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

CRIMINAL WRIT PETITION NO.478 OF 2022

Satish s/o Bhimrao Narode,
Aged about 43 YEARS, occupation :
Agricultural Labour, r/o Mozari,
Tahsil – Tivsa, Amravati, district
Amravati.

..... **Petitioner.**

:: V E R S U S ::

1. The State of Maharashtra,
Through its Principal Secretary, Home
Department, Mantralaya, Mumbai-32.

2. The District Magistrate and Collector,
Civil Lines, Amravati, District -
Amravati.

3. The State of Maharashtra, through
P.S.O. Tiwsa, District Amravati. **Respondents..**

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Shri M.V.Rai, Counsel for the Petitioner.

Shri M.K.Pathan, Additional Public Prosecutor for the State.

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CORAM : **ROHIT B.DEO & URMILA JOSHI PHALKE, JJ.**

DATE : **OCTOBER 19, 2022**

ORAL JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard learned counsel Shri M.V.Rai for the petitioner
and learned Additional Public Prosecutor for the State. **Rule.** Rule
made returnable forthwith and heard finally by consent.

2. On 17.12.2021, respondent No.3 – Tiwsa Police
Station, District Amravati had sent a proposal to respondent No.2 –
the District Magistrate and Collector, Amravati contending that

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under the Maharashtra Prohibition Act, 1949 it has taken three preventive measures, but the petitioner committed offences thereafter and, therefore, initiated preventive proceedings under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers & Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (for short, the said Act) after recording two in-camera statements of witnesses and thus stated that the petitioner is bootleggers and by his act caused danger to the society and thus doing illegal act or transporting and selling of illicit liquor. Respondent No.2, after receiving the proposal along with necessary documents and after considering the same, passed order of detention under Sections 3(1) and (2) of the said Act and the petitioner was detained in view of order passed on 31.12.2021. Respondent No.2 assigned various grounds of detention mentioning though preventive action is taken against the petitioner, the petitioner's activities are continued and, therefore, his detention is required in view of provisions of the said Act. The order of detention was sent to respondent No.1 for its approval. Respondent No.1 pleased to approve and confirmed the order passed by respondent No.2 after considering opinion and report given by the Advisory Board and further directed to detain the petitioner for a period of 12 months from the date of detention.

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3. Brief facts of the case in a nutshell are as under:

The petitioner was arrested and detained on 31.12.2021 as per order passed by respondent No.2. The order of detention passed by respondent No.2 was approved by respondent No.1. The said detention order was passed on the basis that 13 offences are registered against the petitioner and Investigating Agency collected Chemical Analysis Report and came to conclusion that the petitioner is a dangerous person and his activities are prejudicial to the society. He is a habitual bootlegger and conducts such activities which definitely disturbs maintenance of law and order. Respondent No.2 further recorded that he is satisfied that the petitioner's activities would disturb maintenance of law and order and, therefore, he is of opinion that considering prejudicial activities of the petitioner in future, it becomes mandatory for him to detain the petitioner under the said Act. Respondent No.2 further recorded that he is subjectively satisfied that the petitioner is a bootlegger within the meaning of Section 2(b) of the said Act. The said detention order is under challenge before this court in this writ petition.

4. The petitioner enumerated various grounds in the petition. The main ground of the petitioner is that the Authority has at all not considered fact that 13 offences under provisions of the

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Maharashtra Prohibition Act were considered upon which it was concluded that the petitioner is a dreaded criminal and his activities are detrimental to the public order and he should be sent behind the bars. The record does not show that respondent No.3 has placed any bail order granting bail to the petitioner and only FIRs are annexed in regard to 11 offences and regarding 2 offences respondent No.3 had annexed notices under Section 41-A of the Code of Criminal Procedure. It is further contended that the impugned order shows offences were registered against the petitioner since 2.2.2017 to 25.11.2021 and the petitioner is arrested, however not tried before learned Magistrate. In none of cases, the guilt of the petitioner was proved. In all the cases, the petitioner is on bail. The detaining Authority has not considered the said aspect. The petitioner states that he is not a person whose presence in the society would be dangerous to the respectable members of the society. The activities of the petitioner cannot be held to be disturbing the public peace when there is no sufficient material to show that the petitioner is a dangerous person in accordance with the provisions of the Act.

5. Learned counsel Shri M.V.Rai for the petitioner submitted that all offences registered against the petitioner are under the provision of the Maharashtra Prohibition Act. There is no material to show that the petitioner is a dangerous person and his

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presence in the society would be prejudicial to the society. Even, statements of witnesses "A" and "B" nowhere state that the petitioner is a dangerous person and his presence would affect the law and order situation. There is no material on record holding the petitioner to be a dangerous person. In view of this it is necessary to consider whether the petitioner can be treated as a dangerous person.

6. Learned Additional Public Prosecutor Shri M.K.Pathan for the State submitted that in all 13 offences are registered against the petitioner. The activities of the petitioner to be continuous are prejudicial to members of the society. He submitted that the detaining Authority had considered 11 past offences and 2 recent offences registered against the petitioner. He further submitted that the detaining Authority has not considered 13 offences registered against him, however in-camera statements were recorded only on condition keeping their identities secret. As the petitioner is a dreaded criminal and his activities are detrimental to the public order, witnesses are not coming forward to depose against him. In-camera statements of witnesses themselves disclose the petitioner's nature and those statements are verified by the SDPO, Chandur Rly. Amravati (Rural) and, therefore, no question on its veracity arises.

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7. In order to support contentions, learned counsel for the petitioner invited our attention to paragraph No.6 of detention order dated 31.12.2021 which refers 11 offences and 2 recent offences. Referring reports of registration of offences and in-camera statements of witnesses, it was mentioned that to prove the petitioner as a habitual bootlegger, these activities would definitely disturb the maintenance of law and order and detaining Authority is fully satisfied about the same. It was further submitted that statements of witnesses "A" and "B" are recorded on November 2021 and December 2021. It was further submitted that activities mentioned by the detaining Authority are not sufficient to satisfy that the petitioner is a dangerous person. The dangerous person is a person who either by himself or as a member or leader of a gang commits or habitually commits or attempts to commit or abates the commission of any of the offence punishable under Chapter XVI to Chapter XVII of the Indian Penal Code or any of the offence punishable under Chapter V of the Arms Act, 1959. Chapter XVI of the IPC is regarding offences affecting the human body, they include culpable homicide, murder and abetment to such offences, thug, hurts as simple hurt, grievous, voluntarily caused hurt with deadly weapons for wrongful confinement and restraint, criminal force, assault, extortion, kidnapping, abduction by force and sexual offences. Chapter XVII is in respect of theft, extortion, robbery,

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dacoity, cheating, mischief, criminal trespass and etc. It will therefore be clear that all those offences are made punishable and seriously punishable because they are the menace to the society, a threat to the society and great harm to the individuals, members of public and members of society. The detaining Authority has assigned the reason that the petitioner is a habitual bootlegger which would definitely disturb the maintenance of law and order and the Authority is satisfied about the same.

8. The Honourable Apex Court in the case of **Mrs. Harpreet Kaur Harvinder vs. State of Maharashtra and another**, reported at **(1992)2 SCC 177** distinguished concept of 'public order and law order' that *"from the law laid by this Court, as noticed above, it follows that it is the degree and extent of the each of the objectionable activity upon the society which is vital for considering the question whether a man has committed only a breach of 'law and order' or has acted in a manner likely to cause disturbance to 'public order'. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of 'public order'. Whenever an order of detention is questioned, the courts apply these tests to find out whether the objectionable activities upon which the order of detention is grounded fall under the classification of being prejudicial to "public order" or belong to the category of being prejudicial only to 'law*

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and order'. An order of detention under the Act would be valid if the activities of a detenu affect 'public order' but would not be so where the same affect only the maintenance of 'law and order'. Facts of each case have, therefore, to be carefully scrutinised to test the validity of an order of detention."

9. The Honourable Apex Court in the case of **Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and others** , reported at **(1995)3 SCC 237** referred to and elaborated upon the aforesaid concept of "public order' as opposed to "law and order". The relevant position of the said judgment reads as under:

"9. It, therefore, becomes necessary to determine whether besides the person being a "dangerous person" his alleged activities fall within the ambit of the expression "public order". A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at

large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". If the activity falls within the category of disturbance of "public order" then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of Arun Ghosh V. State of W.B.(1970) 1 SCC 98 this Court had an occasion to deal with the distinction between law and order and public order. Hidayatullah, C.J. (as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amount only to a breach of law ad order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it

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may not differ from another but in its potentiality it may be very different. Again in the case of Piyush Kantilal Mehta v. Commissioner of Police, [1989] Supp (1) SCC 322, this Court took the view that b order 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. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land."

10. Keeping in mind the distinguishing features and the decisions of the Honourable Apex Court, it becomes necessary to find out whether acts and conducts attributed on the part of the petitioner warrant his detention by invoking provisions contained in Section 3 of the said Act on the spacious grounds that those acts were prejudicial to the maintenance of the public order. The genesis of the detention order lies in the registration of 13 offences under the Maharashtra Prohibition Act. When the material on record in the present case is perused, offences registered against the petitioner are under the Maharashtra Prohibition Act. No other serious offence has been invoked against the petitioner. In all offences he is released on bail. After considering in-camera statements of alleged

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witnesses, it reveals that the witnesses have claimed that the petitioner threatened them and acted in such a manner that they are threatened to face dire consequences. Even, if the list of offences mentioned is considered and the order of detention is taken into consideration, we find that in in-camera statements and the order of detention there is no live link which leads to issuance of the order of detention. It cannot be said that the petitioner deserves to be detained under the provisions of the said Act. There is no material on record to show that the petitioner roaming in the society freely would lead to public discord. The subjective satisfaction showing that the detaining Authority came to conclusion that on the basis of some evidence which was placed before the Authority showing the past conduct of the person and the Authority has examined the said evidence and came to conclusion that detention of the person is required, the subjective satisfaction arrived at by the detaining Authority does not appear to be in consonance with the position of law in the context of the public order as against law and order. The material on record does not really indicate that ordinary law would be insufficient to take care of alleged criminal activities of the petitioner and it cannot be said that the activities are of such a nature that the powers under Section 3 of the said Act could have been invoked.

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11. In view of the discussion above, since the order of detention passed by respondent No.2 deserves to be set aside, we pass following order:

ORDER

(1) The criminal writ petition is allowed.

(2) The impugned order of detention passed by respondent No.2 and the order of approval passed by respondent No.1 are hereby quashed and set aside.

(3) The petitioner is set at liberty forthwith, if not required by the Police in any other offence.

Rule is made absolute in the aforesaid terms.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

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