



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

CRIMINAL WRIT PETITION NO. 318 OF 2024

Latabai Shahaji Pawar,
Age : 40 Years, Occu. : Household,
R/o Wagholi, Tq. Kallam,
Dist. Osmanabad,
At Present R/o Yedshi,
Tq. and Dist. Osmanabad. .. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Home Department (Special),
Mantralaya, Mumbai.
2. The Collector and the
District Magistrate, Osmanabad.
3. The Superintendent of Police,
Osmanabad.
4. The Sub Divisional Police Officer,
Osmanabad, Dist. Osmanabad.
5. The Police Inspector,
Osmanabad Rural Police Station,
Dist. Osmanabad. .. Respondents

Shri Datta A. Madke, Advocate for the Petitioner.
Shri G. A. Kulkarni, A.P.P. for the Respondent Nos. 1 to 5.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 10 APRIL 2024.**

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. Heard both the sides finally with their consent.

2. The petitioner is aggrieved by order of detention dated 23.01.2024 passed by the respondent No. 2/District Collector/Magistrate, Osmanabad U/Sec. 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 (for the sake of convenience and brevity hereinafter referred as to the “M.P.D.A. Act”) being a bootlegger.

3. Respondent No. 2/Detaining Authority arrived at subjective satisfaction on the basis of in camera statements, a preventive action U/Sec. 93 of the Maharashtra Prohibition Act and following offences :

Sr. No.	Police Station	Crime No. and Date	Section	Case Status
1	Osmanagad (Rural)	254/2019 20.10.2019	66 of the Maharashtra Prohibition Act.	Pending in Court
2	Osmanagad (Rural)	70/2020 21.03.2020	65(e) of the Maharashtra Prohibition Act.	Pending in Court
3	Osmanagad (Rural)	137/2020 18.06.2020	65(e) of the Maharashtra Prohibition Act.	Pending in Court
4	Osmanagad (Rural)	192/2022 27.09.2022	65(e) of the Maharashtra Prohibition Act.	Pending in Court

5	Osmanagad (Rural)	80/2023 14.04.2023	65(e) of the Maharashtra Prohibition Act.	Pending in Court
6	Osmanagad (Rural)	114/2023 20.05.2023	65(e) of the Maharashtra Prohibition Act.	Pending in Court
7	Osmanagad (Rural)	118/2023 22.05.2023	65(e) of the Maharashtra Prohibition Act.	Pending in Court
8	Osmanagad (Rural)	171/2023 06.07.2023	65(e) of the Maharashtra Prohibition Act.	On investigation

4. Learned counsel for the petitioner submits that impugned grounds of detention have not been served on the petitioner. She was unable to make effective representation. There is violation of constitutional safeguard provided by Article 22(5) of the Constitution of India. He would further submit that subjective satisfaction is perverse and arbitrary. The statements of anonymous witnesses are liable to be discarded. He would further submit that preventive action U/Sec. 93 of the Maharashtra Prohibition Act was dropped. Offences registered in the year 2019 and 2020 have been considered.

5. Learned counsel for the petitioner seeks to rely upon following judgments of the Supreme Court and this Court :

- I. Judgment dated 19.10.2022 in Special Leave Petition (Cri.) No. 2420 of 2022 in the matter of the State of Manipur and others Vs. Buyamayum Abdul Hanan @ Anand and another.

- II. Judgment dated 08.02.2024 in Criminal Writ Petition No. 1527 of 2023 in the matter of Dhanubai @ Dhanno Yashvant Nettlekar Vs. State of Maharashtra and others.
- III. Judgment dated 14.03.2023 in Criminal Writ Petition No. 1578 of 2023 in the matter of Vishwas Arun Garunge Vs. The District Magistrate Jalgaon and others.
- IV. Judgment dated 19.03.2024 in Criminal Writ Petition No. 156 of 2023 in the matter of Sayedu @ Syed Karim S/o Syed Husain Vs. State of Maharashtra and others.

6. Learned Assistant Government Pleader supports the impugned order on the basis of affidavits in reply dated 26.02.2024, 10.03.2024 and 21.03.2024. It is vehemently refuted that grounds of detention have not been served on the petitioner. Few documents are placed on record across the bar including statement of the petitioner. It is submitted that all the relevant documents were served on the petitioner and her thumb impression was obtained.

7. Learned A. P. P. further submits that due procedure was followed by the respondents in passing impugned order. The petitioner was extended due opportunity of hearing. The timeline prescribed under the M.P.D.A. Act has been followed. It is further submitted that the petitioner has indulged in the criminal activities since 2019 repetitively. The subjective satisfaction arrived at by the respondent No. 2 is plausible and

reasonable.

8. It is further submitted that reports of the chemical analysis collected during the course of investigation of the offences pitted against the petitioner show that contraband seized from the petitioner was dangerous to human consumption and health. Learned A. P. P. has referred to sequence of events narrated in the reply to show due procedure was followed.

9. We have considered rival submissions of the parties. We have also gone through relevant material which was before the detaining authority. In all eight offences were considered by the detaining authority. All the offences were U/Sec. 65(f) of the Maharashtra Prohibition Act. The petitioner was found to be indulging in sell of illicit liquor from time to time. A preventive action U/Sec. 93 of the Maharashtra Prohibition Act was initiated against her, but same appears to have been dropped subsequently.

10. It reveals from record that last offence bearing CR No. 171/2023 was registered against the petitioner on 06.07.2023. Reply of the respondent No. 2 shows that in camera statements were recorded on 20.08.2023. Those were verified by the Sub Divisional Police Officer on 24.09.2023. Proposal was forwarded to the detaining authority on 25.10.2023. Lastly impugned order was passed on 23.01.2024. It was approved U/Sec. 3(3) of the M.P.D.A. Act on 01.02.2024. Matter was referred to the Advisory Board and the opinion was rendered on 11.03.2024. Order of

detention was confirmed by the State Government on 19.03.2024.

11. The grounds of detention though produced by the petitioner on record were given to her subsequently and not at the time of detention. It is a grievance of the petitioner that she was unable to make representation for want of relevant papers. Learned A. P. P. would invite our attention to para No. 07 of the affidavit in reply dated 26.02.2024 and para No. 09 of the affidavit in reply dated 10.03.2024. Petitioner has raised a specific ground of non supplying of grounds of detention. By affidavit in rejoinder same grievance is reiterated. The respondent authorities ought to have physically served grounds of detention and all the relevant papers on the petitioner.

12. It transpires that there is thumb impression of the petitioner on paper of grounds of detention. She was merely communicated passing of the order of detention and the grounds of detention. The petitioner is illiterate. It is not made clear as to when was she served with papers and her thumb impression was obtained. There is no material on record to indicate that relevant papers were received by her. Apprising a detainee of impugned action is not adequate. We have considered statement of the petitioner and her husband recorded on 23.01.2024. Both the statements do not make mention that relevant papers were actually served on the detainee or received by them. We have also considered undated statement of the petitioner which is produced across the bar. The statement is vague and lacks material particulars. We, therefore, find substance in the submission of

the learned counsel for the petitioner.

13. Learned counsel for the petitioner would point out that in camera statements, recorded on 20.08.2023. Both the witnesses have narrated criminal activities of the petitioner. The statements were verified by competent officer. Both the witnesses have narrated track history of the detinue of last ten years. The contents of the statement indicate that they are tutored witnesses and a precaution is taken to suit the purpose of sponsoring authority. We have reservation for the statements.

14. The criminal antecedents of the petitioner show that she has indulged in offences U/Sec. 65 of the Maharashtra Prohibition Act. Bootlegger activity per-se cannot be treated to be detrimental to the maintenance of public order. A preventive action U/Sec. 93 of the Act has not been taken to the logical end, but dropped. We do not find any material on record to support a finding of the detaining authority that illicit liquor seized from the petitioner was hazardous to public health. The detaining authority is not an expert person. In the affidavit in reply dated 10.03.2024 in para No. 14 for the first time an attempt is made to show that the contraband was injurious to public health. This would amount to supplying the reasons by affidavit for the first time in the High Court. In view of the law laid down by the Supreme Court in the matter of Mohindersing Gill Vs. Chief Election Commissioner, New Delhi reported in *AIR 1978 SC 851*, this attempt is futile to defend impugned action. In that view of the matter, we find that the subjective satisfaction is perverse.

15. Learned counsel for the petitioner relies on the judgment in the matter of Dhanubai @ Dhanno Yashvant Nettlekar Vs. State of Maharashtra and others (supra). In that matter also the detenue was found to be a bootlegger by the detaining authority. No offence falling under Chapter XVI and XVII of the Indian Penal Code was pitted against the petitioner. Therefore, we recorded finding in paragraph No. 30. We propose to adopt same view in the present matter. Next judgment cited by the petitioner in the matter of Vishwas Arun Garunge Vs. The District Magistrate Jalgaon and others (supra) is also aptly applicable considering its para No. 22.

16. It reveals from record that last offence was registered on 06.07.2023. Statements of the witnesses were recorded on 20.08.2023. Thereafter, proposal was submitted and received by the respondent No. 3 on 25.10.2023. There is unexplained delay from recording of the statements till submission of the proposal to the respondent No. 2. After the submission of the proposal, impugned order was passed on 23.01.2024. This delay has also not been explained by the respondents. There is room to infer that there was no real urgency in the matter to proceed against the petitioner for detention under the M.P.D.A. Act. Her being at large was taken to be casual and not really prejudicial to the maintenance of public order.

17. Learned A. P. P. refers to the judgment of the Supreme Court in the matter of Lallubhai Jogibhai Patel Vs. Union of India

reported in *AIR 1981 SC 728*. He would refer to para No. 20 of the judgment to buttress that there is affidavit stating that grounds of detention have been explained to the detenue which would be sufficient compliance of Article 22(5) of the Constitution of India. In the present matter we have already recorded that there is no supply of the relevant papers to the detenue and the affidavits filed by the respondents do not clarify this aspect. The ratio laid down in the judgment cannot be made applicable to the present case.

18. Learned counsel for the petitioner has referred to the judgment in the matter of the State of Manipur and others Vs. Buyamayum Abdul Hanan @ Anand and another (supra). But the facts in that case are distinguishable. In that matter illegible and blur documents were supplied to the detenue which hampered his right to make representation. In the present case, grounds of detention and relevant documents have not been supplied to the petitioner at all, in time. The judgment cited is not applicable to the present case.

17. For the reasons recorded above, we pass following order.

O R D E R

- I. The criminal writ petition is allowed.
- II. The impugned order of detention passed by respondent no. 2 on the basis of MPDA proposal no. 4546 of 2023 dated

14-09-2023 submitted by respondent no. 4 for that purpose, is quashed and set aside.

III. The petitioner shall be set at liberty forthwith.

IV. Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb / April 24