



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 135 OF 2026

Shubham Balasaheb Kardule,
Age : 25 years, Occ.: Labour,
R/o. At Post Shiral,
Tq. Ashti, Dist. Beed-414208.

...Petitioner

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The District Magistrate Beed,
Dist. Beed.
3. The District Superintendent of Police
Beed, Dist. Beed.
4. Jail Superintendent
Central Prison Harsul,
Chhatrapati Sambhajinagar.

...Respondents

...

Mr. Z. H. Farooqui, Advocate for the Petitioner.

Mr. G. A. Kulkarni, A.P.P. for Respondent Nos. 1 to 4.

...

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

Reserved on : 07.04.2026

Pronounced on : 07.05.2026

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

1. **Rule.** Rule made returnable forthwith. Heard finally at the admission stage with consent of counsel for the parties.



2. By this Writ Petition filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner seeks to challenge the detention order and committal order dated 24.11.2025 bearing No.2025/RB-Desk-1/Pol-1/MPDA-23, passed by Respondent No.2-District Magistrate, Beed in exercise of powers under Section 3 (2) 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 approval order dated 02.12.2025 and confirmation order dated 01.01.2026 passed by Respondent No.1-State Government in exercise of powers under Sections 3(3) and 12(1) of the MPDA Act, respectively. By the impugned detention order, the petitioner has been directed to be detained on the ground that the petitioner is a “*sand smuggler*” within the meaning of Section 2 (e-2) of the MPDA Act, as according to the detaining authority the activities of the petitioner are prejudicial to the maintenance of public order.

3. It seems that the Police Inspector, Police Station Ashti, Beed submitted a proposal seeking detention of the petitioner. The said



proposal appears to have been routed through the Sub-Divisional Police Officer, Sub-Division Ashti and Superintendent of Police, Beed and eventually placed before Respondent No.2-District Magistrate, Beed who in turn found that the petitioner's detention is necessary to prevent him from acting in any manner prejudicial to public order. It is pertinent to note that, the basis for submission of the said proposal is registration of two (2) past criminal cases against the petitioner, which are summarised as follows :

Sr. No.	Police Station	Crime No.	Sections	Date of registration	Court Case No.	Status
1.	Ashti	186/2021	324, 323, 504, 506, 143, 147, 149 of IPC	19.06.2021	RCC No. 163/2022	Pending
2.	Ashti	520/2025	109, 351(2), 352, 115(2), 303(2), 119(1), 190, 191(2), 189(2), 132, 127(1) of BNS	13.11.2025	Nil	On Investigation

However the impugned detention order is based on a solitary Crime bearing No.520/2025, dated 13.11.2025 registered with Ashti Police Station. In addition to this crime, two in-camera statements of witnesses 'A' and 'B' are also considered while passing the impugned order of detention.

4. Though learned counsel for the petitioner has assailed the impugned order of detention on several grounds, however, the



main thrust of his argument is that, the petitioner cannot be termed as ‘sand smuggler’, as the detaining authority while arriving at a conclusion that the petitioner is engaged in activities of sand smuggling has relied on the aforesaid solitary offence bearing Crime No.520/2025, registered with Ashti Police Station, he however, submits that bare perusal of the contents of the FIR would reveal that neither there are allegations that the petitioner in any manner is found excavating, storing or transporting the sand nor he has been shown as an owner of any of the vehicle alleged to have been involved in the sand excavation. He would submit that the only role ascribed to the petitioner is of taking away the Tractor Head of Swaraj Company from the custody of the Police Authorities which is allegedly involved in the sand excavation. In support of his submission he relied on the judgment of this court in the case of *Tukaram Birappa Pujari V. Commissioner of Police and Ors.* reported in (2024) 3 AIR Bom. R. (Cri.) 864.

5. So far as the in-camera statements of witnesses ‘A’ and ‘B’ are concerned, learned counsel for the petitioner submits that both these statements are more or less cyclostyled as well as vague, as it can be seen that, the allegations made in the said statements are general in nature. He further submits that these in-camera



statements are neither verified properly nor the material regarding such verification was served on the petitioner which amounts to depriving the petitioner of making an effective representation as guaranteed under Article 22 (5) of the Constitution of India. He placed reliance on the judgment of this Court in the case of ***Shaikh Husain @Shahrukh Shaikh Fatru V. State of Maharashtra & Anr.*** [Criminal Writ Petition No. 873 of 2022 at Nagpur Bench].

6. He would further submit that, even taking the allegations of the said FIR as it is, the same would not amount to an act prejudicial to the public order but at the most it could be said to be an act of affecting the law and order. To buttress his submissions he relied on the judgment of the Hon'ble Apex Court in the case of ***Rashidmiya @Chhava Ahmedmiya Shaik V. Police Commissioner, Ahmedabad and Anr.*** reported in (1989) 3 SCC 321, as well as the judgment of this Court in the case of ***Dattatray Baswant Jagtap V. Commissioner of Police, Solapur and Others*** reported in 2019 SCC Online Bom 4275.

7. Per contra, the learned APP supports the impugned order of detention of the petitioner as well as the order of confirmation. According to the learned APP, the respondent No.2 –



District Magistrate was subjectively satisfied that considering the illegal activities of the petitioner about involvement in sand excavation, if not prevented, the petitioner is likely to indulge in further dangerous activities which would be prejudicial to maintenance of public order in the future. He further submits that while passing the impugned order of detention, Respondent No.2-District Magistrate has scrupulously followed the mandatory provisions prescribed under MPDA Act. He would further submit that, the offence registered against the petitioner coupled with the in-camera statements of witnesses 'A' and 'B' demonstrate that the petitioner used to excavate and transport the sand illegally. He thus submits that Respondent No.2-District Magistrate was justified in passing the impugned detention order of petitioner, so also the order of confirmation passed by the State Government, is legal and proper.

8. Heard learned counsel for the petitioner, learned APP for the State, and perused the entire record. At the out set, it would be apt to reproduce Section 2 (e-2) of the MPDA Act which defines the term "*sand smuggler*", as under,

2(e-2) "sand smuggler" means a person who individually or as at part of a group of persons is engaged in or is preparing to



engage in or associated with or abets unauthorized extraction, removal, collection, replacement, picking up or disposal of sand and its transportation, storing and selling or who commits or attempts to commit or abets the commission of offences in respect of sand which are punishable under the Mines and Minerals (Development and Regulation) Act, 1957 or under the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013;”

9. In short unless the ingredients of definition of ‘sand smuggler’ are satisfied, the same would not justify the order of preventive detention of a person. This Court in the case of ***Tukaram Birappa Pujari*** (supra) while dealing with the similar issue, observed in paragraph No.3 which reads thus :

“3. 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 (MPDA Act), is an act to provide for preventive detention of various categories of persons, one of the category being of “Sand Smugglers”, for preventing their dangerous activities prejudicial to the maintenance of public order.

Each of the category is specifically assigned a distinct meaning in the Act, by providing a definition and as far as Sand Smuggler is concerned, Section 2(e-2) of the MPDA Act, define the term as below:

2(e-2) “sand smuggler” means a person who individually or as at part of a group of persons is engaged in or is preparing to engage in or associated with or abets unauthorized extraction, removal, collection, replacement, picking up or disposal of sand and its transportation, storing and selling or who commits or attempts to commit or abets



the commission of offences in respect of sand which are punishable under the Mines and Minerals (Development and Regulation) Act, 1957 or under the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013;”

An activity of a Sand Smuggler, according to the MPDA Act would be prejudicial to the maintenance of public order, as defined in Section 2(a), in case sand smuggler, is engaged, or is making preparations for engaging, in any of his activities as a sand smuggler which affect adversely, or is likely to affect adversely, the maintenance of public order.

The necessary ingredient for a person to be classified as a sand smuggler is his engagement in or preparations to be engaged in or his association or his act of abetting unauthorized extraction, removal, collection, replacement, picking up or disposal of sand and its transportation, storing or selling, or to commit or abet to commit, or abet the commission of offences in respect of sand which are punishable under the Mines and Minerals (Development and Regulation) Act, 1957 or under the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013.”

10. In the instant case, bare perusal of the allegations of FIR bearing Crime No.520/2025 depicts that there are no allegations against the petitioner either of excavating, storing and transporting the sand or that the vehicle which were seized while excavating the sand are either owned or possessed by the petition-er. The only role attributed to the petitioner is of taking away the Tractor Head of swaraj company from the custody of the Police Authorities while the same along with other vehicles was being taken to the police station



after those were seized by the Police Authorities. Applying the ratio laid down by this Court in the case of *Tukaram Birappa Pujari* (supra), we find that the Detaining Authority, before arriving at a conclusion that the petitioner is a *sand smuggler* ought to have ascertained as to whether the necessary ingredient about his engagement in or preparations to be engaged in or his association or his act of abetment of unauthorized extraction, removal, collection, replacement, picking up or disposal of sand and its transportation, storing or selling or to commit or abet to commit, or abet to commission of offences in respect of sand which are punishable under the Mines and Minerals (Development and Regulation) Act, 1957 or under the Maharashtra Minor Mineral Extraction (Development and Regulation) Rules, 2013 are satisfied. In the light of above we are of the considered view that, in absence of these ingredients classifying the petitioner as a *sand smuggler* lacks the subjective satisfaction and thus vitiates the impugned detention order.

11. So far as the reliance placed on the two in-camera statements of witnesses 'A' and 'B' are concerned, we find that bare perusal of these statements would show that those have been recorded within a span of few days so also are vague since those



lacks the particulars of date, time and place of the alleged incidents.

As regards verification of the said in-camera statements, the record shows that there is no proper verification of these statements nor the detaining authority appears to have applied its mind to its credibility. This Court in the case of ***Shaikh Husain @ Shahrukh Shaikh Fatru*** (supra), while considering the necessity of proper verification of the in-camera statements observed in paragraph Nos. 18 and 19 of the said judgment which reads thus :

“(18) First of all, it is observed that the grounds of detention nowhere discloses that the detaining authority interacted with the witnesses A and B so as to satisfy itself that the statements of these witnesses and genuine to be true and or instances which they disclosed were correct. There is no interaction by the detaining authority with the Assistant Superintendent of Police, who verified such statements. The copies of statements of witnesses A and B attached to the petition and provided to the detenu, nowhere show any endorsement of the detaining authority so as to confirm that such statements were perused by the detaining authority and said authority considered that the witnesses were depicting true events. There is absolutely no whisper in the grounds of detention as to on what count the detaining authority found itself satisfied about the truthfulness or genuineness of such statements made by the witnesses.

(19) This Court in the case of Shahjahan w/o Kalimkhan Samshadkhan Pathan Vs. State of Maharashtra & Anr. 2016 ALL MR (cri)4233 (supra), observed in para 5 that, in the absence of any record of the statements being seen by the Commissioner of the Police thereby affecting his subjective satisfaction, the petitioner is entitled to succeed in the



petition. These observations are clearly attracted to the matter in hand. There is no contemporaneous material placed before us to show that the detaining authority had in fact verified the statements and had any interaction with the Assistant Superintendent of Police, who recorded his report. Similarly, by reproducing the contents of statements of witness A and B in the grounds of detention without the material to show that the detaining authority had in fact interacted either with the witnesses or discussed it with the authority, who verified such statements, the order of detention stands vitiated.”

12. It is settled position of law that, though the preventive detention of a person 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. Therefore, such vague statements that too without any proper verification cannot be made the basis of preventive detention.

13. It is trite law that, the preventive detention is not mean to punish for past act but to prevent future conduct that threatens public order. Thus, mere pendency of a solitary criminal case without a live link to eminent disturbances of public order certainly does not justify preventive detention. The distinction between the law and order and public order has been explained by the Hon'ble



Apex Court in the case of ***Ram Manohar Lohia v. State of Bihar***

reported in ***1965 SCC OnLine SC 9***, wherein the Hon'ble Apex Court

observed thus :

“54. We have here a case of detention under Rule 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 no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression “public order” take in every kind of disorders or only some of them? The answer to this serves to distinguish “public order” from “law and order” because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 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.”

14. We thus 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. The solitary incident dated 13.11.2025 cannot be said to have any live link. We are, therefore, of the considered view that every activity disturbing law and order may not necessarily disturb the public order.

15. In that view of the matter, the impugned detention order is unsustainable in law so also find that the confirmation order passed by the State Government also does not sustain. Hence, we pass the following order:-



:: ORDER ::

- i. The Criminal Writ Petition stands allowed.
- ii. The impugned order of detention bearing No.2025/RB-Desk-1/Pol-1/MPDA-23 dated 24.11.2025 passed by Respondent No.2 - District Magistrate, Beed as well as approval order dated 02.12.2025 and confirmation order bearing No.MPDA-1125/CR.667/Spl-3b dated 01.01.2026 passed by Respondent No. 1 State Government are hereby quashed and set aside.
- iii. The Petitioner – Shubham Balasaheb Kardule shall be released forthwith, if not required in any other offence/offences.
- iv. Rule is made absolute in the above terms.

(ABASAHEB D. SHINDE, J.)

(SANDIPKUMAR C. MORE , J.)

habeeb/