



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

CRIMINAL WRIT PETITION NO. 230 OF 2024

Shyam Suresh Yenelli
Age: 32 years, Occu.: Labour,
R/o Nalaguttachal,
Tq. & Dist. Nanded

..PETITIONER

VERSUS

1. State of Maharashtra
Through it's Principal Secretary,
Home Department, Mantralaya,
Mumbai
2. State of Maharashtra
Through it's Section Officer,
Home Department (Special),
Mantralaya, Mumbai
3. The Inspector,
State Excise, Nanded City,
Tq. & Dist. Nanded
4. The Sub-Inspector,
State Excise, B Division, Nanded,
Tq. & Dist. Nanded
5. The Inspector,
Police Station Wajirabad,
Tq. & Dist. Nanded

..RESPONDENTS

....
Ms. U.T. Khan, Advocate for petitioner
Mrs. V.N. Patil Jadhav, A.P.P. for respondents
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : 02nd AUGUST, 2024
PRONOUNCED ON : 09th AUGUST, 2024

JUDGMENT (PER : R.G. AVACHAT, J.) :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

2. The challenge in this writ petition, under Article 226 of the Constitution of India, is to order dated 14th December, 2023 passed by the District Magistrate, Nanded (detaining authority) detaining the petitioner for a period of twelve months, in exercise of power under Section 3 of 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'). The State of Maharashtra in Department of Home approved the order of detention vide its order dated 19th December, 2023. The detention of the petitioner is on the ground of he being a bootlegger and his activities as such were likely to affect the maintenance of public order.

3. The Inspector, State Excise Department, Nanded put up a proposal dated 28th November, 2023 before the detaining authority for detention of the petitioner. A copy of the proposal is on record. Averments therein are :-

The petitioner manufactures/distills toddy blended or laced with hazardous chemicals for sale at Nanded and surrounding places. Not less than nine crimes were registered against him under Section 65(e) of the Maharashtra Prohibition Act, 1949 ('Prohibition Act') during the period from

February 2022 to September 2023. A preventive action under Section 93 of the Prohibition Act was also taken against him. The petitioner executed a bond in the sum of Rs.25,000/-, assuring of maintaining good behaviour. The period of bond was for one year from 15th June, 2023. He committed breach of the bond. Last three crimes mentioned in paragraph no.2 of the proposal were registered against the petitioner during the bond period. Pursuant to a tip off received by the officials of State Excise Department, raids were effected at his residence. He was found in possession of the illicit toddy laced with hazardous chemicals. The authorities concerned obtained the sample of seized toddy and got it analyzed from the chemical analyst. It was revealed that the samples contained ethyl alcohol in various percentage. Some of the samples contained chloral hydrate, sugar and copper sulphate. The officials in the rank of Associate Professor in the Department of Forensic Science at Dr. Shankarrao Chavan Government Medical College, Vishnupuri gave a report on 21st September, 2023. It is reiterated by the authorities that ethyl alcohol, copper sulfate and chloral hydrate if consumed by a human being, was harmful for human health. The report further indicates that concoction of the three i.e. alcohol, copper sulfate and chloral hydrate if consumed in excess quantity, there is possibility of loss of life.

4. The authorities concerned also recorded two in-camera statements of the persons on the condition of not disclosing their identity. Both the witnesses in their statements disclosed the petitioner to have consistently been indulging in manufacturing of illicit toddy. According to

witness - A, it was in October 2023 by 08:00 in the evening, he was on his way home. The petitioner accosted him near Somesh Colony and threatened at knife point. The petitioner also abused him and gave threats if he informed the police about his (petitioner) illegal activities.

5. On the same lines is the statement of witness – B. Similar incident took place with the said incident in the second week of November 2023 by little past 08:30 p.m. The petitioner accosted him and threatened as he suspected the said person to have instigated the persons in the nearby to lodge report against the petitioner.

6. The detaining authority, after having gone through the proposal and all the papers submitted in support thereof, passed the order of detention, impugned herein. The said order is mainly challenged by the petitioner on the following grounds :-

- (i) The petitioner is a young person in the age group of 30-32 years, earning his livelihood by working as a labour.
- (ii) The petitioner has never been convicted for any of the offences under the Prohibition Act.
- (iii) The petitioner in all the cases was released on his executing P.R. bond, meaning thereby the authorities concerned even did not take recourse to the ordinary law of land. The authorities did not find arrest of the petitioner imminent.
- (iv) In some of the reports received from the Forensic Department, no

chloral hydrate was detected in the sample/s allegedly seized from the petitioner. In two cases it was termed to be milky hazy liquid and not toddy. The reports specifically state that no chloral hydrate was detected. It was not even toddy.

- (v) Toddy/*Shindi* being perishable, it was destroyed after taking samples therefrom, which were sent for chemical analysis. The delay in sending the same might have turned the samples to be unfit for chemical analysis.
- (vi) So far as regards the in-camera statements are concerned, those witnesses claimed to have known the petitioner for over five years.
- (vii) The detaining authority has wrongly mentioned in the detention order that offence under Section 65(e) of the Prohibition Act is punishable with seven years imprisonment, when in fact the punishment provided therefor is a sentence which may extend up to five years.
- (viii) Complainant – Preeti Waghmare in her report dated 11th September, 2023 described the petitioner being sixty five years of age.
- (ix) All the cases registered against the petitioner could be dealt with under the ordinary law of land. There was no likelihood of the alleged activities of the petitioner to result into disturbance to maintenance of public order.

7. Learned counsel for the petitioner made oral submissions reiterating the aforesaid grounds raised in the writ petition. According to her, the petitioner is behind the bars for about seven months. She ultimately urged for allowing the petition.

8. Learned A.P.P. would, on the other hand, submit that the petitioner got indulged in selling toddy. According to her, in view of definition of 'intoxicant' appearing in Section 2(22) of the Prohibition Act means any liquor, intoxicating drug, opium or any other substance, which the State Government may, by notification in official gazette, declare to be an intoxicant. Then she took us through the definition of 'toddy' appearing in sub-Section (46) of Section 2 of the very Act. Learned A.P.P. would then submit that the petitioner would mix hazardous chemicals in the toddy like liquid and sell it. She then adverted our attention to the report given by the Associate Professor of Dr. Shankarrao Chavan Government Medical College, Vishnupuri. She would further submit that the preventive action taken against the petitioner proved futile. She then took us through the order of detention impugned herein and submitted that the detaining authority to have arrived at subjective satisfaction in passing the order. According to her, judicial review can hardly be there in case of subjective satisfaction in passing the order of preventive detention. She then adverted our attention to the in-camera statements of the witnesses, who were threatened by the petitioner with a view to have him a free hand in dealing with sale of intoxicants. Learned A.P.P. ultimately urged for dismissal of the petition.

9. Considered the submissions advanced. Perused the order impugned herein.

10. Paragraph no.3 of the order gives chart of nine crimes registered against the petitioner for the offence punishable under Section 65(e) of the Prohibition Act. Last five crimes mentioned in the chart have been registered against the petitioner during the period from 14th February, 2023 to 11th September, 2023. Then there is reference to a preventive action taken against the petitioner under Section 93 of the the Prohibition Act. The present action of detention is said to have been taken since, inspite of chapter case, no. 3 of 2023 under Section 93 of the Prohibition Act, the petitioner continued to commit similar offences. The order further records that the samples of toddy/*shindi* were obtained and have been chemically analysed.

11. Although the first four crimes that took place and registered in the year 2022 against the petitioner have been referred to indicate his past conduct, the same would be relevant so as to indicate his continuous illegal activities. There is on record C.A. report dated 07th April, 2022 relating to sample of toddy seized from the petitioner, which reads thus :-

“The Sample contains 1.20% v/v of ethyl alcohol. It contains yeast, sugar and copper sulphate and it also contains 2.00 mg % w/v of chloral hydrate in it.”

12. True, the report dated 11th October, 2023 indicates that no chloral hydrate was detected in the sample. The same was, however found to have contained 2.19% of ethyl alcohol, besides yeast and sugar. Its appearance was like milky hazy liquid. The report dated 01st December, 2023, records as under :-

“The Sample contains 2.71% v/v of ethyl alcohol. It contains yeast, sugar and copper sulphate. No chloral hydrate is detected in it.”

There is one more report dated 21st September, 2023 issued by the Associate Professor of Department of Forensic Medicine of Dr. Shankarrao Chavan Government Medical College, Vishnupuri, which reads thus :-

“१. वरील संदर्भाकित तिन्ही अहवालामध्ये इथाईल अल्कोहोल, कॉपर सल्फेट आणि क्लोरल हायड्रेट हे घटक पदार्थ असल्याचे नमूद आहे. सदरील पदार्थ मानवाने सेवन केल्यास शरीरावर हानिकारक परिणाम दिसून येतात. तसेच हे तिन्ही पदार्थ मिश्रीत द्रावण सेवन केल्यास मानवी शरीरावर होणारे इथेनॉलचे परिणाम जास्त प्रमाणात दिसून येतात.

२. वरील संदर्भात तिन्ही अहवालातील पदार्थ मिश्रीत द्रावण अतिप्रमाणात सेवन केल्यास मानवी शरीरावर हानिकारक परिणाम होवून त्या व्यक्तीचा मृत्यू होवू शकतो.”

13. Post receipt of this report only, the proposal for detention of the petitioner was moved by the Inspector of State Excise Department, Nanded. Before that two in-camera statements have been recorded. The witnesses, on condition of anonymity, disclosed the officials the petitioner to have intercepted them in the months of October and November and threatened with dire consequences if they report the police about his activities relating to

sell of toddy. The details of the statements do find place in the detention order. The in-camera statements to have also been verified by the officer in the rank of Superintendent of Police, State Excise, Nanded.

14. Relevant provisions of the MPDA Act reads thus :-

“2. In this Act, unless the context otherwise requires, -

(a) “acting in any manner prejudicial to the maintenance of public order” means -

(ii) in the case of bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order;

Explanation. - For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health [or disturbance in public safety and tranquility or disturbs the day to day life of the community by black- marketing in the essential commodities which is resulting in the artificial scarcity in the supply of such commodities and rises in the prices of essential commodities which ultimately causes inflation] [or disturbs the life of the community by producing and distributing pirated copies of music or film products, thereby resulting in a loss of confidence in administrations];

*(b) "bootlegger" means a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provisions of the *Bombay Prohibition Act, 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacles or any other materials whatsoever in furtherance or support of the doing any of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such thing;*

15. The toddy laced with dangerous chemicals seized from the petitioner was, therefore, necessarily intoxicant.

16. The Apex Court, in its judgment in case of ***Pesala Nookaraju Vs. The Government of Andhra Pradesh & Ors., [2023] 11 SCR 520*** has observed thus :-

“64. The potentiality of the act has to be examined in the light of the surrounding circumstances, posterior and anterior for the offences under the Prohibition Act.

65. Just because four cases have been registered against the appellant detenu under the Prohibition Act, by itself, may not have any bearing on the maintenance of public order. The detenu may be punished for the offences which have been registered against him. To put it in other words, if the detention is on the ground that the detenu is indulging in manufacture or transport or sale of liquor then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Prohibition Act but if the liquor sold by the detenu is dangerous to public health then under the Act 1986, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to it that the liquor dealt with by the detenu is liquor which is dangerous to public health to attract the provisions of the 1986 Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.”

17. In the case in hand, the detaining authority was subjectively satisfied that the seized toddy from the appellant was dangerous for human consumption. It relied on the report given by the Associate Professor in the

Department of Forensic Science at Dr. Shankarrao Chavan Government Medical College, Vishnupuri. The said reports were given to the petitioner while the order of detention was served on him. The two in-camera statements have also been relied on. Needless to mention, that the preventive detention order is an administrative act.

18. True, in all the cases the appellant had never been arrested. He was served with the notice under Section 41-A of the Cr.P.C. The record, however indicates that a preventive measure under Section 93 of the Prohibition Act was initiated against him. Even a bond of good behaviour was executed by him. During the period of bond, last 2-3 crimes came to be registered against him. True, for cancellation of the said bond and recovery of the bond amount, he need to be served with the notice and given an opportunity. Same is the different matter.

19. The Apex Court, in case of ***Vijaykumar Vs. Union of India and Others, (1988) 2 SCC 57*** has observed - **Whether the offence for which detenue was jailed was bailable or not immaterial for the purpose of preventive detention.** In view of the same, even the present petitioner to have not been arrested in connection with any of the crimes registered against him, which found basis of his detention order would, therefore, be of no consequence. Although, the last crime was registered in September 2023. Both the in-camera statements are dated 24th November, 2023. The proposal for the petitioner's detention was moved on 28th November, 2023.

As such, there is proximity inter se the crimes registered against the petitioner and even the last crime, in-camera statements, the proposal for detention and the order of detention itself.

20. For all the aforesaid reasons, we find the detaining authority to have passed the detention order with his subjective satisfaction. No interference with the order impugned herein is, therefore, warranted. In the result, criminal writ petition fails. Same stands dismissed. Rule stands discharged.

SSD (NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)