



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

CRIMINAL WRIT PETITION NO.535 OF 2023

Petitioner : Badal s/o Manoj Sahare,
Aged about 35 Years, Occ. Labour,
R/o Nagpurfail, Pulgaon, Tah. Deoli,
Dist. Wardha.

– Versus –

Respondents : 1. State of Maharashtra,
Through Section Officer,
Home Department (Special),
2nd Floor, Main Building, Mantralaya,
Madam Cama Road, Mumbai – 400 032.

2. District Magistrate,
Dist. Wardha.

3. Sub Divisional Police Officer,
Pulgaon, Dist. Wardha.

4. Police Station Officer,
Police Station Pulgaon, Dist. Wardha.

5. Superintendent, District Prison,
Dist. Wardha.

Mr. A.M. Jaltare, Advocate for the Petitioner.
Mr. S.S. Doifode, A.P.P. for the Respondents.

CORAM : **VINAY JOSHI AND M.W. CHANDWANI, JJ.**
RESERVED ON : **26th OCTOBER, 2023.**
PRONOUNCED ON : **8th NOVEMBER, 2023.**

J U D G M E N T : *(Per M.W. Chandwani, J.)*

Rule. Rule made returnable forthwith. Heard finally by the consent of the learned Counsel for the parties.

02] The petition challenges the order of detention dated 26/04/2023 passed by the District Magistrate, Wardha – respondent No.2 under sub-sections (1) and (2) of 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 (hereafter referred to as “MPDA Act” for short). The petitioner further lays challenge to the order dated 20/06/2023 passed by respondent No.1 under Section under Section 3 of the MPDA Act confirming the order dated 26/04/2023 of respondent No.2.

03] The background facts leading to this petition can be summarized as under :

A proposal was initiated for detention by invoking the provisions contained in Section 3(2) of the MPDA Act alleging, *inter alia*, that the petitioner was a habitual bootlegger. The petitioner habitually indulged in manufacturing, stocking, transporting and selling of illicit liquor in contravention of the provisions of the Maharashtra Prohibition Act, 1949 (hereinafter referred to as “Act of 1949” for short), within the jurisdiction of

Police Station Pulgaon and other adjoining area of Wardha District, which is declared as liquor prohibited district by the Government of Maharashtra. From the year 2020, as many as 27 cases were registered under the provisions of the Act of 1949 from 2020 till 2023. Investigation in these cases revealed that the petitioner had illegally supplied and distributed the illicit liquor, which came to be seized from the petitioner in those crimes. In last six months, near about 12 cases have been registered against the petitioner under the provisions of the Act of 1949. But, the petitioner is continuously indulged in the acts in contravention of the provisions of the Act of 1949. The people, who drunk the liquor at den of the petitioner, teases women, girls and create uproar within the locality and also causes nuisance. Thus, the Detaining Authority felt to detain the petitioner preventing him from acting in a manner prejudicial to the maintenance of public order and passed the impugned order dated 26/04/2023, which is under challenge by taking multiple grounds including non-application of mind, absence of material to indicate that bootlegging activities were prejudicial to the maintenance of public order as well as non-consideration of bail order.

04] Heard the learned Counsel for the petitioner as well as the learned Additional Public Prosecutor for the respondents/State. We have also perused the original record made available to us by the learned A.P.P.

05] Mr. Amol Jaltare, learned Counsel appearing on behalf of the petitioner assailed the detention order mainly on the ground that in both in-camera statements, nowhere it is stated that the petitioner himself is involved in disturbing the tranquility of the society. He would submit that there are no allegations that the petitioner is involved in the violent activities. The only allegation is made in-camera statements "A" and "B" that merely because some drunken people are causing nuisance in the vicinity of the locality of the witnesses. These statements do not show that there was disturbance of public order. There is difference between disturbance of public health and disturbance of public order and both are not synonymous with each other. None of the statements refer any series of questionable acts of the petitioner. Crime No.962/2022 is registered almost six months prior to passing of the order of detention. Therefore, there is no live link. The petitioner was never arrested. Though in Chemical Analyzer's report, percentage of ethyl alcohol was found, the said report does not express that how much quantity of ethyl alcohol is dangerous for human consumption. Thus, the grounds, which have been relied by the Detaining Authority, are flimsy and cannot form the basis of subjective satisfaction. The detention order is contrary to the provisions of Section 3 of the MPDA Act and, therefore, the same is liable to be set aside and the petitioner is entitled to be released forthwith. To

buttress his submissions, Mr. Amol Jaltare seeks to rely on the following cases:

- I. *Jaywanta s/o Gangaram Pawar vs. The State of Maharashtra & Ors.*¹
- II. *Hanif Karim Luluwale vs. State of Maharashtra and others*²
- III. *Devidas Lalji Ade vs. The State of Maharashtra & Ors.*³
- IV. *Shekh Kasam s/o Shekh Shekhji vs. State of Maharashtra & Anr.*⁴
- V. *Elizabeth Ranibhai Prabhudas Gaikwad vs. The State of Maharashtra & Anr.*⁵

06] Countering the submission of the petitioner, learned A.P.P. Mr. Doifode for the State vehemently submitted that the order is well reasoned and has been passed after recording subjective satisfaction by the learned District Magistrate, Wardha. In-camera statements “A” and “B” show that the people, who drinks liquor at the den of the petitioner, tease women and girls of the locality and also abuse to the local public. Wardha District is a prohibited district. There are almost 27 offences registered against the petitioner under the Maharashtra Prohibition Act. All the drunken persons are misbehaving just because of the illegal manufacturing, stocking and

1 2022 ALL MR (Cri) 2818

2 2022(5) Mh.L.J. (Cri.) 2781

3 2023 ALL MR (Cri) 130

4 2023 ALL MR (Cri) 190

5 2021 ALL MR (Cri) 1394

selling of the illicit liquor and as per Section 3 of the MPDA Act, any person can be detained with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. In the present case, because of acts of the petitioner, there is disturbance in the public order and even, due to finding of excessive ethyl alcohol, the health of public at large is at risk. The order passed by the Detaining Authority and confirmed by respondent No.1 is just, legal and proper. Therefore, the writ petition requires to be dismissed. To buttress his submissions, the learned A.P.P. seeks to rely on the following cases:

- I. *Ramesh Balu Chavan vs. The Commissioner of Police & Ors.*⁶
- II. *Kashinath Motiram Chavan vs. The Commissioner of Police, Solapur & Ors.*⁷
- III. *Machindra Dnyanoba Jadhav vs. The State of Maharashtra & Ors.*⁸
- IV. *Kanuji S. Zala vs. State of Gujarat and others.*⁹
- V. *Mohammed Mustafa s/o Mohammad Mastan vs. The State of Maharashtra & Anr.*¹⁰

07] Before we proceed to deal with the submissions made by the respective parties, it will be necessary to note the provisions of the MPDA

6 2017 ALL MR (Cri) 3683

7 2021 ALL MR (Cri) 3043

8 2021 ALL MR (Cri) 3198

9 (1999) 4 SCC 514

10 2018 ALL MR (Cri) 37

Act, which bear upon the controversy sought to be raised on behalf of the petitioner. The provisions of Section 2(a)(ii) of the MPDA Act are reproduced:

“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 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 -

(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;”

08] From the aforesaid provisions, it is clear that a bootlegger can be detained by invoking the provisions under Section 3(1) of the MPDA Act and not only in the case, where the bootlegger's activities are causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof, but also in a case, where it has propensity of a grave or widespread danger to life or public health. A notable reference in this context is made in the decision of the Supreme Court in the case of Mrs. Harprit Kaur Harvinder Singh Bedi vs. State of Maharashtra and Anr.¹¹, wherein the contention of the explanation was illustrated as under :

“Explanation to [Section 2\(a\)](#) (supra) brings into effect a legal fiction as to the adverse affect on 'public order'. It provides that if any of the activities of a person referred to in clause [(i)-(iii)] of [Section 2\(a\)](#) directly or indirectly causes or is 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 a wide- spread danger to life or public health, then public order shall be deemed to have been adversely affected. Thus, it is the fall out of the activity of the "bootlegger" which determines whether 'public order' has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing with detentions under the Act.”

¹¹ (1992) 2 SCC 177.

09] A profitable reference in this context can also be made to the judgment of the Supreme Court in the case of Kanuji S. Zala vs. State of Gujarat & Ors.- (1999)4 SCC 514. In paragraphs 4 and 5, it has been observed as under:

"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 observation made by this Court in Om Prakash Vs. Commissioner of Police & Ors. - 1988 Supp. (2) SCC 576 that

"as in Piyush Mehta Case, the materials available on record in the present case are not sufficient and adequate for holding that the alleged prejudicial activities of the detenu 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."

10] The legal position which, thus, emerges is that while testing the legality of an order of detention passed by the Detaining Authority, by resorting to the provisions of section 3 of the MPDA Act, in the case of a bootlegger, what has to be seen is whether there was credible material before the Detaining Authority, on the strength of which, an inference is justifiable that the bootlegging activity directly or indirectly was causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or a grave or widespread danger to life or public health and thereby adversely affected the maintenance of public order as explained under Section 2 of the MPDA Act.

11] Indisputably, the sufficiency or otherwise of the material is a matter for the subjective satisfaction of the Detaining Authority. Whether the such material existed and the Detaining Authority considered the relevant material to arrive at such satisfaction is the remit of judicial review. On the aforesaid touchstone, reverting to the facts of the case, we find that apart from the numerous cases, which were registered against the petitioner, the Detaining Authority considered the statements of two witnesses recorded in-camera.

12] Perusal of the statements of witnesses 'A' and 'B' reveal that the petitioner is carrying an illegal business of illicit liquor within the jurisdiction of Police Station Pulgaon, District Wardha, where manufacturing, stoking and selling of liquor is completely prohibited. Due to illicit liquor business of the petitioner, the residents of the locality are being harassed not only by the petitioner, but by the persons, who used to drink liquor at the den of the petitioner. Under the influence of liquor, the drunken persons used to abuse each other and even urinate on the road. Due to these activities, the modesty of ladies, who come out of house for cleaning courtyard and the college going girls, is being outraged, therefore, they don't come out of the houses. Even the drunken persons used to quarrel with the people of the locality. When the petitioner has been confronted, he abused and threatened the witnesses.

Due to terror of the petitioner, nobody comes forward to help the witnesses, because of fear. Some people left the places and sifted somewhere else. The petitioner even abuses and threatens the persons of the locality when the people protest against his illegal business.

13] The Detaining Authority has further considered the report of the Assistant Chemical Analyser stating that samples of liquor seized from the petitioner contains ethyl alcohol in water more than 42% and as per the opinion of the Civil Surgeon, Wardha, consumption of ethyl alcohol in excessive amount badly affects the life of people and it also affects the digestive system, brain, heart, liver kidney, muscles and if the percent of ethyl alcohol increases or decreases in blood from certain level, then it can cause even death.

14] In our view, the aforesaid observations of the Detaining Authority cannot be said to be passed on no material and without subjective satisfaction. Though the petitioner has been granted bail in individual offences, the intention and the acts attributed to the petitioner are required to be considered as a whole. There is material to indicate that the activities of the petitioner were such that they disturbed even the tempo of the life of

ordinary citizens. It is not a case of a solitary incident. On the contrary, the material on record unmistakably indicates that the petitioner has been continuously indulging in the acts prohibited under the MPDA Act.

15] This takes us to the decision of this Coordinate Bench of this Court in the cases of Elizabeth Ranibhai Prabhudas Gaikwad, Jaywanta s/o Gangaram Pawar and Hanif Karim Luluwale (*supra*) relied by the petitioner, wherein it has been held that merely the activity of bootlegging tendency *per se* and by itself, cannot be presumed to be adversely affecting the public order but it has to be shown that it is of such a nature and of such order that is really affects adversely or is likely to affect adversely the maintenance of public order. Mere contravention of law may not necessarily result in disturbance of public order though, it may rather it does disturb order.

16] The aforesaid pronouncement, in our view, would be of no assistance to the petitioner in a case where the Detaining Authority, based on cogent material, forms an opinion that the activity of bootlegging was prejudicial to the maintenance of public order.

17] Further, in view of the subjective satisfaction recorded by the Detaining Authority, the decision in the case of Shikh Kasam Shekh Shekhji,

(*supra*) relied by the learned Counsel for the petitioner, will not be helpful to the petitioner.

18] Though the petitioner was being prosecuted under the ordinary law, but of no use. On the contrary, the danger to public order and life increased in view of the activities of the petitioner, a bootlegger, due to his continuously indulging in the business of illicit liquor, Therefore, acquittal in eight cases out of 27 cases registered against the petitioner will not come in aid to the petitioner. The Detaining Authority has rightly restored to the extraordinary law of preventive detention under the MPDA Act and, therefore, the decision in the case of Devidas Lalji Ade (*supra*) relied by the learned Counsel for the petitioner, does not apply to the case in hand.

19] In the case of Ramesh Balu Chavan (*supra*), after recording the fact relating to the crime registered against the detenu therein, the detenu was alleged to be a person, who had supplied and distributed illicit liquor and in-camera statements of the witnesses, the Division Bench had recorded the incidents attributed to the detenu therein, where there was a feeling of alarm, danger and insecurity in the minds of the people, who had gathered at the spot.

20] In the present case also, just because of manufacturing, stocking and selling of the illicit liquor in the locality of Police Station Pulgaon, the drunker have created the feeling of alarm, danger and insecurity in the minds of the locality, which is attributed to the present petitioner. Therefore, the argument that the petitioner himself is not directly involved in the allegedly illegal acts of the drunker and they are the drunker against whom the actions are required to be taken and not against the present petitioner, will not be helpful to the petitioner.

21] We have noted above that the samples of contraband liquor, which were seized from the petitioner, were sent to the forensic analysis and the forensic laboratory reported samples containing ethyl alcohol up to 42% and the Civil Surgeon of Wardha has opined that consumption of ethyl alcohol in excessive amount is harmful to the human body, which even can cause death.

22] In the light of aforesaid facts, the reliance placed by learned A.P.P. Mr. Doifode on the decisions of (I) *Ramesh Balu Chavan*, (II) *Kashinath Motiram Chavan*, (III) *Machindra Dnyanoba Jadhav*, (IV) *Kanuji S. Zala* and (V) *Mohammed Mustafa s/o Mohammad Mastan*, appears to be well founded.

23] The persistent and relentless bootlegging activities, as manifested by the registration of as many as 27 cases against the petitioner coupled with

the chemical analysis reports and the opinion of Medical Expert in-camera statements of witnesses “A” and “B”, justify an inference that said activities are potentially dangerous to public health. We, thus, find that the acts and conduct attributed to the petitioner were prejudicial to maintenance of the public order on both counts namely harm, danger or alarm or a feeling of insecurity among the people of the said locality and grave danger to public health.

24] The upshot of the aforesaid discussions is that challenge to the impugned order does not deserve countenance. The petition, therefore, deserves to be dismissed.

25] Hence, the petition stands dismissed. Rule discharged.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

**sandesh*