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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1448 OF 2017

Shri Yuvraj Kheru Wadaje	)	
Age 31 years, Sevalal Nagar Mardi	)	
Taluka – North Solapur,	)	
District- Solapur.	)	... Petitioner

Versus

1. District Magistrate of Solapur,	)	
2. The State of Maharashtra,	)	
Through Addl. Chief Secretary	)	
to Government of Maharashtra	)	
Home Department, Mantralaya,	)	
Mumbai.	)	
3. The Superintendent,	)	
Yerwada Central Prison,	)	
Pune.	)	... Respondents

Mr. Udaynath Tripathi for the Petitioner.
Ms. M.H. Mhatre, APP for the Respondents.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 11th SEPTEMBER, 2017

JUDGMENT (PER A.S. OKA, J.):

1 By this Petition under Article 226 of the Constitution of India, the petitioner has taken an exception to the order dated 13th February, 2017 passed by the District Magistrate, Solapur in exercise of

powers under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Person Engaged in Black Marketing of Essential Commodities Act, 1981 (for short “the said Act of 1981”). By the said order, the petitioner was ordered to be preventively detained.

2 The learned counsel appearing for the petitioner invited our attention to the grounds of detention served upon the petitioner. He submitted that taking into consideration the fact that the three offences under the Maharashtra Prohibition Act, 1949 have been registered against the petitioner, at highest, he can be described as a bootlegger. However, in the grounds of detention, the Detaining Authority has alleged that the petitioner is a habitual bootlegger within the meaning of clause (b-1) of Section 2 of the said Act of 1981. He submits that the action of quoting wrong Section viz; clause (b-1) of Section 2 shows non-application of mind on the part of the Detaining Authority. He submitted that even assuming that the petitioner was involved in bootlegging activities like manufacturing, sale or supply of illicit liquor, the said activity cannot be said to be disturbing public order unless there was material to show that his prejudicial activities as a bootlegger has adversely affected public health. He submitted that in the present

case, there is no material on the basis of which the subjective satisfaction could have been recorded that the alleged prejudicial activities of the petitioner have affected public health of the society at large. He pointed out that it is not set out in the grounds of detention that due to consumption of ethyl alcohol, public health was affected. He pointed out that it is not the case that anybody fell sick, became serious or anybody has died. He submitted that merely because ethyl alcohol is allegedly found in the liquor allegedly manufactured by the petitioner, it cannot be said that his prejudicial activities affected public health. The learned counsel appearing for the petitioner relied upon a decision of the Apex Court in the case of *Rashidmiya @ Chhava Ahmedmiya Shaik V. Police Commissioner, Ahmedabad and Another*¹. The learned APP supported the impugned order by relying upon the affidavit filed by the Detaining Authority.

3 We have carefully considered the submissions. Under Section 3 of the said Act of 1981, a power is conferred on the State Government or on the delegates of the State Government appointed under Sub-Section (2) thereof to make an order of preventively detaining a person when they are satisfied that with a view to prevent him from acting in any manner prejudicial to maintenance of public order it is necessary to do so. If prejudicial activities of a person are

¹ AIR 1989 SC 1703

likely to affect public health, it can be said that the prejudicial activities affect the maintenance of public order.

4 Bootlegger is defined under clause (b) of Sub-Section (3) of Section 2 of the said Act of 1981 which reads thus :-

“(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 animals, 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;”

5 The phrase acting “in any manner prejudicial to the maintenance of public order” is also defined in clause (a) of Section 2 which reads thus :-

“(a) “acting in any manner prejudicial to the maintenance of public order” means -
(i) in the case of a slumlord, when he is engaged, or is making preparations for engaging, in any of his

activities as a slumlord, which affect adversely, or are likely to affect adversely, the maintenance of public order;

- (ii) in the case of a 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;
- (iii) in the case of a drug-offender, when he is engaged, or is making preparations for engaging, in any of his activities as a drug-offender, which affect adversely, or are likely to affect adversely, the maintenance of public order;
- (iv) in the case of a dangerous person, when he is engaged, or is making preparation for engaging, in any of his activities as a dangerous person, which affect adversely, or are likely to affect adversely, the maintenance of public order.
- (v) in the case of video pirate, when he is engaged or is making preparations for engaging in any of his activities as a video pirates, which affect adversely or 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 disturb 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 administration.”

6 A “dangerous person” is defined under clause (b-1) of the said Act of 1981 which reads thus :-

“(b-1) “dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.”

7 We have carefully perused the grounds of detention. In grounds of detention, reliance has been placed on three First Information Reports (FIRs) registered against the petitioner with Solapur Taluka Police Station on 3rd October, 24th November and 8th December, 2016 for the offences punishable under Section 65E of the Maharashtra Prohibition Act, 1949 (for short “the Prohibition Act”). The details of the allegations in the said FIRs have been set out in the grounds of detention. In the first offence (C.R.No.422 2016), the allegation is that the petitioner was found secretly selling country made

hathbhatti liquor. He was possessing 10 litre of country made hathbhatti liquor. Chemical analysis of the sample showed that it contained 9% V/V ethyl alcohol in water. The second FIR (C.R.No.489/2016) alleges that the petitioner was found in custody of large quantity of liquor manufacturing material. Total 800 litres of chemical containing a mixture was found. The analysis of sample showed that it contained 6% V/V of ethyl alcohol. The third FIR (C.R.NO.514/2016) alleges that on 8th December, 2016 the petitioner was found in possession of 800 litres of chemical mixture. The allegation is that the said mixture is used for manufacturing of country made hathbhatti liquor. The chemical analysis of the sample showed that it contained 7% V/V ethyl alcohol in water. The petitioner was found possessing 800 litres of such mixture.

8 The Detaining Authority in the grounds of detention has referred to a standard textbook on Forensic Medicine which opines that consumption of ethyl alcohol in excessive amount is harmful to human body. Moreover, the Detaining Authority has relied upon in-camera statements of three witnesses. The in-camera statement of three witnesses show that the petitioner is indulging in manufacturing of illicit country made hathbhatti liquor. Apart from setting out nuisance created by the petitioner, the instances of terror created by the petitioner have been also set out in the statements.

9 It is true that the said Act of 1981 does not define the term “habitual bootlegger”. It appears from the grounds of detention that the Detaining Authority on the basis of material referred in the grounds of detention was satisfied that the petitioner was repeatedly indulging in acts of bootlegging and in that context that the Detaining Authority has used the words “habitual bootlegger”. Paragraphs 6 and 7 of the grounds of detention reads thus :-

“06/- I am subjectively satisfied that you are a habitual bootlegger within the meaning of section 2(b-1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (No.IV of 1981) (Amendment – 1966, 2009 & 2015). You are thereby become perpetual and potential danger to the society and public health at large. You have created terror in the areas of Sevalal Nagar, Mardi, Bhogaon and nearby locality within the jurisdiction of Solapur Taluka Police Station. The people in the said areas are experiencing a sense of insecurity and are living and carrying out their daily avocation under a constant shadow of fear, and also have become mute spectators to your atrocities. Where by even tempo of life of citizens in the above areas is badly disturbed. Thus, your activities pertaining to your illegal business of Hatbhatti – handmade liquor are prejudicial to the maintenance of public order and public health in the above areas.

07/- I have carefully gone through the material placed before me, from which it becomes clear that you have committed offences as mentioned in para No.4(1). Police have taken legal action against you in these offences. But you have not changed yourself. So, to prevent you from your illegal activities, preventive action was initiated against you as shown in para No.4(2). Then also you have not changed yourself and in recent past also committed offences as shown in Para no.5(1)(A) to 5(1)(C). The action taken against you as per prevailing law, it is proved to be inadequate and ineffective to prevent your criminal deeds. After considering the nature of offences mentioned in para No.5(1)(A) to 5(1)(C) which has been committed by you and in-camera statements mentioned in 5(2)(A) to 5(2)(C), I am further satisfied that you are acting in a manner prejudicial to the maintenance of public order and public health. Considering your criminal tendency and inclination I am again subjectively satisfied that you are habitual bootlegger and in future also you will be engaged in manufacturing, selling and supply of countrymade Hathbhatti liquor, which is harmful to human health, and to continue your this illegal business you will act in a manner prejudicial to the maintenance of public order and public health. it has become necessary to detain you under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (No. LV of 1981) (Amendment –

1966, 2009 & 2015) to prevent you from acting in such a prejudicial manner in future too.”

10 After having carefully perused the grounds of detention, we find that apart from the three offences registered against the petitioner under the Maharashtra Prohibition Act, 1949, there are three in-camera statements of witnesses. The investigation papers relating to the said three offences as well as reports of the chemical analyzer are part of the compilation submitted along with grounds of detention.

11 The Detaining Authority has recorded a subjective satisfaction that the petitioner has become perpetual and potential danger to the society and public health at large. Action contemplated by Section 3 is a preventive action. In this Petition under Article 226 of the Constitution of India, we cannot go into the question of adequacy of material on the basis of which the order has been made. In the present case, there is a material on record on the basis of which the subjective satisfaction contemplated by Section 3 could have been certainly recorded. For recording such subjective satisfaction, it is not necessary that there should be material before the Detaining Authority to show that by consuming illicit liquor manufactured and/or possessed and/or sold by the petitioner, somebody has fallen sick or somebody has died. As stated above, the action under Section 3 is a preventive action. The

subjective satisfaction on the necessity of taking such action has been recorded on the basis of the material on record.

12 Suffice it to say that there was sufficient material on record on the basis of which the subjective satisfaction could have been recorded by the Detaining Authority and in fact has been recorded. As stated earlier, as the prejudicial activities of the petitioner are likely to affect public health, the said prejudicial activities as a bootlegger are likely to affect adversely public order and therefore, the maintenance of public order.

13 We see no infirmity in the impugned order and accordingly, we pass the following order :-

ORDER

- (i) Writ Petition is rejected. Rule is discharged.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)