

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

CRIMINAL WRIT PETITION 1527 OF 2017

Narhari S/o Kashinath Ade
Age 38 years, Occu : Agril.,
R/o Radi Tanda, Tq. Ambajogai,
District Beed.

.. PETITIONER

Versus

1] The State of Maharashtra,
Through its Secretary
Home Department,
Mantralaya, Mumbai-32.

2] The District Magistrate,
Collectorate Office, Beed
Tq. & Dist. Beed.

3] The Police Inspector,
Police Station Ambajogai(Rural)
Ambajogai, Tq. Ambajogai.
(Copy of Respondents is to be
served through Public Prosecutor
High Court of Bombay, Bench
at Aurangabad.)

..Respondents

Mr. Eknath Sawant h/f Mr. M.P. Kale, Advocate for Petitioner.
Mr. D.R. Kale, APP for Respondents - State.

**CORAM : S.S. SHINDE &
MANGESH S. PATIL, JJ.**

**RESERVED ON : 29/11/ 2017.
PRONOUNCED ON : 05/12/2017.**

JUDGMENT (PER MANGESH S. PATIL, J.) :

Rule. The Rule is made returnable forthwith. Heard finally
with the consent of the parties.

2] In this Writ Petition filed under Articles 226 and 227 of the Constitution of India, the petitioner is objecting to the order dated 12/10/2017 passed by the Government of Maharashtra, Home Department, 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 (hereinafter referred to as the MPDA Act) directing him to be detained for a period of one year from the date of detention.

3] Shortly stated, the facts leading to the filing of this Writ Petition are as under :

Respondent No.3 Police Inspector of Ambajogai Rural Police Station, District Beed submitted a proposal to the Respondent No.2 District Magistrate, Beed on 30/8/2016 informing that the petitioner has been distilling country liquor in his house at Radi Tanda. Several crimes were registered against him under the provisions of the Maharashtra Prohibition Act, 1949 for such activities. He has been selling country made liquor in the surrounding villages. Few persons got addicted to such country liquor and there has been increase in percentage of violence against girls and women in the vicinity. Because of his nature, nobody is coming forward to lodge any complaint. Seven criminal cases have been pending against him for the offences punishable under the Maharashtra Prohibition Act. Thus a request was made to initiate action against the petitioner under Section 3 of the MPDA Act on the basis of confidential statements of three witnesses A,B,C recorded by Respondent No.3 Police Inspector.

The respondent No.2 District Magistrate after going through the report, copies of the charge sheets and the statements of witnesses, by the impugned order (Exh.C collectively.) directed the petitioner to be detained under the provisions of Section 3(2) of the MPDA Act.

4] The matter was referred to the Advisory Board and the Government of Maharashtra, Home Department (Special) by its order dated 12/10/2017 directed the petitioner to be detained for one year from the date of detention (Exh.E). Hence this Petition.

5] According to the learned Advocate for the petitioner, the impugned order passed by the respondent No.2 suffers from non-application of mind. The respondent No.2 has passed the impugned order in a stereo type manner. The learned Advocate also submitted that no intimation of the order was delivered to him in breach of the provisions of Section (8) of the MPDA Act. The Advisory Board did not give him any opportunity to present his case under Section 11 of the MPDA Act and directly submitted its report to the State Government. In turn without following the principles of natural justice, the State Government has also by the impugned order confirmed the detention. The learned Advocate further submitted that in view of proviso to Section 3 of the MPDA Act, the maximum period to which a person can be directed to be detained at the first instance is only six months and the impugned order passed by the State Government directing him to be detained for one year is clearly in breach of such statutory limit. The learned Advocate for the petitioner in support of his submission referred to the decision in the case of Lahu Shrirang Gatkal V/s. State of Maharashtra and Ors; AIR 2017 SC 3770. Thus, according to the learned Advocate, for all these

reasons the impugned orders are illegal and liable to be quashed and set aside.

6] The learned Advocate for the petitioner further submitted that the very basis for passing the impugned orders that the petitioner is involved in many offences under the Maharashtra Prohibition Act, 1949 has ceased inasmuch as he has been acquitted by the Magistrate of all these offences. The learned Advocate in support of his submission also produced copies of the orders passed by the learned Magistrate stopping all these proceedings by invoking the powers under Section 258 of the Cr.P.C.

7] The learned APP vehemently opposed the Petition. According to the learned APP, the respondent no.2 and the State Government have passed the impugned orders only after application of mind and giving suitable opportunity to the petitioner to make a Representation. He also pointed out that intimation of the order was duly given to a relative of the petitioner viz. Kashinath Rathod R/o Radi Tanda, Tq.Ambajogai, District Beed and one Atmaram Harichandra Rathod, R/o Bitargaon Tanda, Tq. Renapur, Dist. Latur on 7/9/2017 (Exh.R-1). The learned APP by referring to the affidavit in reply filed by one Manisha Rambhau Telbhate, Tahsildar (Revenue) in the office of Collector, Beed, further submitted that the petitioner was produced before the Advisory Board on 4/10/2017 and the Advisory Board submitted its report to the State Government and in pursuance of which, by the impugned order, petitioner has been directed to be detained. The learned APP also submitted that the period of six months provided under Section 3 of the MPDA Act only regulates the powers of the authority to whom the State Government

delegates the power to pass order under Section 3(1) of the MPDA Act and does not restrict the power of the State Government conferred on it under Section 13 of the MPDA Act to pass an order for detention upto 12 months. The learned APP in support of his submission referred to the decision of Division Bench of this Court at Principal Seat dated 13/10/2017 in the case of Sachin @ Bobby Sambhaji Shinde V/s The Commissioner of Police, Solapur and others in Criminal Writ Petition No.1766/2017 with connected Petitions.

8] We have carefully gone through the papers of investigation. At the outset, it is necessary to note that the very basis for passing the impugned orders directing detention of the petitioner has fallen to the ground inasmuch as admittedly, he has been acquitted of all the charges under the Maharashtra Prohibition Act by the learned Magistrate, who has directed all the seven cases to be stopped by invoking his powers under Section 258 of Cr.P.C. Consequently, when the petitioner has been acquitted of these crimes under Maharashtra Prohibition Act, it cannot be said that he has been involved in bootlegging. There remains no ground, in substance, to brand him as a bootlegger. Therefore, as has been rightly submitted by the learned Advocate for the petitioner, the very basis for passing the impugned order does not survive. For this reason alone, therefore, in our view, the impugned order is no more sustainable on facts.

9] Apart from the above state of affairs, a careful perusal of the order passed by the respondent no.1 reveals that he has passed the order in a stereo type manner. He has simply referred to the pending cases under the Maharashtra Prohibition Act and thereafter has referred to the statements of witnesses 'A to C'. However, the

reference to the statements of these witnesses is apparently in a stereo type manner. If according to the proposal forwarded by the respondent No.3 Police Inspector, the distilling of country liquor has resulted in increase in offences against girls and women, it was expected that these witnesses should have referred to this fact. But none of them seem to have referred to such increase in the crimes against girls and women. The respondent no.2 has clearly ignored this aspect which demonstrates non application of mind as has been rightly pointed out by the learned Advocate for the petitioner. Therefore, merely because the impugned order passed by the respondent No.2 mentions that he has arrived at subjective satisfaction, the observation are clearly hollow and demonstrate clear non application of mind. Without there being any witness saying that there is increase in the crime against women and girls, he has observed that there has been such an increase in the crime. Therefore, we are satisfied that the impugned order passed by the respondent No.2 also suffers from non application of mind.

10] True it is, that the other ground of not informing the relatives is concerned, the acknowledgement in writing of the abovementioned two persons viz. Kashinath Rathod and Atmaram Rathod clearly belies the submission on behalf of the petitioner.

11] Similarly, in view of the recent judgment of the Division Bench in the case of Sachin Shinde (supra), wherein a reference is made to all the judgments of the Supreme Court including the one in the case of Lahu Shrirang Gatkai (supra) cited by the learned Advocate for the petitioner have been discussed and relying upon the decision in the case of Devaki (supra) rendered by three Judge Bench of the Supreme

Court laying down the law that the period of six months prescribed under Section 3 of the MPDA Act only restricts the powers of the authority to whom it is delegated by the State Government and does not affect the power of the State Government to impose detention under Section 13 of the MPDA Act for a period of 12 months. Without burdening the judgment, we therefore, discard the submission of the learned Advocate for the petitioner that the impugned order is illegal since it directs detention of the petitioner for a period of one year.

12] Be that as it may, since in our view the impugned orders passed by the respondent No.1 State Government and the respondent No.2 District Magistrate are otherwise not sustainable on facts, for the reasons discussed hereinabove, the orders are liable to be quashed and set aside.

13] The Writ Petition is allowed. Rule is made absolute in terms of prayer clause "B".

(MANGESH S. PATIL,J.)

(S.S.SHINDE ,J.)

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