

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

CRIMINAL WRIT PETITION NO. 1191 OF 2020

Machindra Dnyanoba Jadhav (Now in jail)
Age; 45 years, Occ; Labour,
R/o; Nakalgaon Tq. Majalgaon,
District; Beed.

...Petitioner

V E R S U S

- 1) The State of Maharashtra,
Through Secretary, Home Department,
Mantralaya, Mumbai.
- 2) District Magistrate,
Beed.
- 3) Superintendent of Harsul Jail,
Harsul Jail, Harsul, Aurangabad.

..Respondents

.....
Shri Vivek V. Bhavthankar, Advocate for the Petitioner
Shri S.J. Salgare, learned A.P.P. for Respondents-State
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**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

Date : 05/01/2021

ORDER [PER : M.G. SEWLIKAR, J.] :-

1. By this writ petition under Article 226 of the Constitution of India and under Section 482 of Code of Criminal Procedure, the petitioner is challenging his detention under 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 (Maharashtra Act No. LV of 1981) (Amendment Act, 2015), hereinafter referred to as “the MPDA Act”.

2. Facts leading to this petition are that on the proposal of detention by police station Dindrud dated 31.8.2020, the District Magistrate Beed passed order of detention under Section 3 of ‘the MPDA Act’ and communicated the same to the petitioner under Section 8 of ‘the MPDA Act’.

3. In the said notice, the District Magistrate, Beed (Respondent No. 2) has stated that the petitioner is a weapon-wielding dangerous recidivist of violent nature indulging in criminal activities that foster terror in the society. Respondent No. 2 has further stated in the notice that the petitioner has become perpetual danger to the lives and properties of people residing in the vicinity and carrying out their daily activities and vocations in the jurisdiction of Dindrud Police Station. It is further alleged that the petitioner manufactures sells and possesses illicit liquor. He has created terror in the locality in which he resides. He has engaged himself in violent criminal activities and also threatened the people not to complain against him. The notice further

states that as many as 9 offences have been registered against the petitioner under Section 65 (e) and (f) of the Maharashtra Prohibition Act. All these offences are pending in the Court. The list of the offences pending against the petitioner is as under :

Sr.No .	Police Station	C.R. No.	Section	Filing Date	Court Case No.	Remark
1.	Dindrud	138/2018	65 (e)	09/07/2018	SCC No. 935/18	Pending
2.	Dindrud	148/2018	65 (e)	15/07/2018	SCC No. 854/18	Pending
3.	Dindrud	53/2019	65 (e)	27/03/2019	SCC No. 452/19	Pending
4.	Dindrud	66/2019	65 (e)	09/04/2019	SCC No. 451/19	Pending
5.	Dindrud	73/2019	65 (e)	16/04/2019	SCC No. 701/19	Pending
6.	Dindrud	183/2019	65 (e) (f)	11/10/2019	SCC No. 291/19	Pending
7.	Dindrud	73/2019	65 (e) (f)	28/11/2019	SCC No. 22/20	Pending
8.	Dindrud	105/2020	65 (e)(f) PRO.Act R/W 188,279, 270 IPC	07/05/2020	SCC No. 242/20	Pending
9.	Dindrud	184/2020	65 (e) (f)	25/08/2020	---	On investigation

4. Despite initiating criminal prosecution against the petitioner, he has not mended his ways, on the contrary his illegal and dangerous criminal activities have continued to show an ascending trend.

5. It is further alleged that to deter the petitioner from committing crime, preventive action under Section 110 of Code of Criminal Procedure and 93 of Maharashtra Prohibition Act was initiated against the petitioner, the details of which are as under :

1.	Daindrud	Chapter case No. 07/2018 Sec. 110 Cr.P.C.	Final bond
2.	Dindrud	Chapter Case No. 06/2018 Sec. 93 of Maharashtra Prohibition Act	As opponent is remaining absent continuously matter is closed.

6. Despite executing a bond of good behaviour, the petitioner has committed these offences. It is further alleged that the petitioner even after, executing a bond of good behaviour has committed another offence. It is further alleged in the notice that in-camera statements of witnesses 'A' and 'B' were recorded. From those statements and the offences registered against the petitioner, the Detaining Authority formed the opinion that the petitioner is a 'Bootlegger' and his activities are prejudicial to the maintenance of public order. His activities adversely affect the maintenance of public order, therefore, it has become necessary for the Detaining Authority to detain the petitioner under 'the MPDA Act'.

7. After passing of the order dated 8.9.2020, the petitioner was served with the order on 8.9.2020 itself. The committal order was passed on the same date and the petitioner was detained in Harsul Jail, Aurangabad on the even date. A proposal to the State Government

was made for the approval of detention of the petitioner under Section 3 (3) of 'the MPDA Act', vide letter dated 16th September, 2020. The State Government after receipt of opinion of the Advisory Board on 16.09.2020 under 'the MPDA Act', confirmed the detention order of the petitioner on 20/10/2020 and the petitioner has been detained for a period of one year.

8. This order is impugned in this Writ Petition.

9. Heard Shri Vivek V. Bhavthankar, learned counsel for the Petitioner and Shri S.J. Salgare, learned A.P.P. for the Respondents-State.

10. Shri Bhavthankar, learned counsel for the petitioner argued that the Detaining Authority has considered only one offence of the year 2020 for passing the order of detention. It has not considered the earlier offences. He further argued that there was no material before the Detaining Authority to record its subjective satisfaction and for coming to the conclusion that the petitioner's detention is necessary. The activities of the petitioner do not indicate that his activities are prejudicial to the maintenance of public order. He submitted that all the cases are pending and in not a single case a conviction has been recorded against the petitioner. He further submitted that mere

registration of offences is not enough to show that the activities of the petitioner were prejudicial to the maintenance of public order. The Detaining Authority did not have any material before it for reaching the conclusion that the activities of the petitioner were prejudicial to the maintenance of public order. There is nothing on record to show that there was feeling of insecurity amongst the members of the public against the petitioner. The detention order shows that the activities may be affecting the law and order but not the public order. He has placed reliance on the case of **Kantilal Mehta Vs Commissioner of Police reported in 1986 (Suppl) SCC 322** and **Piyush Kantilal Mehta Vs the Commissioner of Police AIR 1989 SC 491**.

11. Shri Salgare, learned AGP for Respondents-State submitted that eight cases are pending against the petitioner. He had executed a bond of good behaviour, despite that he has committed offences again. The petitioner is a 'Bootlegger'. He manufactures illicit liquor, which comes within the definition of 'Bootlegger'. He argued that there is no necessity to show that there was actual danger to the maintenance public order. The apprehension that the activities of the petitioner are likely to affect the maintenance of public order is sufficient for detaining a 'Bootlegger' under 'the MPDA Act'. He placed reliance on the cases of **Ramesh Balu Chavan Vs. The Commissioner of Police & Ors. - 2017 ALL MR (Cri) 3683, Kanuji**

S. Zala Vs. State of Gujarat 1999 DGLS (SC) 555, Magar Pansingh Pimple Vs. State of Maharashtra & Anr.- 2006 ALL MR (Cri) 491, Smt. Gobibai V. Ghanavat Versus State of Maharashtra & Ors. - 2003 ALL MR (Cri) 406.

12. It is not in dispute that nine cases are pending against the petitioner, the details of which are given in para 4 of this judgment. The detaining authority has considered only Crime No. 184 of 2020 under Section 65 (e) and (f) the Prohibition Act, which was filed on 25.8.2020 and is still under investigation. The Detaining Authority has also relied on the statements of in-camera witnesses 'A' and 'B' for coming to the conclusion that detention of the petitioner is necessary. According to the Detaining Authority the petitioner is a 'Bootlegger'. The expression 'Bootlegger' has been defined in **Section 2 (b) of 'the MPDA Act'** as under :

*“(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;”*

13. Thus, in terms of this Section, any 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, is regarded as a 'Bootlegger'.

14. Acting in a manner maintenance prejudicial to public order in case of a 'Bootlegger' is defined under **Section 2 (a) (ii) of 'the MPDA Act'** , is read as under :

" 2. 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 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)....."*

15. Now, it will have to be ascertained as to whether the petitioner is a 'Bootlegger' and whether his activities are causing or is likely to affect the maintenance of public order.

16. As stated earlier, nine cases have been filed against the petitioner, out of them eight cases are pending in the Court and one case was under investigation, at the time of passing of the detention

order.

17. Facts of the Crime No. 184/2020 under Section 65 (e) (f) of the Maharashtra Prohibition Act, 1949, were that when the complainant was patrolling, he received information that the petitioner was manufacturing illicit liquor at Pimpalgaon, in contravention of the provisions of the Maharashtra Prohibition Act, 1949, and is also in possession of chemicals required for manufacturing such liquor. At about 14.50 hours the location was raided and at 50 liters of illicit liquor worth Rs. 27,300/- was recovered and articles were seized and accordingly seizure panchanama was prepared.

18. Learned AGP has produced the original papers filed by the Detaining Authority to show that FIRs' in all cases mentioned in the detention orders were produced for the perusal before the Detention Authority. FIR in Crime No. 184 of 2020 was also produced before the Detaining Authority. This clearly shows that the Detaining Authority had sufficient material before it to draw a conclusion that the petitioner is a 'Bootlegger'.

19. For coming to the conclusion in the present petition that the petitioner is a 'Bootlegger', it is not necessary that the conviction needs to be recorded. It is sufficient that offences are registered

against the petitioner under the provisions of the Maharashtra Prohibition Act, 1949, which indicates that such a person is indulging in the activity of distilling, manufacturing, storing, transporting, importing, exporting, selling or distributing any liquor, intoxicating drug or other intoxicant, in contravention of the provisions of the Maharashtra Prohibition Act. In the case at hand, the material produced before the Detaining Authority clearly shows that the petitioner was manufacturing illicit liquor and the illicit liquor of 50 liters was found in his possession. This clearly shows that the petitioner is a 'Bootlegger'.

20. Now the question is whether there should be proof that the activities of the petitioner had in fact affected the maintenance of public order. In the case of **Piyush Kantilal Mehta Vs the Commissioner of Police AIR 1989 SC 49**, the Hon'ble Supreme Court has held as under :

"In the instant case, the detaining authority has failed to substantiate that the alleged anti-social activities of the petitioner adversely effect or are likely to affect adversely the maintenance of public order. It is true some incidents of beating by the petitioner had taken place, as alleged by the witnesses. But, such incidents do not have any bearing on the maintenance of public order.

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 the maintenance of public order.

Even though a representation is pending before the Advisory Board, the writ petition under Article 32 of the Constitution is maintainable before the Court."

21. However, in the case of **Kanuji S. Zala Vs. State of Gujarat 1999 DGLS (SC) 555**, the Hon'ble Supreme Court has held that

"(5) What is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. It is also well settled that whether the material was sufficient or not is not for the courts to decide by applying an objective test as it is a matter of subjective satisfaction of the detaining authority. The observation made by this Court in Om Prakash Vs. Commissioner of Police & Ors. - 1988 Supp. (2) SCC 576 that "as in Piyush Mehta Case, the materials available on record in the present case are not sufficient and adequate for holding that the alleged prejudicial activities of the detenu have either affected adversely or likely to affect adversely the maintenance of public order within the meaning of Section 4(3) of the Act and as such, the order is liable to be quashed" are to be understood in the context of the facts of that case.

(6) As already stated earlier, in this case the detaining authority has specifically mentioned in the grounds that the activity of the detainee was likely to cause harm to the public health and that by itself is sufficient to amount to affecting adversely the public order as defined by the Act. The detaining authority has also stated that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed on some occasions. In view of the material on record it cannot be said that the satisfaction of the District Magistrate, in this behalf, was not reasonable or genuine."

22. Thus, from this decision of the Hon'ble Supreme Court, it is abundantly clear that there is no need to adduce any evidence to the effect that the activities of the detainee had affected adversely to the

maintenance of public order. The apprehension that his activities are likely to affect the maintenance of public order is enough for detaining the detenu under 'the MPDA Act'. In the case of **Ramesh Balu Chavan Vs. The Commissioner of Police & Ors. 2017 ALL MR (Cri) 3683**, it has been held that

"17. The last ground raised by Mr. Tripathi is ground (d). It is stated therein that the activities of the detenu are not prejudicial to the public order and there is no effect of the consumption of country made liquor like death of people or hospitalization or bankruptcy. It, therefore, cannot be held that the consumption of the seized contraband country made liquor is injurious to health. Mr. Tripathi has only pressed the first part of ground (d) wherein the contention is raised that the activities of the detenu are not prejudicial to the public order. In order to detain a person under the MPDA Act as a bootlegger, it must be established in the first instance that he is a bootlegger. As per the definition of bootlegger given in the MPDA Act, "bootlegger" means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicants in contravention of any provisions of the Maharashtra Prohibition Act (Act No. XXV of 1949) and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly spends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacles or any other material 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. The detenu certainly falls within this category because the facts relating to C.R. Nos. 245/2016 and 257/2016 show that the detenu was transporting and selling liquor. After going through Section 2 of the MPDA Act, we are of the view that a 'bootlegger' can be detained under the provisions of the MPDA Act not only in case he deals with any liquor which as per the C.A. report is harmful to public health but also in case his activities as bootlegger otherwise creates a feeling of alarm, danger or insecurity among the members of the public or a section thereof."

23. From the decision of this Court in **Ramesh Balu Chavan Vs. The Commissioner of Police & Ors.** (supra) it is clear that mere apprehension that the activities of the detainee are likely to affect adversely, the maintenance of public order is sufficient for invoking the provisions of 'the MPDA Act'. The words in Section 2 (a) (ii) of 'the MPDA Act' "are likely to affect adversely, the maintenance of public order", indicate that simply on the basis of apprehension, provisions of 'the MPDA Act' can be invoked and a person can be detained.

24. The original in-camera statements of witnesses 'A' and 'B' were produced before the Detaining Authority. The Detaining Authority considered those statements. These statements have been verified by the Sub Divisional Police Officer. The statement of witness 'A' was recorded on 25.8.2020 and it was verified by the Sub Divisional Police Officer on 2.9.2020. The statement of witness 'A' shows that on 25.7.2020 the detainee demanded Rs. 500/- from him and when the witness refused to give money, the detainee punched on his face and beat him by kick and fists blows and robbed him of Rs. 700/-. He further stated that nobody came to his rescue, rather people started running helter-skelter.

25. Witness 'A' has further stated in his statement that because of the activities of the detainee, people are not coming

forward to depose against him. They are not ready to lodge any complaint against the detainee.

26. The statement of witness 'B' shows that on 29.8.2020, at 12.00 noon the detainee asked him as to why he always tries to dissuade his friends from drinking liquor. According to this witness, the detainee further stated that because of the activities of the detainee, his business is on the decline, Thereafter, the detainee started beating witness 'B' with kick and fists blows and robbed him of Rs. 2,000/-. Nobody came to his rescue. The Shop keepers in the vicinity of the spot of the incident are immediately downed their shutters. The original in-camera statements of witnesses 'A' & 'B', which were produced before the Detaining Authority were also produced before this Court for perusal. This Court has perused the same. The statements of these two witnesses clearly show that the activities of the petitioner are causing danger to the maintenance of public order, therefore, the detaining authority was right in holding that there was sufficient material before it for recording his subjective satisfaction that the activities of the petitioner have created terror in the minds of the people in the vicinity and has disturbed the peace and tempo of their lives as well as public order. The Detaining Authority was also right in holding that despite taking preventive actions against the detainee, his activities are indicating ascending trend and they are

going on unabated. Therefore, there is no merit in the petition. The petition stands dismissed.

(M.G. SEWLIKAR)
JUDGE

(T.V. NALAWADE)
JUDGE

mahajansb/