



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

CRIMINAL WRIT PETITION NO. 835 OF 2024

Gyansingh Shivilal Chavan
Age: 45 years, Occu.: Labour,
R/o Parundi Tanda, Tq. Paithan,
Dist. Aurangabad

..PETITIONER

VERSUS

1. District Magistrate, Chhatrapati Sambhajnagar,
Dist. Chhatrapati Sambhajnagar.
2. State of Maharashtra
Through the Additional Chief Secretary,
Government of Maharashtra, Home Department,
Mantralaya, Mumbai – 32.
3. The Jail Superintendent,
Harsul Prison,
Dist. Chhatrapati Sambhajnagar

..RESPONDENTS

....
Mr. C.C. Deshpande, Advocate for petitioner
Mrs. S.N. Deshmukh, A.P.P. for respondent - State
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.**
RESERVED ON : 19th JUNE, 2024
PRONOUNCED ON : 16th JULY, 2024

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

1. This writ petition, under Article 226 of the Constitution of India, is
filed for the following main relief :-

“C) That the order of detention bearing no. D.O.2024/MPDA/DET-1/DC-121, issued u/sec.3(2) of the MPDA Act, 1981, dtd. 26/03/2024, passed by the resp. no.1, District Magistrate, Chhatrapati Sambhajnagar and order passed by the Home Department, Mantralaya in MPDA-0324/Pra.Kra.-216/ViSha-3B be quashed and set aside and he be released forthwith;

2. Respondent No.1 is the District Magistrate, Chhatrapati Sambhajinagar. Vide his order dated 26th March, 2024, the petitioner was detained for a period of twelve months, in exercise of power under Section 3(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 order of detention is passed on account of the petitioner's activities as a bootlegger were found to have been prejudicial for maintenance of public order. It was also found that he was likely to revert to such activities, and therefore, to prevent him therefrom, his detention was imminent.

3. The order of detention passed by Respondent No.1 has been confirmed by Respondent No.2 – State of Maharashtra, Department of Home vide order dated 15th May, 2024.

4. For better appreciation, it would be desirable to refer to relevant material part of the order of detention impugned in this writ petition. Paragraph nos.2 and 3 of order dated 26th March, 2024 read thus :-

“2. Your criminal record shows that you are a ‘Bootlegger’ as defined in the said Act. You have started the illegal business of hatbhatti at Parundi Tanda and adjoining areas. Your activities of this illegal bootlegging have created a threat to the public order in that area. Police Inspector of Police Station Pachod has brought to my notice that you are manufacturing illicit Hatbhatti liquor. When the medical officer of Primary Health Center, observed that, the foul smell of your Hatbhatti den was

spreading in that area and the health of the people in that area was in danger. There is no definite amount of any ingredient in the hatbhatti liquor that you are selling and it is harmful and dangerous to human health. There have been many incidents of loss of life due to consumption of such spurious hatbhatti liquor in Maharashtra State. To prevent your illegal bootlegging activities, Police Officer of Police Station Pachod have raided your illicit hatbhatti liquor den from time to time and registered cases against you. Similarly, when the report of Rural Hospital Pachod was asked about the effect of your illegal den of hatbhatti liquor, it has been mentioned in his report that drinking hatbhatti liquor has endangered the health of many people. Preventive action was taken against you u/s 93 of Maharashtra Prohibition Act, 1949 to curb your business of hatbhatti liquor but it has not effect on your rather you, have committed crimes in ascending order.

3.

Despite registration of various offences under the Maharashtra Prohibition Act, 1949, you have continued to indulge in repetition of the same kind of and in order to curtail your bootlegging activities a report for taking preventive action u/s 93 of Maharashtra Prohibition Act, 1949 was initiated. However this preventive action has had no effect on your bootlegging activities and you continued to indulge in bootlegging as well as violent activities thereby causing dangerous to human life and disturbing public order in Police Station Pachod and adjoining areas.”

5. It was further found that inspite of initiation of preventive action under Section 93 of the Maharashtra Prohibition Act, 1949, the petitioner indulged in two more offences, punishable under Section 65-F of the very Act, on 21st November, 2023 and 30th November, 2023. The proceeding in preventive action (Chapter Case) was, therefore, dropped and the proposal for detention of the petitioner was moved.

6. In the crime, vide C.R. No. 452 of 2023 registered on 21st November, 2023, the petitioner was found to have manufactured illicit liquor at his residence. A raid was, therefore, effected. A container containing 10 liters of illicit liquor was seized. The articles used in manufacture of illicit liquor were destroyed. The C.A. reports of the seized illicit liquor indicate it to have contained 43% v/v ethyl alcohol. While in another raid effected on 30th November, 2023, the illicit liquor worth Rs.1,000/- was seized from the petitioner's possession. The chemical and other articles used in manufacturing thereof were destroyed on the spot. The C.A. reports found the seized illicit liquor contained 13% v/v ethyl alcohol. Considering the nature of offence, the petitioner was given notice under Section 41(A) of the Cr.P.C.

7. It was further found that the petitioner in the first week of January and February 2024 intercepted two different persons and threatened them at the knife point so as not to be the obstacle in the petitioner's activity of manufacturing illicit liquor. The sponsoring authority recorded the statement of those two persons with assurance of not disclosing their identity. Thus, it was found that the petitioner was prepared to go to any extent so as to have a free run in running his business of manufacturing and sell of illicit liquor. The sponsoring authority also obtained a certificate from the Medical Officer, Primary Health Center, Adul, in whose opinion in the vicinity whereat the petitioner would reside, due to stink / foul smell of the illicit liquor the residents/inhabitants of the area fell sick. If the petitioner's activities

continued unabated, there was likelihood of spread of pandemic like disease. In short, on the aforesaid grounds, the petitioner was detained for a period of twelve months.

8. Learned counsel for the petitioner would submit that the order of detention was passed with non-application of mind. Only two crimes have been considered besides two in-camera statements. While the material produced before the detaining authority pertains to six crimes registered in the long back. There was no live link between the order of detention and the crimes registered against the petitioner. Extraneous material was considered for passing the impugned order. He would further submit that the documents relied on would indicate the detaining authority to have had already made up his mind to pass the impugned order for extraneous reasons. Although, the order was served on the petitioner on 26th March, 2024, it was prepared well in advance. The order was passed in very casual manner.

9. He would further submit that the petitioner was served with the notice under Section 41(A) of the Cr.P.C. in both the crimes. In other crimes, the petitioner was on bail. According to the learned counsel, when the ordinary law of land is quite sufficient to curb the alleged illegal activities of the petitioner, a resort to extraordinary measure of detention for twelve months without any reason ought not to have been resorted to. The same has affected the petitioner's fundamental right. Learned counsel relied on the following two authorities of this Court to ultimately urge for allowing the

petition :-

(I) Hussain Sardar Tadvī Vs. The District Magistrate, Jalgaon and Others, Criminal Writ Petition No. 435 of 2024

(II) Dhanubai @ Dhanno Yashvant Netlekar Vs. State of Maharashtra and Others, Criminal Writ Petition No. 1527 of 2023

10. Learned A.P.P. would, on the other hand, submit that the graph of criminal activities of the petitioner was ascending. There were not less than six crimes registered against him under the MPDA Act. A preventive action under Section 93 of the very Act was initiated. Pending such proceeding, the petitioner indulged in two more illegal activities as a bootlegger. He even threatened two persons with dire consequences, if they come in his way of manufacturing and selling of illicit liquor. According to learned A.P.P., the order of detention is axiomatic to indicate the detaining authority to have been subjectively satisfied. The order recites that the activities of the petitioner, if allowed to be continued, would necessarily affect maintenance of public order. She would further submit that the petitioner even started turning to indulge in the activities as dangerous person. She then adverted our attention to a certificate given by the Medical Officer of Primary Health Center, Adul indicating that due to manufacturing of illicit liquor, in the vicinity at which the petitioner would reside, foul smell / stink would spread and it was dangerous to human health. Learned A.P.P. relying on the judgment of this Court in case of **Vinod Dhannulal Jaiswal Vs. District Magistrate, Aurangabad and Ors., Criminal Writ Petition No. 1430 of 2023** dated 17th January, 2024, ultimately urged for dismissal of the writ petition.

11. Considered the submissions advanced. Perused the order impugned herein. Before advertizing to address the impugned order of detention, it would be appropriate to refer certain provisions of the MPDA Act as under :-

“2(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;”*

12. The chart in the order of detention contains six crimes including two on which reliance has been place for passing the impugned order. First four crimes were allegedly committed by the petitioner during December 2021 to December, 2022. Those are pending trial. There is a long gap between those four crimes and the order impugned herein. As such, there is no proximate connection between those four crimes and the order of detention.

13. True, an action under Section 93 of the Maharashtra Police Act was initiated against the petitioner in the initial period of 2023. Then it appears that the petitioner indulged in two activities of manufacturing of illicit liquor. Crimes vide C.R. Nos. 452 and 471 of 2023, therefore, came to be registered for offence punishable under Section 65(f) of the Maharashtra Prohibition Act on 21st and 30th November, 2023. The police papers pertaining to those crimes indicate that pursuant to a tip off, a raid was effected at the petitioner's place whereat he was found to have been in possession of the illicit liquor worth Rs.900/- and Rs.1,000/- respectively. The C.A. reports of the samples taken of the seized illicit liquor indicate that one contains 43% of ethyl alcohol and another sample contains 13%.

14. Admittedly, the petitioner was served with notice under Section 41-A of the Cr.P.C. in connection with both the crimes. Then there are two in-camera statements. For better appreciation, gist thereof is reproduced below :-

गोपनीय जबाब -अ

दिनांक -०४/०३/२०२४

समक्ष विचारले वरुन जबाब देतो की, मी वरील ठिकाणचा राहणारा असुन वरील नमुद प्रमाणे व्यवसाय करुन उपजिवीका भागवीतो. मी ग्यानसिंग शिवलाल चव्हाण यास मागीलआठ ते दहा वर्षांपासुन एक हातभट्टीवाला म्हणुन ओळखतो. तो गावठी हातभट्टीचा अड्डा चालवीतो त्याच्या अड्डाभोवती गुन्हेगार जमतात आणि त्यामुळे भितीचे वातावरण तयार झाले आहे त्याचा गावठी हातभट्टीच्या धंद्यामुळे पारुंडी तांडा आणि नजिकच्या परीसरात दुर्गधी पसरुन लोकांचे आरोग्य धोक्यांत आले आहे. त्याचे भितीमुळे त्याचे विरुद्ध कोणीही तक्रार देत नाही.

माहे फेब्रुवारी २०२४ पहील्या आठवडयांत एके दिवशी सांयकाळी २०.०० वाजेच्या सुमारास मी घराकडे जात असतांना पारुंडी चौफुली जवळ ग्यानसिंग शिवलाल चव्हाण यांने मला अडवले आणि चाकु काढून माझ्या पोटाला लावला आणि मला धमकी दिली की, मादरचोद माझ्या हातभट्टीच्या धंद्यामुळे तुला काय अडचन आहे, जर तु यापुढे माझ्या धंद्यात नाक खुपसलास तर तुझ मुंडकच उडवून टाकीन. असे म्हणुन त्याने माझ्या गालात झापड मारुन निघुन गेला. त्यावेळी आजुबाजुचे लोक त्याचा भितीपोटी पळुन गेले. तो एक हातभट्टीवाला गुंड असल्यांने मी पोलीसात तक्रार दिली नाही. आपण दिलेल्या आश्वासनाप्रमाणे माझा जबाब गुप्त ठेवावा हि विनंती.

माझा वरील जबाब मी वाचुन पाहीला तो माझे सांगणे प्रमाणे संगणकावर टंकलिखित केला असुन तो बरोबर व खरा आहे.

गोपनीय जबाब - ब

दिनांक :-05/03/2024

समक्ष विचारल्यावरुन जबाब देतो की, मी वरील ठिकाणी राहत असून वरील प्रमाणे व्यवसाय करुन उदरनिर्वाह करतो. मी ग्यानसिंग शिवलाल चव्हाण यास पाच ते सहा वर्षांपासून हातभट्टीवाला आणि गुंड म्हणून ओळखतो. त्याच्या हातभट्टीच्या धंद्यामुळे पारुंडी तांडा, पारुंडी गांव, गेवराई मरदा व नजिकच्या परिसरातील लोकांचे आरोग्य धोक्यात आले असून त्यांच्या मनात भिती आणि असुरक्षिततेची भावण निर्माण झालेली आहे. त्याच्या गावठी हातभट्टीच्या अड्ड्याच्या दुर्गधीस त्या भागातील लोक तोंड देत आहेत. त्याच्या गावठी हातभट्टीच्या अड्डाभोवती गुन्हेगार जमतात त्यातुळे त्या भागातील स्त्रीया, मुली व लहाण मुले मुक्त पणे वावरण्यास धजत नाहीत.

माहे जानेवारी 2024 च्या शेवटच्या आठवडयात एके दिवशी सायंकाळी 07.30 वाजेच्या सुमारास मी माझ्या कामावरुन घरी जात असतांना त्याने मला शाळेजवळ अडवले आणि माझी कॉलर पकडून मला धमकी दिली की, " माझ्या धंद्याची माहिती नेहमी पुलीसांना तुच देतो या पुढे जर माझ्या अड्ड्यावर पोलीस आले तर तुला खल्लास करुन टाकीन." असे म्हणुन त्याने मला शिवीगाळ करुन निघून गेला. त्यावेळी त्याच्या भितीमुळे रस्त्यावरील लोक माझ्या मदतीस पुढे आले नाही. तो एक

गुंड असल्याने मी त्याचे विरुद्ध पोलीसात तक्रार दिली नाही. कृपया आपण आश्वासन दिल्या प्रमाणे माझा जबाब गुप्त ठेवावा हि विनंती.

माझा वरील जबाब मला मी वाचून पाहिला तो माझे सांगणे प्रमाणे संगणकावर टंकलिखित केला असून तो बरोबर व खरा आहे.

Close reading of both these statements indicate that those are vague. The witnesses did not state day or date on which the petitioner intercepted them and threatened with dire consequences if they come in his way of dealing in illicit liquor. Those statements, therefore, could be said to be vague and prejudicial to the petitioner to defend himself.

15. In none of the C.A. reports it has been observed that consumption of seized illicit liquor was harmful for the human health. It appears that the sponsoring authority has resorted to a novel method. He requested the Medical Officer, Primary Health Center, Adul, Tq. Paithan to pay visit to Akhatwada Tanda and report. It was the communication date 01st March, 2024. The Medical Officer, vide his letter bearing no date or outward number, opined as under :-

“आपण केलेल्या विनंतीप्रमाणे आम्ही आखतवाडा तांडा व नजीकच्या परीसरात भेट देवून पाहणी केली असता सदर भागात आंबट उग्रट दुर्गंधी पसरलेली असून त्यामुळे पारुंडी तांडा, गेवराई मर्दा, पारुंडी या भागातील लोकांचे आरोग्य धोक्यात आलेले आहे. पारुंडी व पारुंडी तांडा काही लोकांना विचारपूस केली असता या गावठी हातभट्टीच्या दारुमुळे त्या परीसरांतील लहान मुले व वयोवृद्ध व्यक्ती या नेहमी आजारी पडतात तसेच या दुर्गंधीमुळे लोक वांट्या करतात व वांट्या केल्याने नजीकच्या परीसरात दुर्गंधी पसरून सर्वसामान्य लोकांना तेथे राहणे अवघड झालेले आहे या दुर्गंधीमुळे बरेच लोक तो भाग सोडून तेथून इतरत्र ठिकाणी सीमांतरीत झालेले आहेत.”

It needs no mention that such a situation can be arose from the stink emanating from roadside dump of waste and/or debris.

16. In case of **Ameena Begum Vs. State of Telangana & Ors., AIR 2023 SC 4273**, the Apex Court has observed thus :-

“52. In Vijay Narain Singh v. State of Bihar, (1984) 3 SCC 14, Hon'ble E.S. Venkataramiah, J. (as the Chief Justice then was) observed:

32. ...It is well settled that the law of preventive detention is a hard law and therefore it should be strictly construed. Care should be taken that the liberty of a person is not jeopardised unless his case falls squarely within the four corners of the relevant law. The law of preventive detention should not be used merely to clip the wings of an Accused who is involved in a criminal prosecution. It is not intended for the purpose of keeping a man under detention when under ordinary criminal law it may not be possible to resist the issue of orders of bail, unless the material available is such as would satisfy the requirements of the legal provisions authorising such detention. When a person is enlarged on bail by a competent criminal court, great caution should be exercised in scrutinising the validity of an order of preventive detention which is based on the very same charge which is to be tried by the criminal court.”

17. In our view, the sponsoring authority could have recalled the order of issuance of notice to the petitioner under Section 41-A of the Cr.P.C. and arrested him. Notice dated 30th November, 2023 given in connection with the crime, C.R. NO. 471 of 2023 relied on for detaining the petitioner is at page no.104. Relevant part of the notice reads thus :-

“यावरील नोटीसमध्ये नमुद कोणत्याही अटीचे/निर्देशांचे पालन करण्यात बुकल्यास फौजदारी प्रकिया संहिता १९७३ च्या कलम ४१ (अ) (३) व (४) नुसार तुम्हास कायदेशिर अटक केली जावू शकते.”

The Sponsoring Authority could have recalled the notice under Section 41-A of the Cr.P.C. and arrested the petitioner. Same has not been done in this case. It needs no mention that arrest has a deterrent effect. In

Arnesh Kumar Vs. State of Bihar, AIR 2014 SC 2756, the Apex Court after referring Section 41 of Cr.P.C. observed thus :-

“From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by Sub-clauses (a) to (e) of Clause (1) of Section 41 of Code of Criminal Procedure.”

18. Moreover, in paragraph no. 65 of the case of **Pesala Nookaraju Vs. The Government of Andhra Pradesh, MANU/SC/0893/2023**, it has been observed thus :-

“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.”

19. The case relied on by learned A.P.P. would indicate that there were not less than thirteen crimes registered against the petitioner. That makes all the difference. The activities of the petitioner therein continued unabated. The Court, in the facts and circumstances of the case, was pleased to uphold the order of detention of the petitioner therein.

20. In short, there is no proximity between the first four crimes registered against the petitioner and the order of detention. So far as regards other two crimes are concerned, the petitioner was not even arrested. The Sponsoring Authority could have recalled the notice given to him under Section 41-A of Cr.P.C. and arrested the petitioner. The C.A. reports relating to the seized illicit liquor do not indicate the same was

harmful for human consumption. Both the in-camera statements are as vague as could be. All these facts lead us to allow the petition. Hence, the following order :-

Order of detention dated 26th March, 2024, bearing no. D.O.2024/MPDA/DET-1/DC-121, passed by the Respondent no.1 - District Magistrate, Chhatrapati Sambhajinagar and order of confirmation dated 15th May, 2024 passed by the Home Department, Mantralaya in MPDA-0324/Pra.Kra.-216/ViSha-3B are hereby set aside. The petitioner be released forthwith, if not required in any other case.

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD