

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

CRIMINAL WRIT PETITION NO. 216 OF 2021

Sitaram s/o Kalidas Kale,
Age 47 years, Occu. Labour,
R/o Pardhiwada, Village Ashti,
Taluka Partur, District Jalna

..Petitioner

Versus

1. State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai 32
2. District Magistrate, Jalna
Office of Collector and
District Magistrate, Jalna,
Administrative Building,
Survey No.488, Jalna
3. Superintendent of Police,
Jalna

..Respondents

Mr Sushant V. Dixit, Advocate for petitioner
Mr Sachin J. Salgare, A.P.P. for respondents/State

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

**JUDGMENT RESERVED ON : 21.08.2021
JUDGMENT PRONOUNCED ON : 22.09.2021**

JUDGMENT (Per Shrikant D. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of both the sides at admission stage.
2. The Writ Petition invites this Court to exercise its plenary powers vested under Article 226 read with Article 227 of the Constitution of India and prays to quash and set aside detention order No.2020/RB-Desk-1/Pol-1/MPDA/Kavi-442 dated 26.10.2020, issued by respondent no.2/District Magistrate, Jalna under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video

Pirates, Sand Smugglers and Persons engaged in Black Marketing of Essential Commodities Act, 1981 (hereinafter referred as 'MPDA Act'), and approved by respondent no.1/State under Section 3(3) of the MPDA Act, vide order No. MPDA-1120/CR-182/Spl-3B dated 3.11.2020.

3. Factual matrix essential for the purpose of deciding this petition in narrow compass is as under :

(a) On 23rd August 2020, Assistant Police Inspector of Ashti Police Station, Taluka Partur, District Jalna moved proposal for detention of the petitioner in view of the provisions of Section 3 (1) of the MPDA Act. The Sub-Divisional Police Officer, Sub-Division, Partur, District Jalna recommended the proposal and forwarded it to respondent no.2/District Magistrate, Jalna on 15.9.2020. After perusing the proposal submitted by the A.P.I. Ashti Police Station and recommended by the Sub-Divisional Police Officer, Sub-Division, Partur, District Jalna, respondents no.2/District Magistrate, Jalna passed order of detention on 26.10.2020 against the petitioner. On 27.10.2020, respondent no.2/District Magistrate, Jalna submitted the proposal to respondent no.1/State of Maharashtra and sought approval of detention order passed by him dated 26.10.2020. It was informed to the petitioner that his case has been referred to the Advisory Board for review and asked the petitioner to submit his representation against the order of detention to the Advisory Board. The petitioner's case was referred to Advisory Board for review. Respondent no.1/State informed to the petitioner that the Advisory Board has also decided to confirm the detention of the petitioner and under Section 12(1) of the MPDA Act, respondent no.1/State confirmed the detention order passed by respondent no.2 and continued the detention of the petitioner for a period of one year from the date of detention.

(b) The petitioner has challenged the impugned order of detention as well as order of approval issued by the State dated 24.11.2020 on various grounds.

4. Heard Mr Sushant V. Dixit, learned Advocate for the petitioner and Mr Sachin J. Salgare, learned A.P.P. for respondent no.1/State at length.

5. We have perused the impugned order of detention and approval granted by respondent no.1/State and affidavit-in-reply filed by respondent no.2 - District Magistrate, Jalna.

6. Mr Dixit, learned Advocate for the petitioner vehemently submitted that the impugned order of detention is perverse and bad in law. According to him, statements of two confidential witnesses have been considered by the authority and on that basis, the petitioner has been termed as dangerous person, which is not in consonance with the definition given under Section 2 (b-1) of the MPDA Act. The petitioner does not fall within the purview of definition of dangerous person. He is not a member or leader of gang habitually committing or attempting to commit or abetting commission of offences punishable under Chapter XVI or XVII of the Indian Penal Code or any offences punishable under Chapter V of Arms Act. The petitioner cannot be said to be acting in any manner prejudice to the maintenance of public order.

7. He submitted that in view of provisions of Section 3(2) of the MPDA Act, the period of detention is only for six months, however, in the instant case, no period of detention is mentioned in the order of detention dated 26.10.2020 and, therefore, such order of detention is liable to be quashed and set aside. He submitted that order of detention has been passed in a very casual manner. The authorities have not applied their mind before passing the impugned order

of detention against the petitioner. The petitioner has been detained without trial and personal liberty of the petitioner has been curtailed.

8. According to Mr Dixit, learned Advocate for the petitioner, in the impugned order of detention, the petitioner has been termed as a dangerous person in view of his so called criminal activities. But, in the affidavit-in-reply filed by respondent no.2, the State has come out with a different story that the petitioner is involved in manufacturing and selling of illicit liquor, which clearly speaks non-application of mind by the authorities while passing the impugned order of detention. Mr Dixit urged to quash and set aside the impugned order of detention passed by respondent no.2 and approved by respondent no.1/State.

9. Mr Dixit has placed his reliance in case of **Lahu Shrirang Gatkhal Vs. State of Maharashtra, through the Secretary and Ors.**, reported in **2017 DGLS (SC) 894** and submitted that the authorities could not have passed a blanket order of detention without specifying the period of detention. The Government cannot extend the period of detention upto the maximum period of twelve months in one stroke.

10. Per contra, Mr Salgare, learned A.P.P. for respondent no.1/State supported the impugned order of detention passed by respondent no.2/District Magistrate, Jalna and approved by respondent no.1/State. He submitted that in the proposal itself, the Assistant Police Inspector, Ashti has mentioned about the illegal activities of the petitioner in manufacturing and selling of illicit liquor. It is the stand of the authority that the criminal activities of the petitioner of manufacturing and selling illicit liquor has caused breach of public peace and order within Ashti city and nearby vicinity. The said illicit liquor is harmful for

human body and may cause death of a person. The authority has considered the antecedents of the petitioner. The authority has passed order of detention after subjective satisfaction and arrived at a conclusion that detention of the petitioner is necessary in the maintenance of public order. He submitted that the petitioner is a 'bootlegger' as defined in MPDA Act, 1981 since he is involved in the commission of offences punishable under Maharashtra Prohibition Act, 1949. The authority has also considered in-camera statements of two witnesses and accordingly, passed the order of detention. He submitted that the impugned order of detention passed by the authority needs to be upheld. Mr Salgare has also placed reliance on following stock of citations :

- (i) **Ramesh Balu Chavan Vs. The Commissioner of Police & Ors.**, reported in **2017 ALL MR (Cri) 3683**;
- (ii) **Kanuji S Zala Vs. State of Gujarat** reported in **1999 DGLS (SC) 555**;
- (iii) **Magar Pansingh Pimple Vs. State of Maharashtra & Anr.**, reported in **2006 ALL MR (Cri) 491**;
- (iv) **Smt. Gobibai Vs. Ghanavat Vs. State of Maharashtra & Ors.**, reported in **2003 ALL MR (Cri) 406**;
- (v) **Machindra Dnyanoba Jadhav Vs. State of Maharashtra & Ors.**, reported in **2021 DGLS (Bom.) 33**;
- (vi) **T. Devaki Vs. Government of Tamil Nadu and ors.**, reported in **(1990) 2 SCC 456**

11. We have considered the submissions of Mr Dixit, learned Advocate for the appellant and Mr Salgare, learned A.P.P. for respondent no.1/State. We have gone through the impugned orders passed by the authorities and the relevant provisions of the MPDA Act.

12. Respondent no.2/District Magistrate, Jalna seems to have considered the following criminal activities of the petitioner :

Sr. No.	Name of Police Station	Cr. No.	Sections	Date of registration	Current position
1	Ashti	6028/2017	65(A) (E) (F) of Maharashtra Prohibition Act	22/04/2017	Pending before Court
2	Ashti	102/2018	122 of Bombay Police Act, 1951	11/07/2018	Cost of Rs.500/-
3	Ashti	141/2019	324, 323, 504, 506 of IPC	23/11/2019	Pending before Court
4	Ashti	62/2020	65 (A) (E) (F) of Maharashtra Prohibition Act, 188, 269 of IPC, 51 (b) of Disaster Management Act	07/04/2020	Pending before Court
5	Ashti	73/2020	65 (A) (E) (F) of Maharashtra Prohibition Act, 188, 270, 271 of IPC, 51 (b) of Disaster Management Act	16/04/2020	Pending before Court
6	Ashti	106/2020	65 (A) (E) (F) of Maharashtra Prohibition Act, 188, 269, 270, 271 of IPC, 51 (b) of Disaster Management Act	09/06/2020	Under investigation

Preventive Actions

Sr.No.	Name of Police Station	Chapter case No.	Section	Disposal
1	Ashti	1/2020	93 of Maharashtra Prohibition Act	

13. Section 2 (b) of the MPDA Act defines, "bootlegger", whereas Section 2 (b-1) of the MPDA Act defines, "dangerous person". In the impugned order of detention, the petitioner has been termed as "dangerous person". It is also equally mentioned in the impugned order that the act of the petitioner is harmful for public order in Jalna district and as such, the authority has arrived at a conclusion to issue detention order against the petitioner. If the proposal submitted by the Assistant Police Inspector, Ashti is taken into consideration, it would throw light as to how the petitioner is involved in the illegal activities of manufacturing and selling of illicit liquor in the vicinity of Ashti. It is evident from the above chart that in all four cases have been registered against the petitioner under the provisions of Maharashtra Prohibition Act, 1949. One crime is of year 2017 and remaining three crimes are of year 2020. The details of the crime have been given in the impugned order of detention. The authority seems to have carefully perused the material as well as considered the two in-camera statements (Confidential witnesses A and B). In this background, we are not convinced to accept the argument advanced by Mr Dixit, learned Advocate for the petitioner that the State has changed its stand by way of affidavit by terming the petitioner from 'dangerous person' to 'bootlegger'. It is evident from the record that since beginning, the State/authority contended that the petitioner is involved in the manufacturing and selling of illicit liquor and thereby raised serious question mark about public order.

14. So far as other grounds raised by Mr Dixit, learned Advocate for the petitioner are concerned, we have gone through the affidavit-in-reply filed by respondent no.2/District Magistrate, Jalna carefully. Judicial review of administrative action/order is certainly permissible on three grounds. The first ground is "illegality", the second is "irrationality" and third is "procedural

impropriety". It is needless to say that the Court will be slow to interfere in such matters relating to administrative functions unless the decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

15. We have gone through the citation in case of **Lahu Shrirang Gatkal Vs. State of Maharashtra, through the Secretary and Ors.** (supra) relied by Mr Dixit, learned Advocate for petitioner. In the said cited case, the detention order was challenged merely on the ground that detention period was not mentioned. The Honourable Supreme Court held that respondent/authority could not have passed such a blanket order of detention without specifying the period of detention.

16. Mr. Salgare, learned APP for the State has rightly invited our attention to the decision of Hon'ble three Judges Bench of the Apex Court in the case of **T.Devaki Vs. Government of Tamil Nadu and others reported in (1990) 2 SCC 456** and submitted that the Hon'ble Supreme Court has taken a view that an order of detention is not rendered illegal merely because it does not specify the period of detention. He submitted that the citation in the case of **T. Devaki Vs. Government of Tamil Nadu and others** (supra) was not brought to the notice of the Hon'ble Supreme Court while deciding the case of **Lahu Shrirang Gatkal Vs. State of Maharashtra, through the Secretary and Ors.** (supra). He submitted that the decision of Hon'ble three Judges Bench of the Apex Court governs the field and the detention order cannot be said to be illegal merely because it does not indicate the period of detention. We have carefully gone through the citation in the case of **T. Devaki Vs. Government of Tamil Nadu and others** (supra). The Hon'ble Supreme Court in para nos. 12

and 13 has observed as under:

“12. Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-offenders Act, 1981 is identical in terms to Section 3 of the Tamil Nadu Act. Section 3 of Maharashtra Act does not require the State Government, District Magistrate or a Commissioner of Police to specify period of detention in the order made by them for detaining any person with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. Section 3(1) which confers power on the State Government to make order directing detention of a person, does not require the State Government to specify the period of detention. Similarly, sub-sections (2) or (3) of Section 3 do not require the District Magistrate or the Commissioner of Police to specify period of detention while exercising their powers under sub-section (1) of Section 3. The observations made in Gurbux Biryani's case that the scheme of the Maharashtra Act was different from the provisions contained in other similar Acts and that Section 3 of the Act contemplated initial period of detention for three months at a time are not correct. The scheme as contained in other Acts providing for the detention of a person without trial, is similar. In this connection we have scrutinised, the Preventive Detention Act, 1950, the Maintenance of Internal Security Act, 1971 COFEPOSA Act, 1974, National Security Act, 1980, but in none of these Acts the detaining authority is required to specify the period of detention while making the order of detention against a person.

13. This Court has consistently taken the view that an order of detention is not rendered illegal merely because it does not specify the period of detention.”

17. Having regard to the legal position made clear by the Hon'ble Supreme Court in the Case of **T. Devaki Vs. Government of Tamil Nadu and others** (supra), the impugned order of detention cannot be said to be illegal because it does not specify the period of detention.

18. In the case in hand, on perusing the order as well as papers made available by the learned A.P.P., it is evident that the committal order came to be issued in view of sub-section (1) of Section 3 of the MPDA Act read with Government order, Home Department (Special), Mantralaya Mumbai No. MPDA/0620/76/Vsha-3(B) dated 8.7.2020. The grounds of detention have been communicated to the petitioner on 26.10.2020 itself. The District Magistrate, Jalna/respondent no.2, vide his letter dated 27.10.2020 itself sought approval from the Government within twelve days before 6.11.2020. Accordingly, respondent no.1/State seems to have given approval to the detention order issued by respondent no.2/District Magistrate, Jalna, vide letter No.MPDA-1120/CR-183/Spl-3B dated 3.11.2020. Further, it is evident that the Advisory Board also, after considering the material was pleased to accord the detention order. Accordingly, the Home Department (Special), vide its order dated 10.12.2020 was pleased to issue detention order of the petitioner for a period of one year from the date of detention.

19. In view of the above facts, we do not find any material defect.

20. Mr Salgare, learned A.P.P. for the State has referred stock of citations referred above. On making analysis of the same, the clear legal position is emerged that the authorities must have arrived at a subjective satisfaction on the basis of material placed before it that the detenu was a 'bootlegger' and that his activities as a bootlegger/dangerous person adversely affected or are likely to affect adversely the maintenance of public order and, therefore, his detention was necessary under the provisions of the MPDA Act.

21. Now turning back to the facts of the case in hand and the impugned order of detention. On perusing the impugned order of detention, it is evident that there was credible material before the authorities, on the basis of which reasonable inference could have been drawn as regards adverse effect on the maintenance of public order, as defined under the MPDA Act. By looking to the material available on record in the present case, we find that there was sufficient and adequate material for holding that the alleged prejudicial activities of the detenu have adversely affected or are likely to affect adversely the maintenance of public order. Furthermore, in this case, the detaining authority has specifically mentioned in the grounds that the activities of the detenu are likely to cause harm to the public health. The authorities also considered in-camera statements in detail and seems to have arrived at a proper conclusion. In view of the material on record, it cannot be said that the subjective satisfaction of respondent no.2/District Magistrate, Jalna in its order, was not reasonable or genuine.

22. In case of **Ramesh Balu Chavan Vs. The Commissioner of Police & Ors.** (supra), it is held by the Division Bench of this Court at principal seat at Bombay that if the detaining authority arrived at the subjective satisfaction on the basis of the material placed before him that the detenu was a bootlegger and that his activities as a bootlegger adversely affected or are likely to affect adversely the maintenance of public order and therefore, his detention was necessary under the provisions of MPDA Act. The facts of the case in hand are practically similar and identical and as such, we do not find any error on the part of the detaining authority while passing the impugned order of detention.

23. Having regard to the above reasons and discussion, we do not find any merit in this petition.

ORDER

Criminal Writ Petition stands dismissed. Rule discharged.

(SHRIKANT D. KULKARNI, J.)

(V.K. JADHAV, J.)

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