangerous persons. The petitioners herein are treated as dangerous persons, meaning thereby that they pose a general risk of harm, danger, or alarm to the public at large. Thus, they will fall in the category as defined under Section 2(a), (iv) of the Act of 1981.

70] In the aforesaid background, as also various pronouncements mentioned earlier, we will now examine the detention order. The detaining authority has considered three crimes registered against the petitioners-detenu, *viz.* crime no. 257/2024 under Sections 454, 457 and 380 of the Indian Penal Code, 1860 (for short "I.P.C."), crime no. 258/2024 under Sections 457 and 380 of the I.P.C., and crime no. 572/2024 under Sections 454 and 380 of the I.P.C. All these offences were registered against unknown persons. The Investigating Officer has taken into confidence the petitioner, who confessed that he has committed offence. The detaining authority, based only on such a theory of confessional statement of accused, which otherwise is an inadmissible evidence, has held that he is a person constantly indulging in criminal acts.

71] The detaining authority has then referred to in-camera statements of two witnesses. The first witness has seen the petitioner removing battery of truck. The witness enquired as to why is he removing the battery,

upon which the petitioner threatened him by saying that if he tells it to the truck owner, he (petitioner) will kill him (witness). Because of such threat, the witness is said to be not ready to disclose his name and/or to report the matter to police. The second witness has seen the petitioner stealing old gram kept on the cart of a merchandise. The witness told him to not take chana sticks, upon which the petitioner took out a knife and swung it at the witness and threatened to kill his family. It is for this reason the witness got scared and did not report the matter to police nor is he willing to disclose his name.

72] Based on the above set of facts, the detaining authority has recorded its satisfaction that the aforesaid criminal activities are disturbing the maintenance of public order on a large scale. The petitioner is then branded as a dangerous person by saying that such activities have created a sense of fear in the minds of people in Yavatmal city. The detaining authority has then held that such criminal attitude and actions show that the petitioner is likely to commit such act of disturbing the public order in future as well. Accordingly, the order of detention under Section 3(2) is passed.

73] The argument of the petitioner is that the activities referred to by the detaining authority even if accepted to have undertaken by the petitioner, the same will not fall in the category of disturbing public order as defined under Section 2(a) of the Act of 1981. According to the petitioner's Counsel, these activities are individual

based and has no effect on the community or the public at large and thus can be dealt with under the provisions of ordinary law.

74] We find substance in the argument, but before we comment further, we deem it appropriate to refer to the judgment of the Supreme Court in the case *Ram Manohar Lohia Vs. The State of Bihar and another [AIR 1966 SC 740],* wherein the Supreme Court, while explaining the terms 'public order' and 'law and order', 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 if 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."*

75] 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 breaches of peace of a purely local significance, which primarily injure specific

individual and only in a secondary sense public interest. Thus, the underlined principle is that the activity of a person should be such that will affect the public order. The three circles referred to by the Supreme Court would explain that the activities disturbing law and order may not necessarily disturb the public order. Thus, when we speak of disturbance of public order, we speak of a behaviour that disturbs peace, safety and security of general public, creating a widespread sense of insecurity.

76] Further, in the case of *Khudiram Das Vs. The State of West Bengal And Others [(1975) 2 SCC 81],* the Supreme Court, while examining history-sheet of the detenu, clarified that generalization could not be made that the detenu was in the habit of committing those offences. The Court further held that merely because the detenu was charged with multiple offences, it could not be said that he was in the habit of committing such offences and that habituality of committing offences cannot, in isolation, be taken as basis of any detention order. The Court held that cases in which such habituality has disturbed public order, could only qualify as a ground to order detention.

77] Thus, merely on the basis of multiple offences, the activities of detenu cannot be termed as the act amounting to disturbing public order unless such habituality has disturbed any public order. In the present case, the history of offences considered by the detaining authority is based on confession of petitioner – accused that he has committed theft. Such an inadmissible

evidence cannot be taken aid of to infer that he is constantly engaged in criminal acts. The in-camera statement also refers to offence of theft, where a particular witness got scared of petitioner's acts. There is thus nothing to show that such acts of petitioners caused widespread sense of insecurity. The detaining authority in each case, has after referring to in-camera statements of the witnesses, which speak of crime against an individual, labelled such acts to be amounting to disturbing public order. The detaining authority has not justified in its order as to how these acts of detenu can create or has created a widespread sense of insecurity in a particular area. The acts attributed to the petitioners-detenus, therefore, do not constitute conduct capable of disturbing public order. The detention order will thus not stand scrutiny of law.

78] Here, we may again refer to *Nenavath Bujji's* case, where the Supreme Court held that in such cases, instead of proceeding to pass an order of detention, the authority should have approached the Court concerned for cancellation of bail on the ground that the detenu had continued to indulge in nefarious activities and many more FIRs have been registered against him. The Supreme Court observed that whenever any accused is released on bail by any criminal Court in connection with any offence, whether it is specifically said so in the order of bail, while imposing conditions or not, it is implied that bail is granted on the condition that the accused shall not indulge in any such offence or illegal

activity in future. Thus, appropriate remedy, in such cases, is to approach Court for cancellation of bail.

79] In the present case also, similar such course could have been adopted by the State Government. No reason is, however, forthcoming as to why such measure was not adopted.

80] The argument of the respondents is that since the witnesses have not come forward to lodge report against the petitioner out of fear, seeking cancellation of bail was quite challenging.

81] We do not find substance in the argument, inasmuch as, if the witnesses were not willing to come forward to disclose their identity, the police officials, who acquired knowledge through such witnesses, may also lodge report under Section 154 of the Code (Section 173 of the B.N.S.S.). Once the information about cognizable offence is received by police, it is obligatory to record the information without any delay. It is not always necessary that one, who has witnessed the crime, must lodge the F.I.R. Further, the Investigating Officer, in such cases, may take recourse to the provisions of the Maharashtra Witness Protection And Security Act, 2017 (for short "Act of 2017"), to conceal the identity of witness or to provide necessary security to him, and accordingly, encourage him to support the case of prosecution. By adopting such a course, the apprehension of witness is taken care of because his identity will be concealed in terms of the Act of 2017.

82] Section 6 of the Act of 2017, provides for protection of witnesses. Section 7 deals with procedure for providing such protection. Section 8 provides for protection during investigation and Section 9 for such protection during trial. Section 11 provides for non disclosure of names of witnesses during investigation. Section 12 provides for measures that may be taken by the Court, which includes recording evidence of protected witnesses *via* video link or by any other mode. It further provides that mentioning the names and addresses of witnesses should be avoided, in orders and judgments or any other record of a case, accessible to the public.

83] Thus, adequate provisions are made to protect the witnesses, who have potential threat. The concealment of identity of the witnesses in terms of Sections 11 and 12 of the Act of 2017 appears to us to be the adequate solution, where the witness is not willing to come forward to give evidence in public. As such, the provisions of this Act are applicable for the offence punishable for more than seven years, Section 2(a) (iv) of the Act of 1981 also refers to offences punishable for more than seven years with a rider that commission of such offences has disturbed or is likely to disturb public order. In any event and as a special case, the Investigating Officer may approach the jurisdictional Magistrate for orders to protect the witness by concealing his name or otherwise.

84] Further, the detaining authority has referred to two instances recorded through in-camera witnesses; one refers to theft of truck battery and other of chana stick. The petitioner has given threat to both the witnesses and, therefore, can well ascertain as to who these witnesses must be. Thus, the plea of concealing identity is devoid of merit. Also, the police has assigned no reason why was further enquiry not made to ensure compliance under Section 154 of the Code. In the first case, the police could have approached the truck owner, whose battery was stolen, firstly to verify the statement of the witness, and secondly, to encourage the truck owner to lodge F.I.R. against the petitioner. Once F.I.R. is registered, whether by police or otherwise, the Investigating Officer may then approach the Court concerned, for cancellation of bail. Such a course shows transparency in handling the cases and ensures detention of persons, for more than twelve months, if offence is proved.

85] Put all together, before us is an order of conferment of powers of the State Government to its officers under Section 3 (2) of the Act of 1981 depicting a picture that in the entire State of Maharashtra, the circumstances that are prevailing and likely to prevail are identical. Thus the State Government has projected a sorry state of law and order situation in entire State. Such set of circumstances is not envisaged under Section 3 (2) of the Act of 1981. What is provided is a circumstance prevailing or likely to prevail in any area within the local jurisdiction of the District Magistrate or Commissioner of

Police. Thus, the circumstances of a particular area within a district should be considered to confer powers of the State Government upon its officers. The State Government is therefore required to describe the circumstance prevailing in a particular area of a district, having potential of persons acting in a manner prejudicial to public order. A specific feature of the prevailing circumstance must be, therefore, prescribed in the order conferring powers. As against, a situation is projected where identical circumstances are prevailing or likely to prevail across the entire State. Such an order, which does not satisfy the statutory requirements, would vitiate the order. Consequently, detention orders passed under Sub Section (2) in pursuance of such an order would be void ab initio. Even otherwise, the order of detention in each case does not take into consideration the aspect of public disorder as defined under Section 2(c) of the Act of 1981. The acts referred to in each detention order is of a minor breach of peace of a local significance, having no impact on community at large. As regards order of approval, it is often passed routinely and mechanically by a Section Officer. Similar issues arise with orders under Section 12, which are also passed by Section Officers, an approach not permissible in law. The order does not specify whether the prevailing circumstances at both stages were the same or expected to remain so. The detention has been extended for 12 months in all cases without regard to the circumstances at the time of confirmation vis-a-vis the circumstances at the time of detention. The confirming authority's order is not communicated to the

detenu. Such decisions are taken as routine administrative acts, recorded in note-sheets, without indicating application of mind.

86] The orders of conferment of powers, detention, appeal and confirmation of detention, therefore, do not withstand legal scrutiny and are liable to be quashed and set aside.

87] The petitions are accordingly allowed. The orders of detention as also the orders of confirmation in respective petitions stand quashed and set aside.

88] The petitioners shall be released forthwith, if not required in any other case.

89] All the petitions are accordingly disposed of.

Rule accordingly.

(JUDGE) (JUDGE)

Sumit