



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

CRIMINAL WRIT PETITION NO.1696 OF 2023

**JALINDER LAXMAN JADHAV
VERSUS
THE DISTRICT MAGISTRATE, BEED AND OTHERS**

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Advocate for Petitioner : Mr. Yogesh Bidve, Advocate, Mr. Dheeraj Panchanre i/b Mr. Shomit Salunkhe a/w Mr. G.D. Tamboli, Advocates for Petitioner

APP for Respondents – State : Mr. A.R. Kale

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

DATE : 04th DECEMBER, 2023

PER COURT :

1. Heard.
2. Challenge in this petition is to the order of detention dated 11/09/2023, passed by learned District Magistrate, Beed, under Section 3 of the Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons And Video Pirates Act, 1981 ('MPDA Act'). Petitioner has been detained for a period of 12 months on account of he being bootlegger and his such activity to be prejudicial for maintenance of public order. Challenge is made on the ground of non-subjective satisfaction by the detaining authority.
3. Learned advocate for petitioner would submit although

there are five crimes registered against petitioner, only last two crimes bearing C.R. Nos. 253/2023 and 264/2023 have been considered besides to in-camera statements of the two witnesses. He would submit that in both the crimes, there is no C.A. report for the detaining authority to observe allegedly seized liquor from the petitioner was hazardous to human life. So far as in-camera statements are concerned, he submits that those statements are vague. None of the witnesses claims to have seen the petitioner dealing in illicit liquor. Their statements indicate that petitioner had intercepted them and extended threats since both of them were likely to report to the policemen about petitioner's illegal activities. Challenge is also made on the ground of delayed submission of the report to Advisory Board for its opinion. The report has not been submitted by the Advisory Board within the time limit of seven weeks from the date of receipt thereof. Learned advocate for petitioner ultimately urges for grant of the petition.

4. Learned APP would submit that the petitioner in spite of being Member of Grampanchayat indulged in criminal activities. Not less than five crimes have been registered against him. The first three crimes were referred to show his criminal tendency, although last two crimes were relied on besides to in-camera statements. Learned APP then took us through the entire detention order to

indicate that petitioner was found on the spot in possession of illicit liquor. On having seen the policemen, the customers fled. According to him, the order of detention itself indicates that consumption of alcohol was injurious to health. He adverted our attention to the in-camera statements of both the witnesses to indicate the petitioner had intercepted them and given threats if they went public as to illegal activities of the petitioner. According to him, subjective satisfaction of detaining authority cannot be subject to judicial review. Sufficiency or insufficiency of material cannot be considered in a petition under Article 226 of the Constitution of India. He would further submit that all the time-frames prescribed under the MPDA Act have been adhered to. The detention order was timely placed before the Advisory Board on 20/09/2023, i.e. within a week's time. The Advisory Board also gave its opinion within a time-frame. According to learned APP, petitioner did not make any representation either to the detaining authority or to the State Government which has confirmed the order and therefore, the petition is not maintainable. Learned APP ultimately urges for dismissal of the petition.

5. Considered the submissions advanced. Perused the order of detention and documents relied on. Close reading of the documents would indicate that all the timelines have been adhered

to by the detaining authority. Preferring the representation to detaining authority or the State Government (confirming authority) is not a condition precedent for taking exception to the order of detention in writ petition. Our attention has been adverted by the learned advocate for petitioner to the representation preferred to the Advisory Board. Be that as it may.

6. The challenge is merely on the ground of non-subjective satisfaction by the detaining authority. Although five crimes of similar nature registered under Section 65(e) of the MPDA Act have been referred in the detention order, first three crimes have only been referred to as prelude. It has been specifically mentioned in the order of detention that only last two crimes and the two in-camera statements have been considered while passing the order of detention. We, therefore, do not refer to earlier crimes which have not been relied on.

7. So far as regards the two crimes bearing C.R. Nos. 253/2023 and 264/2023, registered on 25/07/2023 and 03/08/2023 respectively, those have been registered under Section 65(e) of the Prohibition Act. The documents indicate that the petitioner was served with notice under Section 41-A of the Cr.P.C. Offence under Section 65(e) is punishable with five years of imprisonment. Meaning thereby, it is non-bailable offence. The

same suggests that the investigating officer could very well have arrested the petitioner as a deterrent measure. Instead, he preferred to issue notice to the petitioner. Needless to mention that when ordinarily law falls short to curb illegal activities of detainu, then and then only recourse to preventive measures are resorted to. In this case, petitioner was not arrested and he was given notice under Section 41(A) of the Cr. P.C., this indicates the sponsoring authority did not prefer to have the petitioner arrested even for a single day. In such circumstances, proposal for his detention under the MPDA Act ought not to have been preferred, nor the detaining authority should have accepted it and passed the order impugned herein.

8. So far as regards the in-camera statements are concerned, those are very vague. Both the witnesses did not give date or time on which the petitioner had intercepted them and given threats if they went public about his illegal activities. Had those witnesses been specific about the time and date, the petitioner could not have been prejudiced in his defence. As such, in our view, considered rationally the detaining authority ought not to have passed the order of detention on such quality of material, more so, when the sponsoring authority did not prefer to arrest the petitioner even for an hour, for the offences which were

non-bailable. In view of the same, interference with the order impugned herein is warranted. Hence, the following order:-

ORDER

- (I) Criminal writ petition is allowed.
- (II) Order of detention dated 11/09/2023, passed by learned District Magistrate, Beed, bearing No.2023/RB-Desk-1/Pol-1/MPDA-11, is hereby quashed and set aside.
- (III) The petitioner be released forthwith if not required in any other case.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)