

(2026) 08 BOM CK 2416

In the Bombay High Court, Kolhapur Bench

Case No : CRIMINAL WRIT PETITION NO.29 OF 2026

Aakash @ Bhaiyya Sanjay Rokade

APPELLANT

Vs

The State Of Maharashtra & Ors.

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981 — Section 3(1)
Defence of India Rules — Rule 30, 30(1)(b)
Defence of India Act
Constitution of India — Article 226

Citation : (2026) 08 BOM CK 2416

Hon'ble Judges : Sandesh D. Patil, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : Mr. Chaitanya Y. Purankar, Mr. U. R. Jamdar, Mr. Pankaj P Deokar

Final Decision : Disposed Of

Judgement

1. Rule. Rule made returnable forthwith. By consent of parties, taken up for final hearing.

2. The Petitioner has challenged the order of detention dated 14thAugust 2025, bearing No. 2025/DCB-2/RR-4817(1)/25, issued by the District Magistrate, Solapur, i.e. Respondent No.2, who was empowered by the State Government under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981 ('MPDA Act').

3. While passing the order of detention, the Detaining Authority has relied upon one crime and two confidential statements. The incident forming the basis of C.R. No.248 of 2025 occurred on 28thMarch 2025 and the said crime was considered for passing the order of detention dated 14thAugust 2025. It is submitted that there is no reference to any supervening prejudicial activity or any cogent explanation establishing the live and proximate link between the said incident

and the order of detention.

4. The learned counsel for the Petitioner submitted that there is a clear distinction between 'law and order' and 'public order'. Even assuming that the allegations against the Petitioner are true, the alleged acts, at the highest, constitute a 'law and order' situation and do not affect 'public order' in any manner. The essential distinction between 'law and order' and 'public order' lies not in the nature or quality of the act, but in the degree, potentiality and extent of its reach upon the society.

5. The learned counsel for the Petitioner placed reliance upon the judgment of the Apex Court in the case of *Ram Manohar Lohia v. State of Bihar & Anr.*¹ and submitted that the Detaining Authority was required to consider whether the acts relied upon by it bear the character of a disturbance of 'public order' or merely constitute a breach of 'law and order'. The test to be applied is whether the even tempo of community life has been disturbed, thereby affecting 'public order', or whether the alleged offence is confined to a particular individual, resulting only in a 'law and order' situation.

6. The learned counsel for the Petitioner submitted that the record does not disclose any shop closures, traffic paralysis, riots, congregation or widespread panic in the locality. He further submitted that the mere gravity of the allegations, by itself, does not convert an incident constituting a 'law and order' situation into a 'public order' problem.

7. The learned counsel for the Petitioner further submitted that two in-camera statements have been relied upon by the Detaining Authority. A bare perusal of the said statements does not inspire confidence so as to readily conclude that the same could safely be relied upon by the Detaining Authority. The material on record indicates that the narration of facts in respect of the crime relied upon is extremely fragile to draw an inference that the conduct of the Petitioner is prejudicial to the maintenance of public order. It would, therefore, be hazardous to sustain the order of detention merely on the strength of the said in-camera statements.

8. The learned counsel for the Petitioner also placed reliance upon the judgments of this Court in the case of *Nilofer Ramjan Shaikh v. Commissioner of Police, Pune City & Ors.*² and *Haridas Shankar Gaikwad v. Commissioner of Police, Solapur & Ors.*³ in support of his submission that unexplained delay in passing the order of detention vitiates the order of detention. He, therefore, prayed that the order of detention be quashed and set aside and the Petitioner be released forthwith.

9. The learned APP opposed the Petition. The learned APP filed an Affidavit-in-Reply and submitted that the Petitioner is a 'Sand Mafia' and that several offences have been registered against him. The statements of the witnesses indicate that the Petitioner used to threaten people and that, due to fear of the Petitioner, they did not lodge complaints against him. The learned APP submitted

that the statements were recorded on an assurance that the identities of the witnesses would not be disclosed. It was further submitted that there is no delay in passing the order of detention. The learned APP, therefore, prayed for rejection of the Petition.

10. We have heard the learned counsel for the Petitioner and the learned APP for the State and have perused the material placed on record.

11. In the present case, one crime and two confidential statements have been relied upon for passing the order of detention. It is clear from the record that the crime was registered on 28th March 2025, whereas the order of detention was passed on 14th August 2025. For considering the delay, it is necessary to take into account the dates on which the confidential statements of the witnesses were recorded. Both the confidential statements were recorded on 14th May 2025, whereas the order of detention was passed on 14th August 2025. Thus, even if the date of recording of the confidential statements is taken as the starting point, there is a delay of approximately three months in passing the order of detention.

12. On perusal of the Affidavit-in-Reply, we find that there is no satisfactory explanation for the aforesaid delay. The delay assumes significance particularly when the order of detention is based only upon one crime and two confidential statements.

13. We further find from the record that the confidential statements were not verified by the Detaining Authority. The statements were verified by the Sub-Divisional Officer, who is not the Detaining Authority. The Detaining Authority has not personally verified the said statements. Merely stating in the order of detention that the Detaining Authority has gone through the statements is not sufficient. The Detaining Authority is required to independently apply its mind to the material relied upon and verify the statements before passing an order of detention.

14. We further find that the contents of both the confidential statements are substantially identical. The crime registered against the Petitioner, by itself, does not disclose any disturbance of public order.

15. The learned counsel for the Petitioner has rightly placed reliance upon the judgment of the Apex Court in *Ram Manohar Lohia* (supra), wherein, in paragraphs 54 and 55, the Apex Court has observed as under:

54. We have heard 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."

16. In the present case, the material relied upon by the Detaining Authority does not disclose any act or conduct on the part of the Petitioner which could be said to have disturbed the even tempo of community life or affected the public at large. There is no material to demonstrate any widespread disturbance, panic, disruption of normal life or any other circumstance which would bring the alleged acts within the ambit of 'public order'.

17. We are also of the view that the unexplained delay of approximately three months between the recording of the confidential statements and the passing of the order of detention has snapped the live and proximate link between the alleged prejudicial activities and the necessity to detain the Petitioner. The delay, coupled with the absence of any satisfactory explanation, renders the order of detention unsustainable.

18. In view of the aforesaid discussion, we are satisfied that the material relied upon by the Detaining Authority does not establish any disturbance of 'public order'. The alleged acts, even if accepted in their entirety, would at the highest constitute a 'law and order' situation. Further, the unexplained delay and the failure of the Detaining Authority to personally verify the confidential statements constitute additional grounds for interference with the order of detention.

19. We, therefore, have no hesitation in holding that the order of detention calls for interference in exercise of our jurisdiction under Article 226 of the Constitution of India.

20. The order of detention dated 14th August 2025, bearing No. 2025/DCB-2/RR-4817(1)/25, is hereby quashed and set aside.

21. The Petitioner shall be set at liberty forthwith, if not required in any other

offence.

22. Rule is made absolute. The Petition is accordingly disposed of.

FOOTNOTES

1. 1965 SCC OnLine sc 9.
2. Cri.W.P.No.3471 of 2025 Dtd. 15 December 2025.
3. Cri.W.P.No.3071 of 2025. Dtd. 11 November 2025.