IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1490 OF 2025

Santosh @Chingya Sainath Tarte,
Age : 24 years, Occ : - Labour
R/o. :- Khobragade Nagar,
Nanded …Petitioner

VERSUS

1. The District Magistrate,
Nanded.

2. Superintendent of Police,
Nanded.

3. The State of Maharashtra
(Through the Secretary Home Department (Spl)
Mantralay, Mumbai.

4. The Superintendent Aurangabad
Central Prison, Aurangabad. …Respondents

…

Mr. Abhaysinh K. Bhosle, Advocate for the Petitioner.
Mr. S. P. Sonpawale, A.P.P. for Respondent Nos. 1 to 4.

…

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

Reserved on : 27.01.2026

Pronounced on : 04.02.2026

JUDGMENT (PER : ABASAHEB D. SHINDE, J.) :

1. Heard.

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

3. By this Writ Petition, the petitioner is taking an exception to the detention order and committal order dated 08.08.2025 bearing No.2025/RB-1/Desk-2/T-4/MPDA/CR-48, passed by Respondent No.1-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 (hereinafter referred to as ***"MPDA Act"***) as well as the confirmation order dated 17.09.2025, passed by Respondent No.3- 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. The impugned detention order has been passed on the proposal submitted by the Police Inspector, Police Station Shivajinagar, Nanded. The proposal has been routed through the Superintendent of Police and eventually placed before Respondent No.1-District Magistrate who claims to have arrived at a subjective

satisfaction that the petitioner's detention is necessary to prevent him from acting any manner prejudicial to public order. It is pertinent to note that, though the basis for submission of proposal for detention of petitioner is registration of nine (9) past criminal cases against the petitioner as well as Chapter Case No. 13 of 2025 under Section 129 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS") dated 01.05.2025 registered with Itwara Police Station, Chapter Case No. 04 of 2023 under Section 110 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") dated 04.03.2023 and Chapter Case No. 201 of 2023 under Section 107 of Cr.P.C dated 08.09.2023 registered with Shivajinagar Police Station, however the impugned order of detention is based only on recent two offences bearing Crime No.593 of 2025 registered on 22.06.2025 and Crime No. 690 of 2025 registered on 19.07.2025 both under Sections 4 and 25 of the Arms Act with Nanded Rural Police Station. In addition to above two crimes, two in-camera statements of witnesses 'A' and 'B' are also made basis for passing of the impugned detention order.

5. Learned Counsel for the petitioner at the outset submits that, although the impugned detention order refers to release of petitioner on bail in pending cases, copies of bail application and the bail orders were admittedly neither placed on record nor has

been considered by the Competent Authority, this lacks the basic principle of subjective satisfaction. To buttress his submission he relied on the judgment of this Court in the case of ***Shaikh Mahebub @Gorya Vs. The District Magistrate, Nanded and Ors.;*** (Criminal Writ Petition No.2062/2024) decided on 08.05.2025 (Aurangabad Bench), wherein it has been held that, when bail was granted by the jurisdictional Court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention ordered.

6. It is further contended by the learned Counsel for the petitioner that as far as Crime bearing No.593 of 2025 as well as Crime bearing No.690 of 2025 are concerned, both are falsely registered against the petitioner. According to the learned Counsel for the petitioner so far as the said offences registered under Sections 4 and 25 of the Arms Act are concerned, the same could not have been made basis for passing of the impugned detention order for want of notification under Section 4 of the Arms Act prohibiting the possession of the arms in certain areas, therefore passing of impugned detention order pursuant to said crimes vitiates.

7. Learned Counsel for the petitioner would further urge that, so far as in-camera statements of witnesses 'A' and 'B' are concerned, 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 and even material required for such verification was not served on the petitioner which amount to depriving the petitioner of making an effective representation as guaranteed under Article 22(5) of the Constitution of India.

8. Per contra, the learned APP supports the impugned detention order of detaining the petitioner for a period of 12 months. According to the learned APP the petitioner is a habitual offender who creates terror and the residents within the jurisdiction of Shivajinagar Police Station and adjoining areas remain in constant fear. He would further submit that Respondent No.1-District Magistrate was subjectively satisfied that, if not prevented, the petitioner is most likely to indulge in further dangerous activities which are prejudicial to the maintenance of public order in the future. He would further submit that Respondent No.1-District Magistrate has adhered to all the mandatory provisions of MPDA Act

before passing the impugned order of detention. He would further submit that considering the statements of the in-camera witnesses 'A' and 'B', it is evident that there was threat and violence in both the incidents which would have directly affect the public order.

9. According to learned APP, the Respondent No.1-District Magistrate after having carefully examined the entire material has arrived at a subjective satisfaction that the preventive detention of the petitioner is very much warranted. Learned APP would also urge that in view of the provisions of Section 5A of MPDA Act, even if on some grounds the detention order fails, the entire detention order does not vitiate so long as other ground survives.

10. Having considered the rival submissions advanced by the learned Counsel for the petitioner and learned APP for the State Authorities and after going through the entire record, we are of the considered view that, no doubt the preventive detention is permitted as an exceptional measure which curtail the fundamental right of life and liberty without the safeguard of a Court trial, however, while doing so the procedure established by law and safeguards enshrined under Article 22 of the Constitution of India needs to be followed scrupulously.

11. Bare perusal of impugned detention order depicts observations made by Respondent No.1-District Magistrate that, the petitioner has been released on bail, however, he is likely to revert to similar activities prejudicial to the maintenance of public order in future and therefore the detention of petitioner is necessary. In short Respondent No.1-District Magistrate was aware that the petitioner has already been released on bail in connection with the two crimes on the basis of which the impugned detention order has been passed.

12. The Hon'ble Apex Court in the case of ***Joyi Kitty Joseph Versus Union of India and Ors.; (2025) 4 SCC 476*** has observed thus :-

> *"32. Likewise, in the present case, we are not concerned as to whether the conditions imposed by the Magistrate would have taken care of the apprehension expressed by the detaining authority; of the detenu indulging in further smuggling activities. We are more concerned with the aspect that the detaining authority did not consider the efficacy of the conditions and enter any satisfaction, however subjective it is, as to the conditions not being sufficient to restrain the detenu from indulging in such activities.*
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> *33. Ameena Begum vs. State of Telangana, (2023) 9 Supreme Court Cases, 587, noticed with approval Vijay Narain Singh v. State of Bihar (1984) 3 Supreme Court Cases 14 and extracted paragraph 32 from the same (Vijay Narain Singh): (SCC pp.35-36).*

> *"32....It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within... not be used merely to clip the wings of an accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court. great caution should be exercised in scrutinizing the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court."*
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> *(emphasis supplied)*

34. The criminal prosecution launched and the preventive detention ordered are on the very same allegations of organised smuggling activities, through a network set up, revealed on successive raids carried on at various locations, on specific information received, leading to recovery of huge cache of contraband. When bail was granted by the jurisdictional Court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention ordered.

35. The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the Magistrate while granting bail for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those

conditions are sufficient or not to restrain the detenu from indulging in further like activities of smuggling".

13. It would also be apt to refer to the decision of the Hon'ble Apex Court in the case of ***Shaik Nazneen Vs. State of Telangana and others*** reported in ***(2023) 9 SCC 633,*** more particularly paragraph 19 which reads thus :-

"19. In any case, the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of his bail and/or move an appeal to the Higher Court. But definitely seeking shelter under the preventive detention law is not the proper remedy under the facts and circumstances of the case"

14. We thus find that impugned detention order depicts non-application of mind at the hands of Respondent No. 1 - District Magistrate while appreciating the material as, although the order asserts that petitioner is on bail in both the pending cases, however, the record does not contained a single copy of any bail application or any bail order. As held by the Hon'ble Apex Court in the case of ***Joyi Kitty Joseph*** *(Supra),* ***Shaik Nazneen*** *(Supra),* as well as in the judgment of this court in the case of ***Shaikh Mahebub @Gorya*** *(Supra),* that when a detaining authority takes into account the fact that the detenue is on bail, it must

examine the bail orders themselves to assess the nature of offence, the conditions imposed by a Competent Court while releasing the accused on bail and also to ascertain as to whether there exists a real likelihood of detenue committing similar kind of offence if released on bail. 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.

15. So far as the reliance placed on the two in-camera statements of witnesses 'A' and 'B' are concerned, as observed above, we find that both the statements are cyclostyled as well as vague as it can be seen that, the allegations made in the said statements are general in nature. 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.

16. So far as submission advanced by the learned Counsel for the petitioner that, Crime No.593 of 2025 dated 22.06.2025 and Crime No.690 of 2025 dated 19.07.2025 both registered under Sections 4

and 25 of the Arms Act could not have been made basis for passing of impugned detention order, we find substance in the said submission since, as per Section 4 of the Arms Act the Central Government is required to issue notification prohibiting the possession of certain weapons in specified area. It is settled position of law that unless that exists and is produced such a notification applicable to the concerned area, it cannot be said that an offence under Section 4 is said to have been committed. It is trite law by virtue of decision of this Court in the case of ***Abdul @ Aslam Salim Shaikh Vs. State of Maharashtra; (2007) 2 Mh.L.J. (Cri.) 812,*** as well as in the case of ***Dilip Asaram Zagade Vs. State of Maharashtra ;*** (Criminal Application No.3111/2018) decided by this Court on 18.02.2019 (Aurangabad Bench), wherein, this Court has reiterated that the absence of notification under Section 4 is not only fatal to prosecution but even to take preventive action based on such an offence.

17. It would be apposite to refer to the observations of this Court in the case of ***Abdul @ Aslam Salim Shaikh*** *(Supra)* in paragraph 7 which reads thus :

> *"**7.** Section 3 of the Arms Act provides that no person shall acquire, have in his possession, or carry any firearm or ammunition*

unless he holds a licence for that purpose. Section 4 of Arms Act deals with weapons other than the firearms. It reads as follows:-

> *"4. If the Central Government is of opinion that having regard to the circumstances prevailing in any area it is necessary or expedient in the public interest that the acquisition, possession or carrying of arms other than firearms should also be regulated, it may, by notification in the Official Gazette, direct that this section shall apply to the area specified in the notification and thereupon no person shall acquire, have in his possession or carry in that area arms of such class or description as may be specified in that notification unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder."*

From this section it is clear that while for firearms in view of the provisions of section 3 of Arms Act, it is necessary to hold a valid licence normally no licence is required to possess any arms other than the firearm unless there is a Notification published in the Official Gazette by the Central Government for that purpose and made applicable to the particular area specified in the notification II such a notification is issued for a specified area no person may acquire, possess or carry any such weapon, without necessary licence. Before a charge under section 4 read with section 25(1D) of the Arms Act could be framed, it was necessary for the prosecution to allege that there was such a notification issued by the Central Government made applicable to the particular area in which the accused persons were found. In the present case in the charge-sheet nowhere there is any mention of any such notification under section 4 of the Arms Act. Nor any evidence was led before the Court that there was any Notification issued by the Central Government prohibiting possession or carrying of any such weapon in particular area. In absence of any such

Notification, merely because a person is found in possession of a weapon, other than the firearms, he cannot be prosecuted, convicted and sentenced under section 25 of the Arms Act."

18. Similarly, it would also be apt to rely upon the observations of Division Bench of this Court in the case of ***Dilip Asaram Zagade*** *(Supra)* in paragraph 15 which reads thus :

15*. In our view, to attract the provisions of Section 4 read with Section 25(1-B)y Vijay Ghodke, prima facie constitute an offence under Section 4 read with 25 of the Arms Act. On the contrary, for want of averments to this effect in the report, it has to be observed that no offence is made out from the so called F.I.R." (b) of the Arms Act, it has to be averred in the F.I.R. that the Central Government, by notification in the official gazette, has regulated possession of swords in the particular area (in this case village Shelapuri), Taluka Majalgaon, District Beed and same is an offence punishable under Section 25(1-B) (b) of the Act. Notification, if any, issued by the Central Government under Section 4 has also not been placed on record for our perusal. It would, therefore, be difficult to hold that the allegations in the report dated 29.6.2018 lodged by Vijay Ghodke, prima facie constitute an offence under Section 4 read with 25 of the Arms Act. On the contrary, for want of averments to this effect in the report, it has to be observed that no offence is made out from the so called F.I.R."*

19. Admittedly nothing is placed on record nor the learned APP is in a position to point out that any such notification under Section 4 of the Arms Act was ever issued within the said specified area nor he

is able to point out that the same was placed before the respondent No.1 – District Magistrate. Perusal of impugned detention order and the record available shows that, this vital aspect is missing. Consequently, the reliance placed on the crimes alleging offences under Section 4 of the Arms Act itself collapsed. We find that the impugned detention order which is solely based on both the FIR's alleging offences under Sections 4 and 25 of the Arms Act itself suffers from a serious legal infirmity. We find that non-consideration of all these vital aspects vitiates the subjective satisfaction as required under the provisions of the MPDA Act.

20. It is settled position of law that, the preventive detention is not mean to punish for past act but to prevent future conduct that threatens public order. It is equally required to be considered, as to whether, mere pendency of criminal cases without a live link to eminent disturbances of public order justify preventive detention, whether it is only concern about law and order or a public order, in that regard the Hon'ble Apex Court in the case of ***Ameena Begum*** *(Supra)*, while explaining the term 'Law and Order' and 'Public Order' observed thus :

*"**35.** Addressing the first issue first, it has to be understood as a fundamental imperative as to how this Court has distinguished between disturbances relatable to "law and order" and disturbances caused to "public order".*

***36.** It is trite that breach of law in all cases does not lead to public disorder. In a catena of judgments, this Court has in clear terms noted the difference between "law and order" and "public order".*

***37.** We may refer to the decision of the Constitution Bench of this Court in Ram Manohar Lohia v. State of Bihar [Ram Manohar Lohia v. State of Bihar, 1965 SCC OnLine SC 9 : (1966) 1 SCR 709] , where the difference between "law and order" and "public order" was lucidly expressed by Hon'ble M. Hidayatullah, J. (as the Chief Justice then was) in the following words : (SCR pp. 745-46, paras 54-55)*

"54. … 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.…

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."

38. *For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, C.J. in Arun Ghosh v. State of W.B. [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , is this : (SCC p. 100, para 3)*

"3. … Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?"

39*. In Arun Ghosh case [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , the petitioning detenu was detained by an order of a District Magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that the offending act "does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or*

likelihood of a breach of public order. [Arun Ghosh v. State of W.B., (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC p. 101, para 5)"

21. 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. 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 because of pendency of criminal cases without a live link to eminent disturbances of public order cannot justify preventive detention.

22. 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 incidents dated 22.06.2025 and 19.07.2025, cannot be said to have such a live link. In the light of above, we are of the considered view that the impugned detention order is unsustainable in law so also find that, 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 order of detention dated 08.08.2025 passed by Respondent No.1-District Magistrate, Nanded and the order of confirmation dated 17.09.2025 passed by Respondent No.3-State Government, are hereby quashed and set aside.

iii. The Petitioner – Santosh @Chingya Sainath Tarte 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.)

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