

(2026) 03 BOM CK 0395

In the Bombay High Court, Aurangabad Bench

Case No : Criminal Writ Petition No. 1405 Of 2025

Anup Ganpat Gondkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-03-2026

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Immoral Traffic (Prevention) Act, 1956 — Section 3, 4, 5, 7, 8, 18

Citation : (2026) 03 BOM CK 0395

Hon'ble Judges : Mehroz K. Pathan, J

Bench : Single Bench

Advocate : Sanket S. Kulkarni, K. K. Naik

Final Decision : Rejected

Judgement

Mehroz K. Pathan, J

1. The Petitioners have filed the present petition challenging the order dated 21.07.2025 passed by the Sub-Divisional Magistrate, Shirdi, whereby the Petitioners were evicted from the premises owned by them in exercise of powers under Section 18 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as the 'PITA Act'), and the premises of Hotel Shirdi Sai Inn were directed to be closed for a period of one year.

FACTS:

2. An FIR bearing No. 1112/2023 is registered with the Shirdi Police Station, Ahilyanagar on 21/12/2023 under Sections 3, 4, 5, 7 and 8 of the Immoral Traffic (Prevention) Act, 1956. In the FIR it is alleged that the Informant is serving as a Police Constable at Shirdi Police Station. On 21.12.2023, Police Inspector Sopan Shirsath called the Informant along with other police personnel and informed them that Superintendent of Police, Shirdi Division, Shri Sandip Mitke had received confidential information that within the jurisdiction of Shirdi Police Station, at a hotel on Pimpalwadi Road, an individual was running a prostitution

racket under the guise of a "Spa Centre." It is alleged that, acting on this information, Police Inspector Shirsath summoned two panch witnesses, namely Bhausahib Arjun Bade and Siddharth Bharat Surana. Thereafter, he also summoned one person, Vishal Shivprasad Verma, to act as a decoy customer. It is alleged that Police Inspector Shirsath handed over Rs. 500/- in four currency notes to the decoy customer and instructed him to hand over the said money to the person conducting prostitution in the name of Spa Centre, demand a woman for sexual intercourse, and after obtaining such a woman, give a missed call to him. It is alleged that Police Inspector Shirsath, along with the police staff, both panch witnesses, and the decoy customer, proceeded in a government vehicle and one private vehicle, carrying a laptop, printer, and other material required for preparing the panchanama. It is alleged that at Pimpalwadi, Dattanagar, the vehicles were halted and the decoy customer was sent inside Hotel Sai Inn, where the Spa Centre was allegedly being operated. After about 15 minutes, Police Inspector Shirsath received a missed call from the decoy customer. It is alleged that, at around 16:25 hrs, the police staff along with the panch witnesses entered Hotel Sai Inn, Pimpalwadi Road, Shirdi. Inside, one woman was found sitting, who on inquiry in the presence of panch witnesses disclosed her name as Sheetal Hardik Chaudhary. She was informed about the purpose of the search. On further checking, in one of the rooms, the decoy customer was found with another woman, who disclosed her name as Nuri Mehbub Syed, resident of Chitta Camp, Karbala Maidan, D-Sector, F-Line Slum, Khadi, Mankhurd East, Mumbai, and working at the Spa Centre. On her person, one mobile handset was recovered, and under the bed, four packets of Manforce brand condoms were found.

3. It is alleged that, upon further search of the premises, three more women were found, namely:

1. Shabana Salimuddin Shaikh, age 30, resident of Garib Nagar Slum, Room No. 26, Bandra East, Mumbai.
2. Ruksar Imran Ansari, age 24, resident of Nehru Nagar Chawl, near Anjuman High School, Kurla East, Mumbai.
3. Ganga Gorakhnath Khandare, age 33, resident of Akhada Balapur, Taluka Kalamnuri, District Hingoli.

It is alleged that from each of them one mobile handset was recovered, and from under the bed of their room, six packets of Manforce brand condoms were found.

4. It is alleged that, when the decoy customer was questioned in the presence of the panch witnesses regarding to whom he had handed over the money, he pointed towards Sheetal Hardik Chaudhary, who had accepted the same. On her person, one mobile handset and Rs. 2,500/- in cash were recovered, which included the marked notes of Rs. 500/- (four notes handed to the decoy) along with one additional Rs. 500/- note. It is alleged that, on further questioning, Sheetal Hardik Chaudhary disclosed that the owner of the Spa Centre was the

Petitioner. With these allegations the complainant had lodged the FIR bearing crime No. 1112 registered U/s. 3, 4,5,7 and 8 of the Immoral Traffic (Prevention) Act, 1956. Dated 21/12/2023 registered at Shirdi Police Station, Shirdi Taluka-Rahata, District Ahilyanagar.

5. Upon registration of the FIR and after conducting an inquiry, the police inspector of the concerned police station had submitted a proposal to the Collector, Ahilyanagar for an action to be taken for closure eviction of the premises under Section 18 of the PITA Act. The Competent Authority i.e. the Sub-Divisional Magistrate had issued notice to the concerned persons including the Petitioners, about the proposed action to be taken under Section 18(1) and sought their response to such proposal. The Petitioners failed to file any response to such show cause notice and as such relying upon the reports submitted by the concerned police inspector of Shirdi Police Station, the impugned order dated 21.07.2025 came to be passed by the Sub-Divisional Magistrate, exercising powers under Section 18(1) of the PITA Act, for closure of the premises.

SUBMISSIONS OF THE PETITIONERS:

6. The learned Counsel for the Petitioners submits that the impugned order directing eviction of the Petitioners from the premises and ordering its closure has been passed by the authority without following the principles of natural justice. The Petitioners were out of station for medical treatment and, therefore, could not file their say. It is thus prayed that a fresh opportunity be granted to the Petitioners in the interest of justice by remanding the matter back to the competent authority for conducting a fresh inquiry.

7. It is further submitted by the learned Counsel for the Petitioners that the action under Section 18(1) can be taken by the competent authority only if it is found that there is a violation of Section 7 of the PITA Act. The Competent Authority without going through any documentary evidence or any witness being examined, had come to a conclusion that the said premises fall within 200 meters of a public place and thus found a violation of Section 7 of the PITA Act and passed the impugned order. The said procedure adopted by the competent authority is bad in law without any cogent evidence and thus liable to be set aside.

8. It is further submitted by the learned Counsel for the Petitioners that when a strict penal action such as closure of a premises is to be taken, the standard of proof ought to have been more cogent, thereby leading to a safe conclusion that the premises was situated within 200 meters of a public place. In the absence of any evidence to establish that the premises fell within 200 meters of a public place, the impugned order is liable to be set aside.

9. The learned Counsel further submits that the said premises had been given on leave and licence to another person, namely Kailash Shirsath, for running a spa by the Petitioners. The said leave and licence holder, Kailash Shirsath, was not made a party to the present proceedings, and therefore the impugned order

passed in the absence of the person who was actually running the hotel as a spa could not have been passed. The impugned order is therefore liable to be set aside on this ground also.

10. The learned Counsel further submits that the premises could not have been closed in exercise of powers under Section 18, unless the Petitioners were convicted of an offence under Section 3 or Section 7 of the PITA Act. He relies upon the judgment of the Bombay High Court at Aurangabad Bench in *Rajaram @ Rajendra Wamanrao Ghogare Vs. State of Maharashtra and Ors.* (Writ Petition No. 1862/2024), to submit that the present Crime No. 1112/2023 is the first crime registered against the Petitioners, which is still pending. As such, applying the principles laid down by this Court in *Rajaram @ Rajendra Wamanrao Ghogare* (supra), unless the Petitioners are convicted under Section 3 or Section 7 of the PITA Act, the premises could not have been closed in exercise of powers under Section 18. Hence, the impugned order is liable to be set aside.

SUBMISSIONS OF THE STATE:

11. As against this, the learned APP strongly opposes the present petition. It is submitted by the learned APP that after receipt of the proposal from the concerned police station, the Police Inspector, Shirdi, was directed to serve notice upon the Petitioners and the concerned persons regarding the proposed action under Section 18 of the PITA Act. Accordingly, the Police Inspector, Shirdi, submitted a report on 24.04.2025 to the competent authority stating that notice had been served upon Anup Gondkar (Petitioner No. 1) and Pramila Gondkar (Petitioner No. 2), whereas the notice could not be served upon Sheetal Choudhary as she was not found at the time of service.

12. It is further submitted by the learned APP that even during the pendency of the proceedings before the competent authority, the office of the Sub-Divisional Magistrate again issued a notice dated 10.02.2025 to the Petitioners, which was served upon Petitioner Nos. 1 and 2 through Shirdi Police Station and acknowledgment of service was filed on 20.02.2025. However, the Petitioners failed to file any response to the said notice dated 10.02.2025. Thereafter, the office of the Sub-Divisional Magistrate once again served notice upon the Petitioners on 26.03.2025 through Shirdi Police Station, and acknowledgment to that effect was submitted to the office on 24.04.2025 regarding service of notice of the proceedings under Section 18. Yet again, the Petitioners failed to file any response to the second show-cause notice dated 26.03.2025 issued by the office of the Sub-Divisional Magistrate. Thus relying upon the proposal submitted by the Police Inspector, Shirdi, which was based on the investigation conducted in Crime No. 1112/2023 for offences under the relevant sections of the PITA Act, the competent authority, after taking into consideration the relevant factors, satisfied itself about the necessity of passing an order under Section 18 of the Act for closure and eviction of the premises. Accordingly, the impugned order came to be passed. The learned APP therefore submits that the impugned order is just, proper, and liable to be maintained. The learned APP further submits that

the requirement of conviction under Section 3 or 7 of the PITA Act, is for an action under Section 18(2) and not under Section 18(1). Hence the impugned is liable to be maintained.

REASONINGS

13. I have gone through the impugned order dated 21.07.2025 passed by the Sub-Divisional Magistrate, whereby the Petitioners were evicted from the premises owned by them in exercise of powers under Section 18 of the PITA Act. Insofar as the first ground raised by the Petitioners, namely that the principles of natural justice were not followed while passing the impugned order, is concerned, the record shows that upon instructions from the competent authority, Shirdi Police Station initially served notice upon the Petitioners and submitted acknowledgment thereof to the office of the Sub-Divisional Magistrate on 24.04.2025. However, the Petitioners failed to file any response to that notice. Subsequently, during the proceedings undertaken by the Sub-Divisional Magistrate, the office of Sub-Divisional Magistrate again issued notice to the Petitioners on 10.02.2025, and the report of service upon Petitioners was submitted on 20.02.2025. Yet, the Petitioners failed to file any reply or explanation to the said show-cause notice. The record further indicates that another notice was issued on 26.03.2025, and the report of service upon Petitioners was submitted by Shirdi Police Station on 24.04.2025. Even then, the Petitioners failed to submit their reply or explanation. Thus, the principles of natural justice appear to have been complied with, and it cannot be said that the impugned order was passed without following them. There is nothing brought on record to show that the Petitioners were medically unfit to file their response. The contention raised by the Petitioners is therefore baseless and stands rejected.

14. Insofar as the grounds raised by the Petitioners, that there was no evidence of violation of Section 7 of the PITA Act and in the absence thereof the impugned order could not have been passed is concerned, it can be seen from the record that a detailed report was submitted by the Police Officer to the competent authority after registration of Crime No.1112/2023 under the Immoral Trafficking Act. The report states that the premises owned by the Petitioners, namely Hotel Sai Inn, Shirdi, is situated at Pimpalwadi Road, wherein there are big hotels and a residential area, and the nearby lodges and hotels are used by the devotees visiting the Sai Mandir. It is further stated in the report that about 100 to 150 meters from Hotel Sai Inn, Shirdi, towards the west, there is a Marathi school wherein children from the nearby area pursue their education. It is also stated that just adjacent to Hotel Sai Inn, Shirdi, owned by the Petitioners, there are Ashrams belonging to people from Andhra Pradesh, Karnataka, and other States, where devotees of Sai Mandir regularly visit and stay. The road in front of Hotel Sai Inn, Shirdi, owned by the Petitioners, leads to Dattanagar, Silver Oak, Lutebasti, Shindebasti, and other residential colonies situated near Pimpalwadi Road, where the Petitioners' hotel is located. The Hotel Sai Inn, Shirdi, falls under Dattanagar, and within 70 meters of the hotel there is a Datt Mandir,

though Shri Sai Baba Mandir and Laxmi Mandir are situated about 300 meters from the said hotel. It is further submitted by the proposing authority that the Petitioners are running a brothel in Hotel Sai Inn, which is situated on a public road in a city full of devotees visiting Sai Mandir. The action of the Petitioners has brought disrepute to the temple town, which is renowned for Sai Mandir, and therefore the action was proposed.

15. Taking into consideration the aforesaid report, the Sub-Divisional Magistrate i.e. the Competent Authority satisfied itself with the aforesaid reports of the Shirdi Police Station and found that the premises owned by the Petitioners fall within 100 to 150 meters of the Marathi School, various adjacent Mandirs and Hotels, and the residential colony which is a violation of Section 7. The Competent Authority specifically observed in the impugned order that the spot of offence and the premises owned by the Petitioners fall within 200 meters of a public place, and as such and that the premises was being used as a brothel, the impugned order under Section 18 of the PITA Act was passed. Thus it could be seen that once such proposal and report was submitted by the Shirdi Police Station and a notice was served upon the Petitioners who are the owners of the Hotel allegedly run as brothel, it was for the Petitioners to file an appropriate response to the said submission and lead evidence to the contrary. In the absence of any explanation submitted by the Petitioners to show that the premises owned by them do not fall within 200 meters as stated by the police station, the competent authority has rightly appreciated the report submitted by the police authorities and found that there is a violation of Section 7 of the PITA Act. Consequently, the impugned order of closure/eviction of the premises has been rightly passed. The ground raised by the Petitioners is therefore misconceived and stands rejected.

16. Insofar as the other ground raised by the Petitioners, namely that they had given the premises on leave and licence to one Kailash Shirsath, it can be seen that the Petitioners themselves claim to be the owners of the premises. The provision under Section 18(1) contemplates issuance of notice to the owner, lessor, or landlord of such premises to show cause within seven days of receipt of notice as to why the same should not be attached for improper use thereof. A perusal of the FIR shows that Petitioner No.1, Anup, has been added as an accused for running the said brothel, forcing women into prostitution, and earning a livelihood out of prostitution with the assistance of another accused, Sheetal Chaudhary. The said Sheetal was apprehended on the spot during the raid, wherein she stated the name of the owner of the premises as Anup Gondkar (Petitioner No.1 herein). The record shows issuance of notice to Petitioner No.1 and Sheetal Chaudhary, along with Petitioner No.2 (mother of Petitioner No.1 and actual owner of the premises). Thus, the person who was found to be in occupation of the premises, namely Sheetal Chaudhary, and the owners of the premises, namely Petitioners Nos.1 and 2, were issued notices, and as such, the mandate of Section 18(1) appears to have been properly followed. The absence of issuance of notice to Kailash Shirsath, the alleged leave and licence holder,

would not, by itself, vitiate the impugned order, which is otherwise just and proper. The contention is therefore misconceived and stands rejected.

17. Now coming to the arguments based upon the judgment passed by this Court in the case of *Rajaram @ Rajendra Wamanrao Ghogare (supra)*, a perusal of the said judgment shows that an identical order passed under Section 18(1) of the PITA Act dated 23.10.2024, directing eviction and closure of the Petitioner *Rajaram Ghogare's Hotel Sai Prasad* for a period of one year, was under challenge. The Petitioner therein relied upon the judgment of the Single Bench at the Principal Seat of the Bombay High Court in *Maqsood Mohammed Mustak v. State of Maharashtra*, reported in 2022 ALL MR (Cri) 3743, to submit that the premises could have been closed only if there was a conviction of the owner of the premises under Section 3 or Section 7 of the PITA Act. Relying upon the observations of the Single Bench of the Principal Seat, this Court quashed and set aside the order passed under Section 18(1) dated 23.10.2024, on the ground that Petitioner *Rajaram* was not convicted of any offence under Sections 3 or 7 of the PITA Act.

18. The perusal of the judgment of the Single Bench of the Principal Seat of the Bombay High Court in the case of *Maqsood Mohammed Mustak (supra)* does not indicate that an order under Section 18(1) of the PITA Act could not have been passed unless there was a conviction of the owner, occupier, or lessor under Section 3 or Section 7 of the PITA Act. On the contrary, the judgment in *Maqsood Mohammed Mustak (supra)* differentiates and holds that Section 18(1) and Section 18(2) of the PITA Act operate in different spheres and address distinct situations. The relevant paragraphs in *Maqsood Mohammed Mustak (supra)* are as under:

15. From the phraseology of Section 18 extracted above, it becomes abundantly clear that sub-section (1) and sub-section (2) of Section 18, operate in different spheres and address distinct situation. Sub-section (1) empowers a Magistrate to pass an order of attachment, direct eviction of the occupier and also make the owner, lessor or landlord to obtain prior approval before letting out the premises, where he is satisfied that the premises was being run or used as a brothel or used by prostitutes for carrying on their trade, only after giving an opportunity to show cause. Sub-section (1) of Section 18, thus, contemplates an opportunity of hearing in the nature of show cause notice, based on the information received by the magistrate that the premises was being put to such improper use.

16. Sub-section (2) of Section 18, on the other hand, empowers the court convicting a person of any offence punishable under Section 3 or Section 7 to pass an order contemplated by subsection (1). Under sub-section (2) of Section 18, the requirement of notice, as envisaged by sub-section (1) is, however, done away with. The reason is not far to seek. The order under sub-section (2) of Section 18, can be passed by a court only against the person who is convicted for the offence punishable under Section 3 or 7 of the PITA, namely, keeping a brothel or allowing the premises to be used as a brothel, and carrying on

prostitution in or in the vicinity of public places, respectively. Evidently, a person who is found guilty of running a brothel need not be again provided an opportunity of hearing, as envisaged by sub-section (1) of Section 18 of the Act. However, where an order of closure of the premises operates to the prejudice of the occupier, who is not prosecuted for the offence punishable under Section 3 or Section 7 of the PITA, different considerations come into play. In such a situation, the requirement of opportunity of hearing, postulated by sub-section (1) of Section 18, cannot be dispensed with.

19. Thus, a perusal of the above observations of this Court and also the provisions of Section 18 makes it amply clear that the powers under Section 18(1) are to be exercised for temporary closure after giving an opportunity of hearing in the nature of a show cause notice, relying upon information that the premises were being used as a brothel. Sub-section (2), on the other hand, contemplates action under Section 18(1) without any notice to such person to show cause as required in sub-section (1). The language of the above two clauses of Section 18 is plain and unambiguous and does not require any further interpretation or construction, much less a construction which would commit violence to the letter and spirit of the provisions. The plain and unambiguous meaning of the aforesaid clauses of Section 18 itself suggests that, for taking action under Section 18(1), the conviction of the owner, lessor, or occupier under Sections 3 or 7 is not mandatory.

20. The judgment of Rajaram @ Rajendra Wamanrao Ghogare (*supra*) refers to paragraph no. 16 of the judgment of Maqsood Mohammed Mustak (*supra*) wherein it is observed that "the order under sub-section (2) of Section 18 can be passed by a Court only against the person who is convicted for the offence punishable under Section 3 or 7 of the PITA Act, namely, keeping a brothel or allowing the premises to be used as a brothel and carrying on prostitution in or in the vicinity of public places, respectively." However it appears in Rajaram Ghogare's case (cited *supra*), that observations pertaining to exercise of powers under Section 18(2) for closure of premises by convicting Court as discussed in the judgment of Maqsood Mohammed Mustak (*supra*) are inadvertently applied to quash and set aside the order passed under Section 18(1) of the PITA Act.

21. The mandatory condition of a conviction of the owner, lessor, or occupier is required only to pass an order of closure in exercise of powers under sub-section (2) of Section 18 of the PITA Act by the convicting Court, whereas no such conviction is required for closure/eviction of the premises if the same is ordered in exercise of powers under Section 18(1) by the Magistrate, even when charges of running a brothel are still pending before the trial Court. Section 2(c) of the PITA Act defines 'Magistrate' to mean : "A Magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the expression occurs and which is specified in the first column of the Schedule." The Schedule prescribes Magistrate for Section 18 as the District Magistrate or Sub- Divisional Magistrate. Thus it could be seen that

the powers under Section 18 (1) are to be exercised by the District Magistrate or Sub-Divisional Magistrate, whereas the powers under Section 18(2) are to be exercised by the convicting Court. The judgment in Maqsood Mohammed Mustak (supra) clearly states that Section 18(1) and Section 18(2) operate in different spheres, and thus the sine qua non to exercise powers under clause (2) of Section 18 cannot be read and applied to invalidate an order passed under clause (1) of Section 18 of the PITA Act. In my view, therefore, the impugned order is just and proper and satisfies the requirements laid down under Section 18(1).

22. The Hon'ble Supreme Court in the case of Chintan J. Vaswani and Ors. Vs. State of West Bengal and Ors. reported in AIR 1975 SSC 2473, was pleased to observe as under:

7. Section 18(1) *proprio vigore* applies only to brothels within the vicious distance of 200 yards of specified types of public institutions. No criminal prosecution or conviction is necessary for taking action under Section 18(1). Strictly speaking, this is not a punitive provision but a preventive one. This power vested in the Magistrate is calculated to ensure moral hygiene in the locality which is particularly sensitive. If one may say so, it is a moral scavenging operation, or a fumigation process whereby the dangerous visitations may be totally inhibited by a legally enforced closure

12. This Court in A. C. Aggarwal v. Ram Koli MANU/SC/0079/1967 : 1968CriLJ82 held 2 that Section 18(1) deals with one class and Section 18(2) relates to another class. Section 18(1) is a summary procedure for closing down obnoxious places of prostitution, without going through the detailed process of a criminal prosecution. It is a quick-acting defensive mechanism, calculated to extinguish the brothel and promote immediate moral sanitation, having regard to the social susceptibility of places like shrines, schools, hostels, hospitals and the like. Section 18(2) on the other hand, operates only where persons have been convicted of offences under Section 3 or Section 7. Thus the place is found to be put to prostitutional use, in a criminal trial. It stands to reason that if the purpose of extirpating the commercial vice from that venue were to be successful, the occupier must be expelled therefrom.

23. Thus, taking into consideration the aforesaid observations of the Hon'ble Supreme Court, it is clear that the powers under Section 18(1) can be exercised by the Magistrate for closure of premises even without there being any conviction of the owner under Section 3 or Section 7 of the PITA Act. The powers under Section 18(1) are to be exercised by the Magistrate, whereas the powers under Section 18(2) are to be exercised by the convicting Court. These two powers are to be exercised distinctly by "two different authorities" in two different contingencies. The Full Bench of the Gujarat High Court in the case of State of Gujarat vs. Gordhandas Keshavji Gandhi And Ors. reported in AIR 1962 Guj 128, was pleased to hold that "a decision of a High Court Judge sitting singly is not legally binding on another Judge of the same High Court sitting singly."

The rule that a court should follow the decision of another Court of co-ordinate jurisdiction is subject however to several exceptions which have been dealt with in Salmond's jurisprudence, 11th Edn. at page 199 to 217.

(1) A decision ceases to be binding if a statute or statutory rule inconsistent with it is subsequently enacted, or if it is reversed or overruled by a higher court.

(2) A precedent is not binding if it was rendered in ignorance of a statute or a rule having the force of statute.

(3) A precedent loses its binding force if court that decided it overlooked an inconsistent decision of higher court.

24. The observations of the Hon'ble Supreme Court in this regard in the case of Chintan J. Vaswani and Ors. (supra), clearly lay down that the powers under Section 18(1), to be exercised by the Magistrate, are independent of any conviction under Section 3 or Section 7 of the PITA Act. Since the observation of this Court in the case of Rajaram Ghogare (supra) appears to be inadvertent and in ignorance of the above judgment of the Hon'ble Supreme Court, hence I am not inclined to follow the same.

25. Thus, taking an overall view of the matter, I am not inclined to entertain the present Writ Petition. The Petitioners have thus failed to make out any case for interference by this Court under its extraordinary jurisdiction under Article 226 or its supervisory jurisdiction under Article 227 of the Constitution of India. The petition is, therefore, devoid of substance and merits and stands rejected.