

(2026) 08 BOM CK 2415

In the Bombay High Court, Kolhapur Bench

Case No : CRIMINAL WRIT PETITION NO.114 OF 2026

Shankar alias Binu Linga Bholshe

APPELLANT

Vs

District Magistrate & 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

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 35(3), Sub-section (3) of Section 35

Bharatiya Nyaya Sanhita, 2023 — Sections 303(2), 305(E) and 3(5)

Mines and Minerals (Development and Regulation) Act — Sections 4(1), 4(C)(1) and 21

Citation : (2026) 08 BOM CK 2415

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

Bench : Division Bench

Advocate : Mr. Harshvardhan Suryavanshi with Bhanudas Suryawanshi, Mr. Shrikant H. Yadav

Final Decision : Allowed

Judgement

1. Rule. Rule is made returnable forthwith. By consent of the learned counsel appearing for the parties, the Petition is taken up for final hearing.

2. The Petitioner has challenged the Detention Order bearing No. 2025/DCB-2/RR-5780(1)/25 dated 23rd September 2025, passed under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("MPDA Act").

3. It is the case of the Petitioner that the impugned order of detention has been passed by the Detaining Authority mechanically and in a casual and cavalier manner, without any genuine application of mind. According to the Petitioner, the Authorities have failed to explain the delay from the date of the alleged prejudicial activities till the passing of the detention order, as well as the date on which the report was forwarded to the State Government. It is submitted that

any unexplained delay in this regard vitiates the order of detention.

4. The Detaining Authority has arrived at its subjective satisfaction by relying upon a solitary offence, namely, Crime Register No.274 of 2025, registered on 27th March 2025, along with the in-camera statements of Witnesses 'A' and 'B'. It is submitted that, in the said crime, the Petitioner was not arrested and was merely served with a notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") on 27th March 2025.

5. It is further contended that the in-camera statements of Witnesses 'A' and 'B' were recorded only on 17th May 2025, in respect of incidents alleged to have occurred about one and a half to two months earlier. According to the Petitioner, the said statements were recorded belatedly only with a view to fill up the lacunae and to justify the proposal for preventive detention. Thereafter, the detention order came to be passed on 23rd September 2025, after a further delay of nearly four months from the date of recording of the in-camera statements. It is, therefore, submitted that the live link between the alleged prejudicial activities and the order of detention has been completely snapped. The unexplained delay in passing the detention order casts serious doubt on the genuineness of the subjective satisfaction recorded by the Detaining Authority.

6. It is further submitted that the Detaining Authority has also taken into consideration the Petitioner's past criminal antecedents, as referred to in paragraphs 6 to 10 of the grounds of detention. Copies of all the documents pertaining to the said cases have been supplied to the Petitioner. It is contended that the subjective satisfaction of the Detaining Authority is based on the cumulative effect of all the materials placed before it. Since extraneous and irrelevant materials have also been taken into consideration, the subjective satisfaction stands vitiated.

7. The Petitioner has further submitted that, in the relied-upon crime itself, the Investigating Agency did not find it necessary to arrest him and merely issued a notice under Section 35(3) of the BNSS, with which the Petitioner duly complied. In such circumstances, initiation of preventive detention proceedings nearly six months thereafter is wholly arbitrary, unjustified and unwarranted. It is submitted that the ordinary criminal law is sufficient to deal with the allegations against the Petitioner, who is already facing prosecution in the said offence. Therefore, recourse to the stringent provisions of the MPDA Act, which deprive a person of his liberty without trial and substantially restrict the remedy of bail, is wholly unwarranted.

8. It is also contended that the in-camera statements, both recorded on 17th May 2025, relate to incidents allegedly occurring in the months of March and April 2025. Although the statements mention the date and time of the incidents, they are vague and ambiguous and do not disclose the complete particulars necessary to enable the Petitioner to make an effective representation.

9. It is further submitted that there is a material discrepancy in the Marathi and

English versions of the grounds of detention. In the Marathi version, the detenu is referred to by the alias "Binu", whereas in the English version, he is described as "Bablu". This inconsistency demonstrates non-application of mind on the part of the Detaining Authority and has seriously prejudiced the Petitioner's constitutional right to make an effective representation against the order of detention. It is, therefore, submitted that the impugned order of detention is illegal and liable to be quashed and set aside.

10. The learned APP has filed an Affidavit-in-Reply denying the averments made in the Petition. It is submitted that the representation dated 24th January 2026 submitted by the detenu was received by the Special Branch-3B Desk through email from Yerwada Central Prison on the very same day. Since 25th January 2026 and 26th January 2026 were holidays, remarks from the Detaining Authority were called for on 27th January 2026. The remarks were received on 2nd February 2026.

11. It is further stated that the concerned Assistant Section Officer processed the file on 3rd February 2026 and forwarded it to the Section Officer, who, in turn, endorsed the same and forwarded it to the Under Secretary. The Under Secretary endorsed the file on the same day and forwarded it to the Deputy Secretary. The Deputy Secretary endorsed the file on 4th February 2026 and placed it before the Additional Chief Secretary. Upon considering the representation along with the remarks of the Detaining Authority, the Additional Chief Secretary rejected the representation on 4th February 2026 after due application of mind. The rejection was communicated to the detenu by letter dated 4th February 2026 through the Registry Section of the Home Department. It is, therefore, submitted that the representation was considered as expeditiously as possible and there was no delay at any stage.

12. The Respondents have further explained, in detail, the chronology relating to the proposal, approval and confirmation of the detention order and have specifically denied that there was any unexplained delay. It is, therefore, contended that, having regard to the relied-upon crime and the in-camera statements of the witnesses, the Detaining Authority rightly arrived at the requisite subjective satisfaction for passing the order of detention. The learned APP, therefore, prayed for dismissal of the Petition.

13. We have heard the learned counsel appearing for the parties and have carefully considered the material placed on record.

14. The principal contention advanced on behalf of the Petitioner is that the Detaining Authority has relied primarily upon a solitary offence. In the said crime, the Investigating Agency did not consider it necessary to arrest the Petitioner and instead issued a notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

15. The said crime has been registered against the Petitioner for the offences punishable under Sections 303(2), 305(E) and 3(5) of the Bharatiya Nyaya

Sanhita, 2023, read with Sections 4(1), 4(C)(1) and 21 of the Mines and Minerals (Development and Regulation) Act. The prosecution case is that a truck belonging to the Petitioner was found transporting and selling sand illegally. During the course of investigation, the driver disclosed the name of the Petitioner, on the basis of which the crime came to be registered. However, instead of arresting the Petitioner, the Investigating Officer issued a notice under Section 35(3) of the BNSS, requiring him to cooperate with the investigation.

16. It appears that instead of taking recourse to provisions contained in Sub-section (3) of Section 35 of the BNSS, the Detaining Authority has straightway resorted to the action of preventively detaining a person, which has created a contradiction in the action of Law Enforcement Authority. One action of Law Enforcement Authority indicates that Petitioner is not such a dangerous person as would warrant his arrest in bootlegging crimes, while other Authority feels that the Petitioner is such a dreaded criminal that his activities are detrimental to public order unless he is sent behind the bar. These observations are made by the co-ordinate Bench of this Court in Writ Petition No. 781 of 2022 and also relied on the Judgment of Hanif Karim Luluwale v. State of Maharashtra & Ors.¹

17. Thereafter going through the order it appears that earlier the crimes were registered for the same offences and said offences are discussed which is not permissible while passing the detention order.

The two in-camera statements on which the Detaining Authority has relied are identical and are verified by the Sub-Divisional Officer and not by the Detaining Authority.

18. The reliance is placed by the Petitioner on the judgment of this Court in the case of Arjun Sidram Salgar v. The State of Maharashtra & Anr.,² wherein in paragraph No.11 it is observed as under:

"11. In the case of Shaikh Nisar Shaikh Kadir Vs. State of Maharashtra & Anr. (supra), the Coordinate Bench of this Court was considering an identical issue and noted the decision of Shaikh Hussain @ Shahrukh Shaikh Fatru vs State of Maharashtra in Criminal Writ Petition No. 873/2022 , which has held in paragraph Nos. 18 and 19 as under:

"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 are 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 detainee, 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 v. State of Maharashtra, 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."

19. The consistent view is that the Detaining Authority's subjective satisfaction, if based on the in-camera statements of witnesses, must be verified by the Detaining Authority. It is not sufficient to base its satisfaction on the verification by some other officer.

20. Moreover, there is delay in passing the detention order. The crime which is considered is of the month of May 2025 and the order is passed on in September 2025. There is delay of four months in passing the detention order.

21. There is a material discrepancy between the Marathi and English versions of the grounds of detention with regard to the name of the detenu. In the Marathi version, the detenu is referred to by the alias "Binu", whereas in the English version, his name is mentioned as "Bablu". The inconsistency in the identity of the detenu in the two versions of the detention order clearly reflects non-application of mind on the part of the Detaining Authority. The reliance is placed on the Judgment of this Court in the case of *Rupesh Ram Thakur v. Commissioner of Police, Thane & Ors.*,³ wherein in paragraph No.12 it is observed as under:

"12. It is undisputed before us that the right to make a representation means right to make an effective and meaningful representation. That is not an empty formality as is rightly contended before us. For the right to be exercised meaningfully, the detenu is entitled to know the grounds of detention and the materials to support the same as have been referred in the detention order. If the materials are in the form of documents and papers which are not in a language known to the detenu, then, it is undisputed that the law obliges a translation of such documents and papers to be supplied to him. When we talk of meaningful and effective representation, it is further obligatory to provide a correct translation. In the instant case, the ground as also the representation referred above complains that the petitioner though detained and pursuant to an order of detention dating back to 17th October, 2017 has a right to make it and pray therein that true and correct translation of the documents be supplied. These documents were indeed relied upon. This petition is instituted on 18th December, 2017, still, none prevented the petitioner from making an representation to the Government post institution of the petition. At least no provision of law or no principle preventing the petitioner from making such representation is brought to our notice. Be that as it may, such a representation dated 9th February, 2018 was indeed made. We have already referred to its contents and the composite nature of the prayers therein. The affidavits filed on behalf of the respondents proceed earlier on the footing that this representation was not considered expeditiously and that is the complaint of the petitioner. Far from it, the complaint was that such representation containing twin prayers was not considered at all. That the rejection as communicated is deemed to be rejection of the composite or twin prayers is

not the stand either. Meaning thereby, it was considered in entirety and in the light of the grounds and the prayers made. There is nothing communicated in relation to the prayer to supply correct and accurate copies of the Marathi documents. Admittedly and undisputedly, the petitioner maintains that he is Maharashtrian and studied in Marathi medium. He is able to read, write and understand Marathi language only. He be supplied, therefore, the Marathi translation of the relied upon documents. If this is his version, then, undisputedly, the reply to the petition or to the representation makes no reference to this prayer at all. There is no material placed before us, though we called for the original file, which would enable us to conclude that both requests of the petitioner were duly considered. In fact, after receipt of the representation dated 9th February, 2018, the file that is produced before us refers to a representation stated to have been made prior to 9th February, 2018. Our query was not in relation to this representation at all. Our query, as noted by us, in our earlier order was in relation to this representation of 9th February, 2018. Admittedly, this representation was placed before the competent authority. The affidavit filed by the detaining authority as also by the State Government earlier makes a reference to the detenu's representation dated 22nd November, 2017 received in the MPDA Desk on 23rd November, 2017 by Speed Post. How it was dealt with and expeditiously is explained in the affidavit of the State Government, particularly the Department of Home, filed in answer to this petition on 30th January, 2018. Para 2 of this affidavit informs this court that this representation was rejected and the rejection was communicated to the detenu on 30th November, 2017."

22. In view of the foregoing discussion, the impugned Detention Order is quashed and set aside.

23. Accordingly, the Writ Petition is allowed. Rule is made absolute.

24. The detenu shall be released forthwith, if his custody is not required in connection with any other case.

25. The Writ Petition is accordingly disposed of.

FOOTNOTES

1. Cri.W.P. No.75 of 2022 Dtd. 28 June 2022.
2. Cri.W.P.No.254 of 2025 Dtd. 26 August 2025.
3. 2018 SCC OnLine Bom.1024.