



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

**907 CRIMINAL WRIT PETITION NO.1687 OF 2023**

Vishwambhar s/o. Satva Mendhke  
Age: 53 years, Occ: Labour,  
R/o. Village Nitrud, Tq. Majalgaon,  
Dist. Beed.

... Petitioner

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
2. The District Magistrate, Beed,  
Dist. Beed.
3. The District Superintendent of Police  
Beed, Dist. Beed.
4. Jail Superintendent,  
Aurangabad Central Prison,  
Aurangabad.

... Respondents

...  
Mr. Z. H. Farooqui, Advocate for Petitioner.  
Ms. Kavita R. Jamdhade, APP for Respondents.  
...

CORAM : R. G. AVACHAT and  
SANJAY A. DESHMUKH, JJ.

DATE : 06<sup>th</sup> December, 2023.

**Per Court:**

. Heard.

2 The challenge in this writ petition is to the 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 (for short "M.P.D.A. Act"). The date of detention is 11<sup>th</sup> September, 2023. The detention is for a period of 12 months on the ground of the activities of the petitioner being bootlegger were prejudicial to maintenance of public order. The order of detention has been confirmed by the State in the Home Department.

3           The challenge is mainly on the ground of non subjective satisfaction of the detaining authority. The learned counsel for petitioner would submit that in all five offences under Section 65(e) of the Maharashtra Prohibition Act were registered against the petitioner during the period from July, 2022 to August, 2023. However, for passing the order impugned herein, the last two crimes being C.R. No.172 of 2023 and C.R. No.178 of 2023 registered on 19<sup>th</sup> July, 2023 and 5<sup>th</sup> August, 2023 respectively have been taken into consideration, besides the two in-camera statements. A reference to preventive action taken against the petitioner has been made in the order. The same has not been relied upon. According to the learned counsel, in both the last crimes, the petitioner was even not arrested. He was served with a notice under Section 41-A of the Code of Criminal

Procedure (for short “Cr.P.C.”). According to him, the recourse to preventive detention measures is made only when an ordinary law falls short to curb illegal activities of the concerned detenu. He, therefore, urged for grant of petition.

4           The APP would, on the other hand, submit that the five similar crimes were registered against the petitioner within a span of one year. Preventive action taken against the petitioner under Section 107 of Cr.P.C. and under Section 93 of the Maharashtra Prohibition Act, was found to be inadequate. Moreover, there are two in-camera statements, duly verified by the higher rank police official. Both the witnesses were apprehensive of the petitioner and therefore, did not lodge report against him. They gave their statements on condition that their identity would not be disclosed. The same indicates the petitioner’s terror. Both the offences were committed in relation to petitioner’s illegal activities as a bootlegger. According to the learned APP, subjective satisfaction of the detaining authority cannot be a matter of judicial review. Insufficiency of the material also cannot be consideration in a petition under Article 226 of the Constitution of India. She, therefore, ultimately urged for dismissal of the petition.

5           Considered the submissions advanced. Perused the order of detention and police papers relied on. True, five crimes under

Section 65(e) of the Maharashtra Prohibition Act, were registered against the petitioner. Preventive actions under Section 107 of Cr.P.C. and Section 93 of the Maharashtra Prohibition Act, were also taken against him. The order of detention, however, specifically records that last two crimes being C.R. No.172 of 2023 and C.R. No.178 of 2023 were relied on for passing the impugned order, besides two in-camera statements. Admittedly, in both the crimes, the petitioner was not arrested. Both the crimes are punishable for imprisonment for a period of five years, meaning thereby the offences were not bailable. The sponsoring authority issued the petitioner notice under Section 41-A of Cr.P.C. The same indicates the petitioner's arrest was not imminent in both the crimes. Then how could it be, the concerned sponsoring authority put up a proposal for petitioner's detention for a period of 12 months based on very crimes, in which he found the petitioner's arrest was not required. Without taking recourse to ordinary law first, a recourse to preventive detention action has been taken. Needless to mention, recourse to such provision is only made when an ordinary law falls short to curb illegal activities.

6            True, there are two in-camera statements indicating the petitioner to have intercepted both of them and given threat to their lives, if they report to the police about the petitioner's illegal activities. It would be anybody's guess as to whether the detaining authority

could have passed the order solely on the ground of in-camera statements, ignoring the last two crimes wherein the petitioner was not even arrested. As such, in our view, the detaining authority appears to have not taken into consideration all these facts and circumstances and passed the impugned order. The same suggests non subjective satisfaction of the detaining authority. The order impugned herein is, therefore, liable to be interfered with. For all these reasons, the writ petition deserves to be allowed. Hence, the following order is passed:

### **ORDER**

- I. The criminal writ petition is allowed in terms of prayer clause (B).
- II. The petitioner be released forthwith, if not required in any other crime.

[ SANJAY A. DESHMUKH, J. ]

[ R. G. AVACHAT, J. ]

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