

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

CRIMINAL WRIT PETITION NO.3117 OF 2018

Laxman Sharnappa Dindore	]	
Age 40 years, residing at 167,	]	
Shobhadev Nagar, Shivganga Nagar	]	 Petitioner
Part-2, Solapur	]	(Detenu)

Versus

1]	The Commissioner of Police	]	
	Solapur	]	
		]	
2]	The State of Maharashtra	]	
	(Through Addl. Chief Secretary	]	
	to Government of Maharashtra	]	
	Mantralaya, Home Department	]	
	Mantralaya, Mumbai)	]	
		]	
3]	The Superintendent	]	
	Yerwada Central Prison, Pune	]	
		]	
4]	The Secretary	]	
	Advisory Board for M.P.D.A. Act	]	
	C/o. Home Department	]	
	Mantralaya, Mumbai – 400 032	]	 Respondents

Mr. U N Tripathi a/w Ms. Jayashree Tripathi for the Petitioner.
Mr. J P Yagnik, APP for the Respondent/State.

**CORAM : R. M. SAVANT &
V. K. JADHAV, JJ.**
DATE : 22nd NOVEMBER 2018

ORAL JUDGMENT [PER R. M. SAVANT, J.]

1 The above Writ Petition takes exception to the detention order being No.06/CB/BL/2018 dated 21/06/2018 issued under Section 3(1) of the

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, 1981 (for short the "MPDA Act") by the Respondent No.1. By the said detention order the Petitioner has been detained under the provisions of the MPDA Act for a period of one year.

2 The facts on which the said detention order is founded would be adverted to by us a bit later in the judgment. However, at this stage it would be relevant to refer to the provisions of the MPDA Act which are in contention. In so far as the said provisions are concerned, the definition of "bootlegger" finds a place in Section 2(b) which reads thus :-

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

(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;

[(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;]

In the context of the detention order Section 2(a)(ii) of the MPDA Act and the Explanation thereto also assumes importance and the same is therefore reproduced herein under for the sake of ready reference :-

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

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

(i)

(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)

(iv)

(v)

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 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.]

A reading of the definition of “bootlegger” discloses that the said definition is

of a wide amplitude and covers 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. It also in the later part inter-alia covers the manner in which the liquor is dealt with by a person. In so far as Section 2(a)(ii) is concerned, it postulates that if a person to act in any manner prejudicial to the maintenance of public order, firstly has to be a bootlegger withing the meaning of Section 2(b) of the MPDA Act and he has to be engaged or make preparations for engaging in any of the activities as a bootlegger which adversely affect or are likely to affect adversely the maintenance of public order. The Explanation to the said provision expositis as to when the public order can be said to have been affected. It contemplates that the public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, if any of the activities of any of the persons referred to in the said clause directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, amongst the general public or any section thereof or a grave or widespread danger to life or public health or disturbs the day-to-day life of the community. Hence the Explanation superimposes itself on Section 2(a)(ii) of the MPDA Act. It is in the context of the statutory regime as above, that the instant matter would have to be looked into and the grounds urged whilst challenging the detention order would have to be considered.

3 The learned counsel appearing on behalf of the Petitioner Shri U N Tripathi drew our attention to the grounds incorporated in the above Writ Petition to assail the detention order. The learned counsel drew our attention to Ground (e) and Ground (f) of the Grounds which principally revolve around the absence of material for the detaining authority to arrive at a subjective satisfaction that the Petitioner was required to be detained under the provisions of the MPDA Act. The submission of the learned counsel for the Petitioner Shri Tripathi is principally based on the aforesaid two grounds. In support of the said contentions the learned counsel placed reliance on the following judgments of the Apex Court and the Division Benches of this Court:-

- 1] Piyush Kantilal Mehta v/s. The Commissioner of Police, Ahmedabad City and another, reported in Judgments Today 1988 (4) S.C. 703,
- 2] Mustakmiya Jabbarmiya Shaikh v/s. M. M. Mehta, Commissioner of Police and others reported in (1995) 3 SCC 237
- 3] Shri Vinod Subhas Chavan v/s. Himmatrao Deshbhartar & ors reported in 2013 ALL MR (Cri) 157
- 4] Shri Shrinivas Kishor Sanga v/s. The Commissioner of Police & ors in Criminal Writ Petition No.1720 of 2017

Based on the said judgments the learned counsel for the Petitioner would submit that the requirement of the sufficient material to arrive at subjective satisfaction is a sine qua non for passing an order of detention under the MPDA Act.

Per contra, the learned APP Mr. Yagnik would place reliance on the judgment of the Division Bench of this Court in **Gopi Khema Rathod v/s. Commissioner of Police, Pune and another** reported in **2004(4) Mh.LJ 1001** and would also refer to the judgment of the Apex Court in **District Collector, Ananthapur and another V Laxmanna** reported in **(2005) 3 SCC 663**.

We would refer to the said judgments in detail a bit later.

4 However, at this stage we would now advert to the grounds as appearing in the detention order passed by the detaining authority i.e. the Commissioner of Police, Solapur. The preface to the detention order refers to the antecedent activities of the Petitioner. The reference to the said antecedent activities need not detain us in so far as the instant challenge is concerned. However, the detention order refers to the cases which have been registered against the Petitioner under the Bombay Prohibition Act in the recent past. The said cases have been tabulated in the detention order in paragraph 5. The status of the said cases as appearing in the table in the concerned column is

that the said cases are pending. The detaining authority has thereafter referred to the gist of substance of the cases in the order. It is by referring to the statements appearing in the substance of the cases that the learned counsel for the Petitioner Shri Tripathi had sought to contend that it is only on the basis of the statements made by the person who was accosted by the police with cans containing liquor who had indicted the Petitioner that the Petitioner is sought to be detained under the provisions of MPDA Act. The said contention of the learned counsel for the Petitioner in our view is misconceived as during the course of investigation in the said cases, we are informed that the material was uncovered against the Petitioner resulting in the Petitioner being arraigned as an accused in the said cases. The detention order thereafter refers to the in-camera statements of two witnesses which statements indict the Petitioner in so far as intimidation caused by him to the members of the public who are likely to come forward to complain against the Petitioner as a result of which intimidation the members of public are afraid to depose against the Petitioner. The said statements are in detail. The liquor which was seized was sent to the Chemical Analyzer for report and after obtaining the report of Chemical Analyzer it was sent to the Forensic Laboratory as regards potential of the said liquor to cause harm to the health of the consumers of such liquor. It is stated in the report of the Forensic Laboratory that the contents of liquor being to the extent of 10% Ethyl alcohol, excessive amount of Ethyl alcohol is injurious and harmful to the human body.

5 It is in the background of the aforesaid material which we have indicated above that the grounds which have been urged by the learned counsel for the Petitioner would have to be considered. The said material indicates the pernicious activity being carried out by the Petitioner over a period of time. The detaining authority as indicated above has on the basis of the aforesaid material reached the subjective satisfaction that there was need to detain the Petitioner under the provisions of the MPDA Act.

6 In so far as the judgments cited by the learned counsel for the Petitioner are concerned, in the judgment in *Piyush Kantilal Mehta's* case (supra) the Apex Court held that the detaining authority in the said case has failed to substantiate that the alleged anti-social activities of the Petitioner adversely affect or likely to affect adversely the maintenance of public order. In the said case the Apex Court was of the view that the Petitioner may be punished for the alleged offences committed by him but surely the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the Petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public

order.

In *Mustakmiya Jabbarmiya Shaikh's* case (supra), the Apex Court relied upon its judgment in *Piyush Kantilal Jain's* case to reiterate that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public.

The Division Bench of this Court in *Shri Vinod Subhas Chavan's* case (supra), in the facts of the said case, where no material was produced by the detaining authority to show the detenu indulging in the sale or supply of liquor, held that the subjective satisfaction recorded by the detaining authority was vitiated and therefore the detention order was likely to be set aside.

Similar is the view taken by the Division Bench of this Court in *Shri Shrinivas Kishor Sanga's* case (supra) in which case also the Division Bench of this Court held that there was no proximate material to reach the subjective satisfaction which was arrived by the detaining authority in the said case.

7 In our view, the reliance placed by the learned APP Shri J P Yagnik on the judgment of the Division Bench of this Court in *Gopi Khema Rathod's*

case (supra) seems to be apposite. In the said case, the Division Bench of this Court was dealing with the aspect as to the requirement of the material to show that the members of the public at large had been affected after consumption of liquor allegedly manufactured by the Petitioner therein. The Division Bench in the said case held that it is not necessary that the activities should be calculated to cause any harm to the public health as such but it is enough if the activities are likely to cause harm, danger or alarm or feeling of insecurity amongst the general public or any section thereof.

8 The judgment in *V Laxmanna's* case (supra) was relied upon by the Division Bench of this Court in *Shri Vinod Subhas Chavan's* case (supra). The Apex Court in *V Laxmanna's* case (supra) in terms held that if the detaining authority is satisfied that the material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should be given to the detenu to afford him an opportunity to make an effective representation. There is no dispute about the fact that such material has been furnished to the Petitioner i.e. the detenu. It is pertinent to note that no such ground was urged before us by the learned counsel for the Petitioner.

9 In our view, in the light of the material which has been referred to in the detention order, there is no merit in the submission of the learned counsel for the Petitioner that the subjective satisfaction has been reached by

the detaining authority in the absence of any material. In that view of the matter, no case for exercise of the writ jurisdiction to interdict with the detention order is made out. The above Writ Petition is accordingly dismissed. Rule discharged with parties to bear their respective costs.

[V. K. JADHAV, J]

[R. M. SAVANT, J]