



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

Criminal Writ Petition No. 105 / 2024

Yogesh Bharat Rajput

Age : 29 years, Occu. Labour,

R/o Indira Aawas, Jamner,

District Jalgaon.

...Petitioner

Versus

1. State of Maharashtra
Through Deputy Secretary,
Home Department (Special),
Mantralaya, Mumbai.

2. The State of Maharashtra
Through District Magistrate, Jalgaon.

3. The State of Maharashtra,
Through Superintendent,
Central Jail, Thane.

..Respondents

Advocate for the Petitioner : Mr. Harshal Prakash Randhir

A.P.P. for Respondents /State : Mr. A.V. Lavte

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 27 MARCH 2024

ORAL JUDGMENT [Per Shallesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard the matter finally with the consent of both the parties.

2. Order of detention dated 27.12.2023 passed by the respondent no.2/District Magistrate, under Section 3(1) 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 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience), is under challenge in this petition, wherein the petitioner is directed to be detained being bootlegger and dangerous person.

3. The respondent no.2 arrived at subjective satisfaction on the basis of following material :

Sr. No.	Police Station	C.R. Number	Date of Registration	Nature of Offence
1	Jamner	130/2021	23.04.2021	Under Sections 65(e) of the Maharashtra Prohibition Act 1949.
2	Jamner	221/2021	03.07.2021	Under Sections 65(e) of the Maharashtra Prohibition Act 1949.
3	Jamner	295/2021	28.08.2021	Under Sections 65(e) of the Maharashtra Prohibition Act 1949.
4	Jamner	409/2021	09.11.2021	Under Sections 65(e) of the Maharashtra Prohibition Act 1949.
5	Jamner	419/2021	20.11.2021	Under Sections 65(e) of the Maharashtra Prohibition Act 1949.
6	Jamner	215/2022	27.05.2022	Under Sections 65(e) of the Maharashtra Prohibition Act 1949.
7	Jamner	482/2023	28.09.2023	Under Sections 65(e) of the Maharashtra Prohibition Act 1949.
PREVENTIVE ACTION				
1	Jamner	186/2021	04.09.2021	As per Section 93 of the Maharashtra Prohibition Act 1949

4. It has been recorded in the grounds of detention that all the criminal cases pitted against petitioner, are pending. The petitioner is found to be habitually indulging in illegally possessing and selling liquor.

He is recorded to be dissuaded the persons who tried to lodge complaint against him, threatened and beaten them. In-camera statements were recorded on 10.12.2023. They were verified on 22.12.2023. The proposal was forwarded by the sponsoring authority to detaining authority on 21.12.2023. Impugned order was passed on 27.12.2023. It was approved under Section 3(3) of the MPDA Act by order dated 05.01.2024. It was further confirmed by the State Government by order dated 13.02.2024.

5. Learned Counsel Mr. Harshal Randhir for the petitioner submits that the subjective satisfaction reflects non-application of mind and it is perverse. Orders of acquittal though placed before the detaining authority, were not taken into account. It is further submitted that no offence pitted against the petitioner was falling under Chapter XVI and XVII of IPC, still the petitioner is held to be a dangerous person. Learned Counsel would submit that there is unexplained delay in approving order of detention under Section 3(3) of the MPDA Act. Lastly it is submitted that in the absence of expert's opinion, the findings recorded in paragraph no.11 of grounds of detention creates doubt regarding subjective satisfaction.

6. Learned Counsel for the petitioner tenders on record written submissions alongwith following judgments :

- (i) Rushikesh Tanaji Bhoite Vs. State of Maharashtra
Criminal Writ Petition No.123/2011
- (ii) Shri. Pandurang @ Panda Narayan Garud Vs. District Magistrate,
Pune and Ors., Criminal Writ Petition No.454/2022

- (iii) Ganesh @ Nana Gangaram Koli Vs. State of Maharashtra and Ors. Criminal Writ Petition No.1530/2023
- (iv) Dhanubai @ Dhanno Yashvant Nettlekar Vs. State of Maharashtra and Ors. Criminal Writ Petition No.1527/2023
- (v) Hetchin Haokip Vs. State of Manipur and Ors.
2018 ALL SCR (Cri) 1240
- (vi) Akash Annasaheb Hodade Vs. District Magistrate, Latur and Ors.
Criminal Writ Petition No.391/2023
- (vii) Aatish s/o Ravindra Kharat Vs. State of Maharashtra and Ors.
Criminal Writ Petition No.1794/2023

7. Learned APP Mr. Lavte supports impugned order on the basis of affidavit-in-reply. He would submit that the petitioner was being continuously engaged in unlawful activity since 23.04.2021. On the basis of incriminating material, the detaining authority has arrived at subjective satisfaction. He would submit that there is no delay in approving order of detention under Section 3(3) of the MPDA Act. He would invite our attention to Marathi version of impugned grounds of detention to show that the petitioner is held to be bootlegger only. He would submit that considering accepted standard percentage of ethyl alcohol, the contraband seized from petitioner, is rightly held to be hazardous to public health.

8. We have considered rival submissions of the parties. We have gone through relevant record which was before the detaining authority while passing impugned order. It transpires that though seven offences registered against the petitioner were part of criminal antecedents alongwith a preventive action and in-camera statements, only last five offences have been considered by the

detaining authority. All the offences are under Section 65(e) of the Maharashtra Prohibition Act. The sponsoring authority while forwarding proposal to the detaining authority, did forward orders of acquittal recorded in offences registered against the petitioner. The proposal dated 20.11.2023 specifically refers that out of seven offences, the petitioner has been acquitted in first five offence and in last two offences, prosecutions are pending.

9. Learned Advocate for the petitioner refers to orders of acquittal passed in C.R. No.295/2021, 409/2021 and 419/2021. The detaining authority has not at all taken into account orders of acquittal. It reveals that the sponsoring authority specifically mentioned that there was acquittal of the petitioner in the above offences, in the proposal forwarded to the detaining authority. Despite this candid disclosure, the detaining authority in paragraph no.4 observes that trials in the above offences were pending. The detaining authority has totally overlooked the status of the offences and their prosecution. Further, in paragraph no.5 detaining authority proceeded to record that the prosecutions are pending. This is not only non-application of mind, but arbitrariness on part of the detaining authority.

10. Petitioner specifically raised ground of non-consideration of orders of acquittal in the memo of writ petition. Interestingly, same mistake is perpetuated in the affidavit-in-reply filed by the respondent no.2. In paragraph no.6, it has been reiterated that the trials in the offences bearing C.R. No.295/2021, 409/2021 and 419/2021 were pending. No endeavour has been made to explain this lapse as

regards correct status of the proceeding. In paragraph no. 13 of the reply, it has been stated by the detaining authority that conviction would not be necessary. With regret, we are constrained to record that the whole approach of the detaining authority is callus. The subjective satisfaction reached by him is perverse and arbitrary.

11. Learned Counsel for the petitioner in this regard, refers to judgment rendered in the matter of **Rushikesh Tanaji Bholte** (supra). We have considered relevant paragraph nos. 8 to 14. In that case, the detaining authority did not consider order releasing him on bail. In the present matter, orders of acquittal have not been taken into account. Further reliance is placed on the judgment of Shri. Pandurang @ Panda Narayan Garud (supra). In that case also, orders of bail were not considered by the detaining authority. This can be said to be a valid ground for vitiating order of detention.

12. We have examined the subjective satisfaction recorded by the detaining authority from paragraph no.6 to 9. All offences pitted against petitioner are under Section 65 of the Maharashtra Prohibition Act. None of the offences falling under chapter XVI or XVII of IPC or under the provisions of Arms Act, have been registered against him. The detaining authority has recorded in paragraph no.8 of the impugned grounds of detention that petitioner is a dangerous person and also a bootlegger. We have considered Marathi version of the order which shows that words ‘dangerous person’ appearing in paragraph no.8 are wrongly quoted. However, petitioner was found to be indulging into criminal activity of dissuading the persons,

threatening and beating persons. We do not find any record to justify the findings. The activity of the petitioner as seen from the record, could constitute, at the most, bootlegging only.

13. The detaining authority failed to take into account orders of acquittal recorded in three offences. It has been recorded by the detaining authority that considering volume of ethyl alcohol in the water, the contraband would be hazardous to human consumption and was likely to cause jaundice, cancer and accumulation of water in stomach or deplete blood level. This is based on reports of chemical analysis of the sample of the contraband collected during the course of investigation. It has been shown that none of the reports contained any opinion in that respect. The detaining authority is not an expert. Before rendering any finding, it has to be supported by expert's opinion.

14. The affidavit-in-reply in paragraph no.13 refers that standard percentage of ethyl alcohol is 42.8% and samples of the contraband show different percentage of ethyl alcohol. It has not been cleared by the answering respondents that as to how in the absence of material, finding was recorded. In this regard, reliance is placed on the judgment in the matter of Ganesh @ Nana Gangaram Koli (supra). We propose to follow paragraph no.12 which is as follows :

“12. The detaining authority is not an expert person to come to the conclusion in the absence of any expert's opinion. The detaining authority should have secured experts opinion in that regard before arriving at any conclusion in para No. 11. We are of the considered view that the subjective satisfaction suffers from perversity. We are fortified in our view, in view of the ratio laid down in judgment dated 19.10.2023 in

Criminal Writ Petition No. 1284 of 2023 in the matter of Prakash Chandrakant Kanjar Vs. The State of Maharashtra and another and judgment dated 25 October 2023 in Criminal Writ Petition Stamp No. 15879 of 2023 in the matter of Satyavan Shakha Rathod Vs. Commissioner of Police, Pune City and others.”

15. Another judgment on the same line has been rendered in the matter of Dhanubai @ Dhanno Yashvant Netlekar (supra). We find merit in the submissions of learned Counsel for the petitioner.

16. Order of detention was passed on 27.12.2023. The proposal was forwarded to the State Government for approval under Section 3(3) of MPDA Act on 02.01.2024. It was approved on 05.01.2024. Learned APP would point out paragraph no.10 of affidavit-in-reply to demonstrate that there is no delay in granting approval. It reveals that from 27.12.2023 to 02.01.2024, there cannot be said to be any laxity. However, from 02.01.2024 to 05.01.2024, there is no explanation. This delay of three days is fatal.

17. Learned Counsel for the petitioner refers to judgment of Supreme Court in the matter of Hetchin Haakip (supra). We have considered paragraph nos. 8 to 15. In that matter, there was unexplained delay of five days for securing approval. The case in hand is governed by the ratio laid down therein. Another judgment on this point is that of Akash Annasaheb Hodade (supra) which is on the same line. Relying upon the same, we find that there is want of promptitude for approving order of detention.

18. In conclusion, we find that the subjective satisfaction is perverse and there is unexplained delay in securing approval under Section 3(3) of the MPDA Act. We have no alternative than to conclude that impugned order is unsustainable. Hence we pass following order :

ORDER

- (i) The Criminal Writ Petition is allowed.
- (ii) The petitioner Yogesh Bharat Rajput shall be set at liberty forthwith.
- (iii) Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE