

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

CRIMINAL WRIT PETITION NO.1285 OF 2023

Prakash Chandrakant Kanjar
Age 34 years, Occu. Business,
R/o Khanderao Nagar, Jalgaon,
District Jalgaon

... **PETITIONER**

VERSUS

- 1) The State of Maharashtra
Section Officer, Home Department,
2nd Floor, Mantralaya, Mumbai
- 2) District Magistrate, Jalgaon,
Collector Office, Jalgaon

... **RESPONDENTS**

.....
Mr. S.S. Bora, Advocate for petitioner
Mr. M.M. Nerlikar, A.P.P. for respondents
.....

**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

**Date of reserving judgment : 16th October, 2023
Date of pronouncing judgment : 19th October, 2023**

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith and heard finally
with the consent of learned counsel for the parties.

2. The challenge in this Writ Petition is to an order of
detention passed 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 (M.P.D.A. Act for short). The period of detention is 12 months w.e.f. 29/6/2023. The detention order was passed by the District Magistrate, Jalgaon (respondent No.2) and it has been confirmed by the State of Maharashtra in Home Department (respondent No.1). The detention order has been passed since the activities of the petitioner, as a bootlegger, were found and are likely to be prejudicial to maintenance of public order.

FACTS :-

3. The relevant part of the order of detention reads as follows :-

Information of Offences registered at Ramanand Nagar Police Station of Jalgaon City is as under.

Sr. No.	Police Station	Crime No.	Sections	Date of registration of crime	Percentage of ethyl alcohol	Details of arrest	Present status
1	Ramanand Nagar	250/2021	Under Section 65(e) of Maharashtra Prohibition Act, 1949	29/8/2021	11%	Notice issued as per Section 41(1) (A) of Criminal Procedure Code, 1973	Pending trial
2	Ramanand Nagar	283/2021	Under Section 65(e) of Maharashtra Prohibition Act, 1949	3/10/2021	21%		Pending trial
3	Ramanand Nagar	01/2022	Under Section 65(e)	02/01/2022	26%		Pending trial

			of Maharashtra Prohibition Act, 1949				
4	Ramanand Nagar	81/2022	Under Section 65(e) of Maharashtra Prohibition Act, 1949	8/4/2022	14%		Pending trial
5	Ramanand Nagar	202/2022	Under Section 65(e) of Maharashtra Prohibition Act, 1949	26/6/2022	9%		Pending trial
6	Ramanand Nagar	263/2022	Under Section 65(e) of Maharashtra Prohibition Act, 1949	26/8/2022	10%		Pending trial

Sr. No.	Name of Police Station	Date of registration	Registration No.	Section
7	Ramanand Nagar	17/8/2022	4/2022	Obtained bond for a period of two years as per Section 93 of Maharashtra Prohibition Act, 1949
8	Ramanand Nagar	8/4/2022	4/2022	Obtained bond for a period of two years as per Section 93 of Maharashtra Prohibition Act, 1949

Details of the offences registered recently within six months

Sr. No.	Police Station	Crime No.	Sections	Date of registration of crime	Percentage of ethyl alcohol	Details of arrest	Present status
1	Ramanand Nagar	31/2023	Under Section 65(e) of Maharashtra Prohibition	7/2/2023	-	Notice issued as per Section 41(1) (A)	Under police investigation

			Act,1949			of	
2	Ramanand Nagar	159/2023	Under Section 65(e) of Maharashtra Prohibition Act,1949	13/5/2023	-	Criminal Procedure Code, 1973	Under police investigation

4. The order of detention records the facts mentioned in the F.I.Rs. of the respective crimes registered against the petitioner. Two in-camera statements of Witness 'A' and Witness 'B' have also been reproduced. Those statements indicate that, Witness 'A' was proceeding on his motorbike via Railway bridge at Khanderao Nagar on 2/6/2023. Three persons suddenly came out from the liquor-den of the petitioner and intercepted his motorbike. One of the three dashed motorbike of the witness. The said person fell down. Others two stood him up. All the three had a reek of their mouths. Then the petitioner along with his colleagues came there. The witness told the petitioner that, because of his acts of selling illicit liquor at that place, foul smell was spread around. People consuming his liquor indulge in fights. He would make complaint against him to the police. The petitioner thereupon gave threats of dismembering him. The petitioner's men assaulted the witness. Passers by remained mute spectators due to fear of the petitioner. The witness did not report to the police due to petitioner's fear.

5. The Witness 'B' has stated in his statement that, he was passing by the very area on 4/6/2023. The petitioner suddenly

came on a motorbike and knocked him down. When he questioned the petitioner, he abused him. The petitioner was under influence of alcohol. When the witness told the petitioner that it was his fault, the petitioner told that it was his den and if anybody intervene in his affairs, he will maim him. The petitioner then threatened him of dire consequences, if he dare to interfere with the petitioner's activities as a bootlegger.

6. The order of detention further records :-

“7. On perusal of the documents placed before me I am satisfied that there are various criminal cases registered against you at Ramanand Nagar Police Station under Section 65(e) of the Maharashtra Prohibition Act, 1949. You have violated the said provisions and frequently involve in illegally manufacturing illicit liquor on large scale and hoard the same for sale. For curbing your notorious illegal activities preventive actions under Section 93 of Maharashtra Prohibition Act, 1949 as well as under Section 144(2) of Criminal Procedure Code, 1973 have been initiated nevertheless your notorious tendency to indulge in activities have not been contained. Hence, it is necessary to curb your criminal activities under the said Act.

8. I am also satisfied that taking into consideration your frequent criminal activities in Jalgaon city it appears that due to your criminal notoriety and not respecting the law and order create terror, therefore, you fall within the meaning of 'dangerous person' as defined in the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders,

Dangerous Persons, Video Pirates, Sand Robber and Black Marketing of Essential Commodities Act, 1981 Section 55 of said Act of 1981. (Mah. Act. No.LV of 1981) (amendment Act, 2015) (Amendment of 1996). Thus, your acts come within the meaning of Section 2(a)(iv) i.e. “activities which affect adversely or are likely to affect adversely the maintenance of public order ... public health”. Thus, you are a ‘bootlegger’ i.e. a person harmful for the lives of general public, likely to cause damage to the private/public properties and, and acts of forcible extortions likely to disturb public tranquility and damaging smooth law and order and general public peace.

9. On minute perusal of all the documents placed before me I am personally satisfied that, variety of offences consistently registered against you do show your notorious criminal tendency thereby putting smooth public order in jeopardy; which put lives of general public and their properties at imminent danger. The FIR and the bail orders placed before me and the recent offences committed by you recently within six months viz. Crime No.31/2023 dated 07/02/2023 of Ramanand Nagar Police Station, Jalgaon, District Jalgaon for the offences under Section 65(e) of Maharashtra Prohibition Act, 1949 as well as Crime No.159/2023 registered with Ramanand Nagar Police Station for the offence under Section 65(e) of Maharashtra Prohibition Act, 1949 registered on 13/05/2023 as well as considering the preventive actions coupled with the two confidential statements of witnesses, I am satisfied that it is necessary to detain you.

7. Learned counsel for the petitioner would submit that, the petitioner was not arrested in any of the cases registered

against him. The petitioner was served with notice under Section 41(A) of the Code of Criminal Procedure. The same suggests the authorities maintaining law and order and even public order found the activities of the petitioner even to have no potential to arrest him for a single day. The learned counsel for the petitioner would submit, although C.A. reports of illicit liquor allegedly seized from the petitioner indicate some percentage of ethyl alcohol, none of the C.A. reports indicate the seized liquor was unfit for human consumption. Learned counsel relied on the following set of authorities to ultimately urge for allowing the petition:-

- (1) Smt. Hemlata Kantilal Shah Vs. State of Maharashtra & ors.
(1981) 4 SCC 647
- (2) T.A. Abdul Rahman Vs. State of Kerala & ors.
AIR 1990 SC 225
- (3) The District Collector, Ananthapur & Ors. Vs. v. Laxmanna
MANU/SC/0221/2005
- (4) Haresh Vinayak Patil Vs. D. Shivanandhan & ors.
MANU/MH/0145/2008
- (5) Ramalu Kankayya Bhandari Vs. The Commissioner of Police,
Solapur & ors. (MANU/MH/3902/2019)
- (6) Mallada K. Sri Ram Vs. The State of Telangana & ors.
MANU/SC/0444/2022
- (7) Pesala Nookaraju Vs. The Government of A.P. & ors.
MANU/SC/0893/2023
- (8) Sandeep Govind Pawar Vs. State of Maharashtra & ors.
MANU/MH/1319/2023

8. Learned A.P.P. would, on the other hand, submit that the order of detention itself suggests the detaining authority to have applied its mind to the material placed before him and ultimately come to a subjective satisfaction as to a case having been made out for the petitioner's detention under Section 3 of the M.P.D.A. Act., According to learned A.P.P., it is a matter of common knowledge that, consumption of illicit liquor (*Hat Bhatti*) is dangerous to public health. The detaining authority has observed the same in the detention order. The C.A. reports indicate the seized liquor contained ethyl alcohol in various percentage. He would further submit that, the in-camera statements relied on go a long way to indicate the petitioner to have threatened them with dire consequences if anybody interferes with his illegal activities. The same suggests the petitioner's activities as a bootlegger, has potential to cause disturbance of maintenance of public order. The learned A.P.P. first took us through the statement and object of the M.P.D.A. Act. He then referred to relevant definitions of the term "bootlegger", "maintenance of public order" etc. According to learned A.P.P., the order of detention indicates expression of the detaining authority's subject satisfaction that the activities of the petitioner were prejudicial to maintenance of public order. The detaining authority has also recorded his satisfaction that it was necessary to prevent the petitioner from indulging further in such activities. The subjective satisfaction is based on material on

record. Whether the material was sufficient or not is not for the Courts to decide by applying the objective basis. The learned A.P.P. relied on paragraph No.71 of the Apex Court judgment in case of *Pesala* (supra). He also then relied on the judgment of this Court in the case of **Gobilal Vs. Ghanavat (2003 Bom.C.R. (Cri.) 851** to submit that, even the C.A. reports are silent to indicate that the seized illicit liquor was unfit for consumption, the activities of the petitioner in threatening the two witnesses suggest the petitioner's activities were prejudicial to the maintenance of public order. The learned A.P.P. took us through certain paragraphs of the impugned order to ultimately urge for dismissal of the petition. Learned A.P.P. relied on the following authorities :-

- (1) Kanuji S. Zala Vs. State of Gujarat & ors.
AIR 1999 SC 2269
- (2) Gobibai V. Ghanavat Vs. State of Maharashtra & ors.
2003 Bom.C.R. (Cri.) 851

9. Considered the submissions advanced. Perused the order impugned herein and the authorities relied on.

10. Section 2(a) of the M.P.D.A. Act reads as under :

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

(a) “acting in any manner prejudicial to the maintenance of public order” means –

(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.

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 disturbance in public safety and tranquility or disturbs the day to day life of the community by black-marketing in the essential commodities which is resulting in the artificial scarcity in the supply of such commodities and rises in the prices of essential commodities which ultimately causes inflation 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.

(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.”

11. The Supreme Court, in case of **Mallada K. Sri Ram Vs. State of Telangana & Ors. (MANU/SC/0444/2022)**, observed in paragraph no.15 as under :

“15. A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the “maintenance of public order”. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. **However, the personal liberty of an Accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in a Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law.**

12. The detaining authority referred to 8 criminal cases under Section 65(e) of the Maharashtra Prohibition Act registered against the petitioner. In the order of detention, however, the facts and circumstances of cases mentioned at Sr.Nos.4 to 6, 9 and 10 have specifically been relied on. Admittedly, in none of the cases registered against the petitioner, he had ever been arrested. He was served with notice under Section 41(A) of the Code of Criminal Procedure. Section 41(A) of the Cr.P.C., reads as under :

41A. Notice of appearance before police officer.—

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling

to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

13. The phraseology of the aforesaid Section indicates that the police officer concerned found arrest of the petitioner was not required in any of those cases. He appears to have found the petitioner to have complied with the conditions of the said notice/s.

The learned A.P.P. tried to contend that, had the petitioner been arrested in breach of the mandate of Section 41 of the Cr.P.C., the officer concerned might have been taken to task. He would further submit that, for taking an action under the M.P.D.A. Act, it shall not be taken as a condition precedent that the detenu ought to have been arrested in the offences on the basis of which preventive detention order is passed against him. According to him, the officers concerned have discretion to have recourse to appropriate provisions of law, such as proceeding under Chapter V of the Cr.P.C. or under Section 56 of the Maharashtra Police Act or under the M.P.D.A. Act. We are partially in agreement with the submissions made by the learned counsel that the officer concerned may have recourse to any of the provisions relating to preventive measures. It needs no mention that the police officer concerned has every power to arrest an accused involved in commission of a cognizable offence punishable with imprisonment

for a term which may be less than 7 years or may extend to 7 years provided the police officer is of the opinion that he ought to be arrested. It needs no mention that, subjecting a person to arrest, whenever it is necessary, has necessarily a deterrent effect. It may be that a person who was arrested and remains behind bars even for a day or two may not dare to indulge in similar or any other criminal activity. It needs no mention that when ordinary law falls short, then only recourse to measures like preventive detention are resorted to. In the case in hand, the petitioner was not arrested in any of the crimes registered against him. The same suggests, the investigating officer did not require him to have him arrested. This Court, in case of Sandeep Pawar (supra), observed in paragraph No.12 as under :

“12. It is imperative for the detaining authority to reach a subjective satisfaction about the fact that the detenue being at large would be prejudicial to the public order. Admittedly, except registration of offences under the Prohibition Act, no offence has ever been registered against the petitioner under the Indian Penal Code or any other penal law. The fact that except the latest two cases in all earlier matters, the criminal cases have been stopped under Section 258 of the Code of Criminal Procedure makes it necessary to consider as to if mere registration of the latest two offences under Section 65E of the Prohibition Act coupled with couple of actions under Section 93 of the Prohibition Act of securing bonds from petitioner can be said to be sufficient to reach a subjective satisfaction regarding petitioner being at liberty would cause disturbance to public order.

Similarly, it becomes imperative for the State to demonstrate that the provisions of the common law are insufficient to deter him from engaging him in the activities which would be prejudicial to the public order.”

14. The order of detention impugned herein is silent to record the reasons as to why even the petitioner to have not been subjected to arrest. In any of the criminal cases registered against him, it was found necessary to detain him under the M.P.D.A. Act. Merely stating that ordinary law of the land was not effective, for curbing petitioner's activities would not be sufficient in the facts and circumstances of the present case. In our view, the sponsoring authority, therefore, ought not to have even put up a proposal for detention of the petitioner under the M.P.D.A. Act. The detaining authority in turn should not have accepted the same and passed the order impugned herein. On this ground alone, the petition deserves to be allowed.

15. So far as regards the challenge on the other ground is concerned, it is to be stated that, registration of the last two crimes, being C.R. No.31/2023 and 159/2023 and two in-camera statements appear to have triggered the sponsoring authority to put up a proposal for petitioner's detention. Admittedly, C.A. reports of the illicit liquor seized from the petitioner appear to have not been available for being presented before the detaining authority. There

was, therefore, nothing before the detaining authority to reach to a conclusion that the illicit liquor seized from the petitioner in those two crimes was unfit for human consumption. Although there were C.A. reports pertaining to the illicit liquor seized from the petitioner in connection with the other crimes relied on, none of the C.A. reports indicate the said liquor was unfit or hazardous for even consumption although it contained ethyl alcohol in different percentage. The facts of the case in case of Pesala (supra) would indicate the seized illicit liquor therein was subjected to chemical analysis. The C.A. reports indicate the same was unfit for human consumption. It is true that the detaining authority has, in the order of detention, observed the consumption of illicit liquor was harmful. However, there was no material before him to substantiate his view. In case of Pesala, the Apex Court, observed in paragraph No.65 as under :

“65. Just because four cases have been registered against the appellant detenu under the Prohibition Act, by itself, may not have any bearing on the maintenance of public order. The detenu may be punished for the offences which have been registered against him. To put it in other words, if the detention is on the ground that the detenu is indulging in manufacture or transport or sale of liquor then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Prohibition Act but if the liquor sold by the detenu is dangerous to public health then under

the Act 1986, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to it that the liquor dealt with by the detenu is liquor which is dangerous to public health to attract the provisions of the 1986 Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.”

16. True, in paragraph No.71 of the very judgment it has been observed thus :

“71. In the case on hand, the detaining authority has specifically stated in the grounds of detention that selling liquor by the appellant detenu and the consumption by the people of that locality was harmful to their health. Such statement is an expression of his subjective satisfaction that the activities of the detenu appellant is prejudicial to the maintenance of public order. Not only that, the detaining authority has also recorded his satisfaction that it is necessary to prevent the detenu appellant from indulging further in such activities and this satisfaction has been drawn on the basis of the credible material on record. It is also well settled that whether the material was sufficient or not is not for the Courts to decide by applying the objective basis as it is matter of subjective satisfaction of the detaining authority.

17. The aforesaid observations have been made on the basis of the facts and circumstances of the case. Since the C.A.

reports therein expressly record the said liquor was harmful to health.

18. In case of Gobibai (supra), this Court has observed :-

(B) Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, Sec. 3(2) – Detention order – Without obtaining C.A. report – Validity of – Contention that there was no material before Detaining Authority to issue detention order on ground that there was danger to public health due to activities of detainee as Detaining Authority has not relied on C.A. report with regard to contents of illicit liquor or alcohol seized from detainee – Held, subjective satisfaction of Detaining Authority that activities of detainee had become perpetual and potential danger to health of people is without any basis in absence of C.A. report which not relied on grounds of detention.

19. Full facts of the case in Kanuji S. Zala (supra) are not before us. It is a judgment of a Division Bench of the Apex Court, while the judgment in case of Pesala (supra) is a three Judge Bench judgment. True, in paragraphs No.4 and 5 of Kanuji S. Zala (supra), it has been observed thus :

“4. In our opinion there is no substance in this contention. In none of the three cases relied upon by the learned counsel the point whether public order can be said to have been disturbed on the ground that the activity of the detainee was harmful to the public health arose for consideration. It appears that in those three cases,

the detaining authority had not recorded such satisfaction. Moreover, in those cases the detaining authorities had referred to some incidents of beating but there was no material to show that as a result thereof even tempo of public life was disturbed. In this case, the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health. The detaining authority has also stated that the statements of witnesses clearly show that as a result of violence resorted to by the petitioner even tempo of the public life was disturbed in those localities for some time. The material on record clearly shows that members of the public of those localities had to run away from there or to go inside their houses and close their doors.

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 observations made by this Court in *Om Prakash v. Commissioner of Police*, 1989 Supp.(2) SCC 576 : (AIR 1990 SC 496 : 1990 CriLJ328) that “as in *Piyush Mehta Case* (AIR 1989 SC 491 : 1989 CriLJ 956), the materials available on record in the present case are not sufficient and adequate for holding that the alleged prejudicial activities of the detinue 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.”

20. The learned A.P.P. then adverted our attention to the two in-camera statement of the Witness 'A' and Witness 'B'.

Then he relied on the observations of the Division Bench judgment in Gobibhai's case, which reads as follows :

(C) Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, Sec. 5-A (amendment of 1996) – Scope of – Held, even if some of grounds of detention fail on account of being vague, non-existent, non-relevant or not connected with such person or is rendered invalid for any other reason, still order cannot be deemed to be invalid or inoperative if same can be supported on remaining ground or grounds.

(D) Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, Secs. 2(a)(ii) & 3(2) – Detention of bootlegger – Scope of – Held, the bootlegger can be detained under the provisions of this Act not only in case he is dealing in liquor which, as per the C.A. report, is harmful to public health, but also in case his activities as a bootlegger otherwise create a feeling of insecurity and danger amongst members of public.

21. The first in-camera statement of Witness 'A' indicates that, on 2/6/2023, he was proceeding on his motorbike, passing by Railway Bridge near Khanderao Nagar. Three unknown persons all of a sudden emerged from liquor den of the petitioner. They intercepted him. All of them were under influence of alcohol. They

started abusing the witness. After a while, the petitioner along with three persons came. When the witness told the petitioner that because of his liquor den, persons under consumption of liquor taken at his den drive vehicles in excessive speed that causes endanger to public life. He asked the petitioner to close down his den. The petitioner thereupon threatened him of dire consequences and even naming him and those other three who were along with the petitioner, manhandled him.

22. The statement of Witness 'B' is to the effect, while he was passing by the very place, one motorcyclist came in speed. The motorcyclist suddenly applied a break. The motorcycle slightly brushed with the witness. The said motorcyclist was under consumption of liquor. The witness stated the said person that, "It was his fault and he was under influence of liquor." He thereupon started abusing the witness. The petitioner along with his two associates came there. On having seen them, the on-lookers started leaving the place. The petitioner abused the witness and said, "If any one come in the way of his illicit liquor den, he would not be spared. The witness was manhandled. Some of the passers-by rescued the witness.

23. The aforesaid two in-camera statements have been verified by the Sub-Divisional Police Officer. Relying on this statement, the learned A.P.P. would submit that, the activities of the

petitioner were necessarily prejudicial to maintenance of public order. He would further submit that, it is well settled that, whether material was sufficient or not is not for the Court to decide by applying objective basis. The detaining authority had rightly arrived at the subjective satisfaction based on the two in-camera statements. In our view, in first instance, we are of the view that, it is very risky to rely on the only in-camera statements to sustain the order of detention in the facts and circumstances of the case. Close reading of both those statements no way lead to us to infer that the persons with whom the witness had a wrangle, had consumed illicit liquor at the petitioner's liquor den. The petitioner, giving threats to those 2 witnesses and his associates manhandling them, was at the most, in the facts and circumstances of the case, an issue of maintenance of law and order. The petitioner has been allegedly running business of illicit liquor for 4 – 5 years next before the action of his preventive detention was taken. There is not a single incident reported at the police station alleging him to have abused and assaulted anyone. No crime for the offences punishable under any of the Sections of the Indian Penal Code has ever been registered against him with such allegations. It is, therefore, reiterated that, the in-camera statements taken at their face value, it would at the most be a question of law and order. Based on such statements alone, the order of detention, in our view, in the present case, does not sustain. For all the aforesaid

reasons, we find the petition deserves to be allowed. Hence the order :

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause (b) and (c).
- (ii) The petitioner be set at liberty forthwith if not required in any other case.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-