

Versus

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|----|-------------------------------------|---|-----------------|
| 1. | The Commissioner of Police, Solapur |) | |
| 2. | The State of Maharashtra (Through |) | |
| | Add. Chief Secretary to |) | |
| | Government of Maharashtra |) | |
| | Mantralaya, Home Department |) | |
| | Mantralaya, Mumbai |) | |
| 3. | The Superintendent Yerwada Central |) | |
| | Central Prison, Pune |) | ... Respondents |

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Ms. Jayshree Tripathi a/w U.N. Tripathi for the Petitioner.
Mrs. M.H. Mhatre, APP for the State.

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CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.

DATED : 18 JULY 2022

ORAL JUDGEMENT :- (PER : NITIN JAMDAR, J.)

. By this Petition, the Petitioner is challenging the order of

detention dated 13 September 2021 issued by Respondent No. 1-the Commissioner of Police, Solapur. The order of detention is issued 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 (for short “MPDA Act”). Since the Petitioner is placed under detention pursuant to the detention order, he has prayed that he may be released and set at liberty.

2. The order of detention dated 13 September 2021 was served on the Petitioner along with the committal order and grounds of detention. In the grounds of detention, the detaining authority has stated that as per the criminal record of the Petitioner, he is a known bootlegger in the area within the jurisdiction of Sadar Bazar, Police Station and is engaged in committing offences under the provisions of Maharashtra Prohibition Act, 1949 (for short “Act of 1949”). He has established many dens selling country-made liquor in the area. For the bootlegging activities, he and his associates carry deadly weapons, and while transporting the country-made liquor, the vehicles are driven in a rash and negligent manner, causing danger to the life of people. It is stated that his spillage of the bootlegging liquor created a stench in the area and a danger to people's health.

3. The grounds of detention make a reference to Seventeen cases against the Petitioner from the year 2015 to 2020 under Section 65(e) of the Act of 1949. It is stated that twice action was taken against the Petitioner to prevent his activities; first on 30 November 2018 under Section 93 of the Act of 1949 and second on 23 March 2021 under Section 110 (e) and (g) of the Code of Criminal Procedure, 1973. The detaining authority has stated that none of this had any effect. These instances were referred to by way of history. The detention order after that is based on eight criminal cases registered on 17 February 2021, 22 March 2021, 8 April 2021, 11 April 2021, 23 April 2021, 6 May 2021, 06 May 2021 and 21 May 2021 under Section 65(e) Act of 1949. The grounds of detention thereafter had given particulars of these offences and the manner in which prejudicial activities were carried out.

4. The detaining authority thereafter relied upon two In-Camera statements of witness A and witness B, wherein witness A stated that in the first week of July 2021, the Petitioner and his associates accosted him when the witness tried to complain about the activities of the Petitioners, threatened him and those who have gathered there ran away and shut their shops. Witness B narrated similar instances that occurred in the third week of July 2021.

5. The detaining authority thereafter obtained an opinion from the Department of Forensic Medicine and Toxicology, Dr. V.M. Government Medical College, Solapur, stating that the consumption of ethyl alcohol in excessive amounts is harmful to the human body and causes death. In the five crimes registered against the Petitioner, the percentage of ethyl alcohol ranged from 8% to 15%. Based on this material, the detaining authority recorded subjective satisfaction that the Petitioner is a Bootlegger within the meaning of Section 2(b) of the MPDA Act and that his activities are prejudicial to public order and they cannot be dealt with under ordinary law of the land. Accordingly, the detaining authority passed the order of detention dated 13 September 2021. The Representation made by the Petitioner was rejected. Therefore, the Petitioner is before us with this Petition.

6. We have heard the learned Counsel for the parties.

7. The Petitioner contends that even though the MPDA Act permits the bootlegger, as defined under the Act, to be placed under detention, it will have to be seen if these activities are prejudicial to public order. It is contended that in the present case, the report received from the Department of Forensic Medicine and Toxicology is too general, and it states that consumption of ethyl alcohol in

excessive amounts is harmful to the human body, but the ethyl alcohol contained in the contraband seized from the Petitioner does not exceed the limit prescribed in Table I of the Food Safety and Standards (Alcoholic Beverages) Regulations, 2018. It is contended that since the contraband does not exceed the permissible limit under the Food Safety and Standards (Alcoholic Beverages) Regulations 2018, the subjective satisfaction that activities of the Petitioner being prejudicial to public order is based on too general premise. It is contended that this being the position, the Petitioner's activity could have very well contained under the ordinary law and resort to the detention, which is a drastic step, was entirely unwarranted. The learned Counsel has relied upon the decision of the Supreme Court in the case of *Munagala Yadamma vs. State of A.P. & Ors.*¹, *Rekha vs. State of Tamil Nadu*² and the decision of Division Bench of this Court in the case of *Devidas Ade vs. The State of Maharashtra and ors.*³.

8. The learned APP submitted that the MPDA Act has a definition of Bootlegger, which makes a reference to the provisions of the Act of 1949 and if the activities of a detenu fall within the parameters of these two enactments, then the order of detention can be validly passed and the reference to the Regulations of 2018 is entirely unwarranted. It is submitted that all that requires is a

1 2012 ALL MR (Cri.) 734 (S.C.)

2 (2011) 5 SCC 244

3 Criminal Writ Petition No. 469 of 2022 decided on 13 July 2022

subjective satisfaction of the detaining authority based on material that the prejudicial activities of the detenu are such that they are affecting public order and cannot be contained by ordinary law, and that being the position, there is no error in the order of detention that is passed.

9. The MPDA Act defines Bootlegger in Section 2(b) as follows:

“2(b) - “bootlegger” means a person, who distills, 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 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 ;

Section 2 (a) (ii) of the MPDA Act reads thus:

“2(a)(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 ;

The conjoint reading of these two provisions, for the matter in hand, would show that the bootlegger is the one who deals with

intoxicants in contravention of any provisions of Maharashtra Prohibition Act 1949 and the rules and orders made thereunder. Section 2 (22) of the Act of 1949 defines 'intoxicant' meaning any liquor, intoxicating drug, opium or any other substance which the State of Maharashtra may, by notification in the Official Gazette, declare to be intoxicant. We have not been shown, nor it is so pleaded in the Petition, that the substance which the Petitioner is dealing with and is seized is not an intoxicant as defined under Section 2(22) of the Act of 1949. Once what is dealt by the Petitioner is intoxicant, the Petitioner falls within the ambit of Bootlegger, and if his prejudicial activities affect public order, Section 2(ii) of the MPDA Act would be attracted. The expert opinion is that the substance dealt with by the Petitioner if taken in excessive quantity, is harmful. Apart from this position, as stated earlier, once what is dealt with by the Petitioner was intoxicant, any reference to the Food and Safety Standards (Alcoholic Beverages) Regulations, 2018, is inconsequential. The opinion of the expert was, in addition, that what was dealt with by the Petitioner was harmful if taken in large quantity.

10. As regards the prejudicial activities are concerned, in none of the decisions cited by the learned Counsel for the Petitioner, an absolute proposition of law is laid down that the activities of bootlegging cannot amount to affect breach of the public order,

therefore, each case will have to be examined on its own facts. In the case of *Rekha vs. State of Tamil Nadu*, the detaining authority had asserted that the detenu therein had several cases; however, it had failed to demonstrate the same, and therefore the Supreme Court observed that no conclusion could be drawn based on one incident that his activities affected the public order. In the case of *Devidas Ade vs. The State of Maharashtra and Ors.*, the Division Bench of this Court found that the verification of the In-Camera statements was not proper, and thus statements had to be excluded from consideration and therefore that the case rested on three crimes alone. In that context, the observations were made that the activities of the detenu therein did not affect the public order.

11. In the case at hand, the history of the Petitioner would show that there were seventeen cases against the Petitioner earlier, two preventive activities did not deter the Petitioner. Though these cases were not made the foundation for a detention order, past conduct shows a reasonable projection of the future course of conduct. Eight offences registered against the Petitioner, which was made the foundation of the detention order. There is no challenge to the two In-Camera statements, and therefore there was sufficient material before the detaining authority to conclude that the activities of the Petitioner could not be contained under the ordinary law and action

of detention was warranted.

14. In light of the above discussion, there is no merit in this Petition which is accordingly dismissed. Rule is discharged.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)