



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 112 OF 2024

Supadu Bandu Tadvi
Age : 42 years, Occu. : Agri.,
R/o Chilgaon, Tq. Jamner,
District – Jalgaon

.. Petitioner

Versus

1] District Magistrate, Jalgaon,
District – Jalgaon

2] The State of Maharashtra,
Through the Additional Chief Secretary,
Govt. of Maharashtra, Home Department,
Mantralaya, Mumbai – 32.

3] The Jail Superintendent,
Central Prison, Amravati,
District – Amravati

.. Respondents

...
Advocate for the petitioner : Mr. Satej Jadhav
APP for the respondent – State : Mrs. V.N. Patil - Jadhav
...

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

**RESERVED ON : 02 MAY 2024
PRONOUNCED ON : 07 MAY 2024**

JUDGMENT (MANGESH S. PATIL, J.) :

This is a petition under Article 226 of the Constitution of India, putting up a challenge to the order passed by respondent no.1 – District Magistrate, Jalgaon under section 3(2) and approved and confirmed by respondent no. 2 – State under section 3(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, 1982 (hereinafter the '**MPDA Act**').

2. The impugned orders brand the petitioner as a bootlegger. The following offences registered against him have been taken into consideration :-

Sr. No.	Police Station	Crime No.	Sections	Date of registration of crime	Percentage of ethyl alcohol	Details of arrest	Present Status
1	Pahur	325/2022	Under section 65(f),(b),(c),(e) of Maharashtra Prohibition Act, 1949	04-09-2022	27%, 3%, 4%	No arrest	Pending trial
2	Pahur	397/2022	Under section 65(f),(b),(c),(e) of Maharashtra Prohibition Act, 1949	19-11-2022	8% 3% 4%	No arrest	Pending trial
3	Pahur	51/2023	Under section 65(e) of Maharashtra Prohibition Act, 1949	25-02-2023	10%	No arrest	Pending trial
4	Pahur	269/2023	Under section 65(f) of Maharashtra Prohibition Act, 1949	21-07-2023	-	No arrest	Under Police Investigation
5	Pahur	437/2023	Under section 65(e) of Maharashtra Prohibition Act, 1949	22-10-2023 27-12-2023	-	No arrest	Under Police Investigation

The following preventive actions have also been taken into consideration :-

Sr. No.	Name of Police Station	Date of Registration	Registration No.	Section
1	Pahur	11-01-2021	13/2021	As per section 93 of Maharashtra Prohibition Act, 1949
2	Pahur	24-11-2022	265/2022	As per section 93 of Maharashtra Prohibition Act, 1949
3	Pahur	18-09-2023	233/2023	As per section 93 of Maharashtra Prohibition Act, 1949

3. In addition, as many as 11 offences registered against him under different sections of the Maharashtra Prohibition Act, 1949 (hereinafter '**M.P. Act**') right from the year 2017 up to 25-07-2022 have been looked into by respondent no. 1 – detaining authority. Further, statement of couple of witnesses who preferred to be anonymous for the alleged apprehension, have also been recorded and considered by the detaining authority. He reached a subjective satisfaction that ordinary law of the land was insufficient to deter his activities of manufacturing and selling liquor illegally which has the potential of being hazardous for human consumption and has the tendency to affect the public order.

4. The learned advocate for the petitioner Mr. Jadhav would basically seek to demonstrate as to how the subjective satisfaction arrived at by the detaining authority is perverse and arbitrary. It lacks application of mind. Old and stale cases, having no proximate relation with the latest criminal activities, have been considered. He would submit that there is no chemical analysis report in respect of the latest two crimes. The observation of the detaining authority about the liquid seized from the petitioner being potentially hazardous to life, is not substantiated by any report of the expert. This being a matter of preventive detention, the detaining authority should have been more

vigilant and careful in approving the proposal forwarded by the concerned police.

5. Mr. Jadhav would submit that in none of the cases, he has ever been arrested and was simply served with a notice under section 41-A(1) of the Code of Criminal Procedure, which in itself is indicative of the fact that even the police machinery never thought it necessary to arrest him. He would place reliance on the decisions in the matters of (1) ***Dhanubai @ Dhanno Yashvant Netlekar Vs. State of Maharashtra and others; 2024 SCC OnLine Bom 484*** (Judgment dated 08-02-2024 in Criminal Writ Petition no. 1527 of 2023) and (2) ***Vishwas Arun Garunge Vs. The District Magistrate and others*** (Judgment dated 14-03-2024 in Criminal Writ Petition no. 1578 of 2023) .

6. Per contra, the learned APP would support the orders. She would submit that necessary statutory compliances and the timeline, as laid down in different sections of the MPDA Act has been religiously followed. The subjective satisfaction arrived at is for plausible reasons. This Court has inherent limitations in substituting its views in exercise of power under Article 226 of the Constitution of India. The subjective satisfaction is supported by the circumstances as mentioned in the impugned orders passed by him. Only the latest two crimes committed within six months next before passing of the

order have been considered together with three similar crimes of the immediate past. Preventive actions have also been considered. Old offences have been referred only to demonstrate tendency of the petitioner. Those do not form the basis for arriving at the subjective satisfaction. Though the chemical analysis report in the latest two crimes committed on 21-07-2023 and 22-10-2023 are not available, the other three offences preceding those committed on 04-09-2022, 19-11-2022 and 15-02-2023 contain the chemical analysis reports. The samples were found containing 27%, 3% and 4% ethyl alcohol. Since the activity of manufacturing and selling illicit liquor was undertaken without any licence under the M.P. Act, there is no standardization and control of any authority. There is every possibility of percentage of the ethyl alcohol exceeding permissible limits having potential to be harmful for human consumption.

7. She would advert our attention to similar argument in the matter of ***Vinod Dhannulal Jaiswal Vs. District Magistrate, Aurangabad and others; AIROnline 2024 BOM 105*** which was authored by one of us (*Mangesh S. Patil, J.*). The definition of 'bootlegging' given under section 2(b) contemplates *inter alia* distilling, manufacturing and selling of intoxicants, drug or any intoxicant, in contravention of the provisions of the M.P. Act. When the petitioner

does not possess any such licence, that in itself is sufficient to brand him as a bootlegger.

8. The learned APP would further submit that the incessant bootlegging activity undertaken by the petitioner would inherently have the potential to disturb the public order.

9. The learned APP would then submit that there are couple of anonymous witnesses; one of whom has expressly stated as to how running of a den by the petitioner and his offending behaviour has created disturbance to the public order.

10. She would submit that similar argument that the petitioner was served with only a notice under section 41-A(1) of the Code of Criminal Procedure in all the crimes registered against him and in none of these, he was ever been arrested, has been considered by this Court in the matter of ***Vinod Jaiswal*** (supra). The purpose of arrest is distinct and different than preventing an activity under the M.P.D.A. Act. The matter of arrest would be governed by the principles laid down by ***Arnesh Kumar V. State of Bihar; (2014) 8 SCC 273*** and can seldom be said to be aimed at preventing any unlawful activity.

11. Lastly, the learned APP also relies upon the decision of this Court in the matter of ***Chandrakala W/o Ramlal Jadhav Vs. The State of Maharashtra and others; 2021 SCC OnLine Bom 634***.

12. At the outset, it is necessary to note that the order of preventive detention passed by respondent no.1 and approved and confirmed by respondent no. 2 is being assailed solely on the ground of subjective satisfaction arrived at by respondent no. 1 – detaining authority. Since no other ground has been raised, we would restrict the discussion only to ascertain if the subjective satisfaction reached by respondent no. 1 – detaining authority, is based on plausible appreciation of the facts and circumstances.

13. Admittedly, though several other previous crimes have been taken into consideration by respondent no.1 – detaining authority, the decision has been based on the last two crimes being crime no. 269 of 2023 and crime no. 437 of 2023 under section 65(f) of the M.P. Act as also three crimes immediately prior to the afore-mentioned two crimes being crime no. 325 of 2022, 377 of 2022 and 51 of 2023. In addition, 3 preventive action under section 93 of the M.P. Act also have been relied upon by him.

14. It is necessary to note that admittedly, the latest two crimes no. 269 of 2023 and 437 of 2023 are pending investigation and there is no report of the chemical analysis in respect of the liquid allegedly seized from the petitioner. In the absence of any such report at this juncture, it cannot be said even *prima facie* that it was an intoxicant.

We are consciously referring to these facts to demonstrate as to if the live link between the crime being relied upon and the impugned order has ever been snapped. Once it is found that the latest two crimes are still under investigation and there are no chemical analysis reports, that makes it abundantly clear as to why respondent no. 1 – detaining authority has also been relying upon the earlier three crimes no. 325 of 2022, 397 of 2022 and 51 of 2023, which were registered on 04-09-2022, 19-11-2022 and 25-02-2023 respectively only because in all these matters, there are chemical analysis reports and the chargesheets have been filed. Resultantly, irrespective of the stand being taken by the respondents and the learned APP, the impugned order can certainly be said to have been passed not on the basis of the latest crimes which they could not have legally done in the absence of chemical analysis reports but passed on three crimes immediately prior thereto.

15. Last of the earlier three crimes i.e. crime no. 51 of 2023 was registered on 25-02-2023 whereas the impugned order of preventive detention has been passed on 27-12-2023, with a gap of more than 10 months. This precisely, in our considered view, is a clinching fact which adversely affects the subjective satisfaction arrived at by respondent no.1 – detaining authority. If the impugned order was passed after 10 months of registration of crime no. 51 of 2023 on 25-

02-2023, the period of 10 months intervening clearly snaps the live link between the crime and the preventive action. Merely because in the meantime, the last two offences have been registered would be inconsequential for the simple reason that no person could have reached a subjective satisfaction of the activity being bootlegging in the absence of the report of the chemical analysis. One cannot overlook this long period of more than 10 months from the registration of crime no. 51 of 2023 and the impugned order.

16. Again, it appears that, the action under section 93 of the M.P. Act bearing registration no. 233 of 2023 was initiated on 18-09-2023, during that period of 10 months. However, bearing in mind the fact that the petitioner was not involved in any bootlegging activity during these 10 months, duly supported by a prima facie material in the form of chemical analysis report of the liquid seized in crime no. 269 of 2023 and 437 of 2023, such initiation of action under section 93 of the M.P. Act would not provide any link between crime no. 51 of 2023 registered on 25-02-2023 and the impugned order of preventive detention passed on 27-12-2023.

17. There is one more aspect in this regard. Though it has been perceived by the respondents that normal law of the land was unable to prevent the petitioner's activities of bootlegging, although on three occasions an action under section 93 of the M.P. Act was initiated

against him, there is absolutely no record to demonstrate that steps were even taken to forfeit the bonds executed by the petitioner and to recover bond amount from him. The first such action was taken on 11-01-2021, the second one was on 24-11-2022 and the latest being on 18-09-2023. A bare look at the afore-mentioned charts would demonstrate that according to the respondents, the petitioner had continued the bootlegging activity in spite of such actions under section 93 of the M.P. Act and if that be so, one cannot comprehend as to how without even taking the steps to forfeit the bonds and to recover the money since many of these crimes were apparently committed during the bond period of three years stipulated under that section and still, the inference has been drawn by respondent no. 1 – detaining authority that the ordinary law of the land was unable to prevent the petitioner's activities. This, in our considered view, goes to the root of the sustainability of the subjective satisfaction reached by him.

18. Turning to the statements of couple of witnesses relied upon by respondent no. 1 – detaining authority, the witness 'A' has stated that while he was proceeding to his home on 15-02-2023 in the evening hours, 3-4 drunkards were sitting in the petitioner's house. One of the drunkard hit his motorcycle and he fell down. He was thereafter lifted by the other persons and drunkards started hurling abuses at him. Seeing the incident, the petitioner have come out of his

house with 2-3 henchmen. The witness confronted the petitioner saying that because of his den foul smell had spread in the area and the persons consuming liquor were indulging in squabbling and teasing womenfolk, drove their vehicles rashly causing injuries to children and such incidents were occurring frequently. He then asked the petitioner to close down his den or else he would file a complaint with the police.

He states that enraged by it, the petitioner abused him in filthy language and brandished a knife by putting it to the chest. Though the people had gathered, none of them could rescue him due to fear of the petitioner. As can be appreciated, if really the witness was under threat and the petitioner was running terror, it seems highly unbelievable and improbable that the witness could have expressly called upon the petitioner to close down the den declaring that else he would file a complaint. If he was so bold, that would be inconsistent with the stand being taken by the respondents about the petitioner having potential of disturbing the public order.

19. The next witness 'B' has alleged about an incident occurred on 20-03-2023 which is clearly a matter of road rage having no potential of demonstrating any threat from the petitioner to public order. The witness has stated that the petitioner was carrying a liquor can on his motorcycle. A stick in his hand brushed the can accidentally and the petitioner lost balance and fell down and the liquor spilled on

the road. The petitioner is alleged to have abused this witness and insisted for compensating him and extended threats. The petitioner is alleged to have taken out Rs.500/- from this witness's pocket forcibly and asked him to pay the remaining amount and left the spot by extending threats. We fail to understand as to how this version of the witness could be resorted to, to draw an inference that the petitioner being at large would put the public order in peril. This road rage incident can occur with anybody and any person in place of the petitioner in all probability would demonstrate a similar conduct. Merely because he was carrying a liquor can, in our considered view, would not make any difference.

20. If such is the quality of the statements recorded and the incidents reported by these anonymous witnesses, in our considered view, the subjective satisfaction based thereon, by no stretch of imagination could be a plausible one.

21. In view of above state-of-affairs, we are of the considered view that the subjective satisfaction arrived at by respondent no. 1 – detaining authority is not based on plausible appreciation of the material referred to by him. This goes to the root of the order passed by him and approved and confirmed by respondent no. 2.

22. The petition is allowed.

23. The order of detention bearing no. DANDPARA/KAVI/MPDA/86/2023 issued under section 3(2) of the MPDA Act, 1981 dated 27-12-2023 passed by respondent no. 1 – District Magistrate, Jalgaon and approved and confirmed by respondent no. 2 – State under section 3(1) of the MPDA Act is quashed and set aside.

24. The petitioner be released forthwith, if not required to be detained in any other matter.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/