



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

CRIMINAL WRIT PETITION NO. 378 OF 2024

Firoz Gani Sayyed,
Age : 40 Years, Occu: Business,
R/o. Aagad Galli, Osmanabad,
Tal & Dist. Osmanabad,
At present in Harsul Jail,
Aurangabad.

...Petitioner

Versus

1. The State of Maharashtra,
2. The Section Officer to Government of Maharashtra,
Home Department (Special),
Mantralaya Mumbai.
3. The District Magistrate,
Dharashiv (Osmanabad),
4. The Superintendent of Excise,
Dharashiv (Osmanabad).

...Respondents

.....
Mr. Shaikh Tarek Mobin H. - Advocate for the Petitioner
Mr. Govind A. Kulkarni – APP for respondent/State
.....

**CORAM : R. G. AVACHAT
AND
NEERAJ P. DHOTE, JJ.**

DATED : 24TH JUNE 2024

JUDGMENT [Per : Neeraj P. Dhote, J.] : -

1. Rule. Rule made returnable forthwith. Learned APP waives service of notice for respondents/State. By consent of the parties, the petition is taken up for final disposal.

2. Impugned in the petition is the order of detention dated 28th December, 2023 passed by respondent no. 3 – District Magistrate, Dharashiv in D.O. No.2023/UPCHITNIS/MAG-3/KAVI-987 and confirmation order dated 08th January, 2024 passed by Respondent No. 2 – State of Maharashtra, Home Department. These orders are passed under the provisions 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 ‘MPDA Act’).

3. The detaining authority passed the impugned orders after coming to the subjective satisfaction that the Petitioner was Bootlegger since he was involved in the continuous activities as Bootlegger. For arriving at the said subjective satisfaction, the detaining authority considered the following offences registered against the Petitioner and two (2) in-camera statements.

Sr. No.	Jurisdiction	Crime No.	Sections	Date of registration	Present status
1.	Sub-Inspector, Maharashtra State Excise Department, Dharashiv.	22/2022	65(e)	22.02.2022	<i>Sub judice</i>
2.	Sub-Inspector, Maharashtra State Excise Department, Dharashiv.	76/2022	65(e)	20.06.2022	<i>Sub judice</i>
3.	Sub-Inspector, Maharashtra State Excise Department, Dharashiv.	165/2022	65(e), S. 328 IPC	14.10.2022	<i>Sub judice</i>
4.	Inspector, Maharashtra State Excise Department, Chhatrapati Sambhajinagar.	335/2022	65(e)	13.03.2023	<i>Sub judice</i>
5.	Inspector, Maharashtra State Excise Department, Dharashiv.	272/2023	65(e)	23.11.2023	Under investigation

4. It is submitted by the learned advocate for the Petitioner that

though several grounds are raised in the memo of Writ Petition, he is restricting challenge to the extent of following grounds: -

- “[VI] That, statements referred to and relied upon narrates the incident of December, 2022 and January, whereas the impugned order is passed on 28.12.2023. The impugned order of detention having based upon the two statement which are of December, 2022 and January, therefore on this very count alone the impugned order of detention is vitiated on account of unexplained delay.
- [XII] In the absence of expert's opinion or C.A. report quantifying percentage of alcohol found in seized material, there is absolutely no subjective satisfaction and the same renders impugned order as perverse.
- [XIII] The reliance placed on CA Report did not explained as to what quantity of alcohol is found in seized material, which could be hazardous to life of people consuming such alcohol. On this count alone, impugned order is perverse and liable to be quashed and set aside.
- [XVIII] That there is no Chemical Analysis (CA) report in latest crime i.e. C.R. No. 272/2023, therefore there is no live link with the latest offence.”

5. Learned advocate for the Petitioner relied upon the following Judgments in support of his contention that the impugned orders are liable to be set aside.

- (a) **Aniket Vs. State of Maharashtra & Ors., MANU/MH/0283/2023** [Nagpur Bench], wherein two in-camera statements were found to be vague & unreliable and of the period much prior to the impugned order of detention.

- (b) **Shri Yash s/o Anil Tekam Vs. State of Maharashtra and others**, Criminal Writ Petition No. 457 of 2021, decided on 17.11.2021 [Nagpur Bench], wherein the instances which formed the basis to pass an order of preventive detention were found to have no nexus with the issue of public order and further the impugned in-camera statements were found to be generalized and unverified and the order of detention was set aside.
- (c) **Jakir @ Jakira Hussain Ansari s/o Abdul Kadir Ansari Vs. State of Maharashtra and another**, Criminal Writ Petition No. 587 of 2023 [Nagpur Bench], wherein one of the grounds was absence of live link between the last criminal activity and the order of detention and the petition was allowed.
- (d) **Vishwas Arun Garunge Vs. District Magistrate, Jalgaon and others**, Criminal Writ Petition No. 1578 of 2023 [Aurangabad Bench], wherein the offences which formed the basis to pass the order of preventive detention were under the Maharashtra Prohibition Act, 1949 and the reports of the Chemical Analysis did not show any express opinion that consumption of the contraband would be hazardous to the public health. Therefore, the subjective satisfaction of the detaining authority was found to be perverse.

6. Learned APP supported the impugned orders. He submitted that though there were no Chemical Analysis reports in the last two instances which were taken into consideration by the detaining authority, there were chemical analysis reports in the earlier two instances / crimes which were taken into consideration by the detaining authority. He further submitted that the Sub Divisional Officer got the bond executed from the Petitioner under Section 93 of the Maharashtra

Prohibition Act, 1949. He submitted that the last offence which was taken into consideration for passing the impugned order was registered in November – 2023 and the impugned order detaining the Petitioner was passed in December – 2023 and, therefore, there was a live link. He submitted that the disturbance to the public order was taken into consideration by the detaining authority in passing the impugned order.

7. The term ‘bootlegger’ is defined in sub-section (b) of Section 2 of the MPDA Act, which reads as under : -

- (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;

7.1 The term ‘acting in any manner prejudicial to the maintenance of public order’ is defined under sub-clause (ii) of clause (a) of Section 2 of the MPDA Act, which reads as under :

- (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;

8. In **Pesala Nookaraju Vs. The Government of Andhra Pradesh and Ors.**, MANU/SC/0893/2023, while dealing with the Appeal of detenu detained under the similar Act of Andhra Pradesh, the Hon'ble Apex Court observed as under : -

“65. Just because four cases have been registered against the appellant detenu under the Prohibition Act, by itself, may not have any bearing on the maintenance of public order. The detenu may be punished for the offences which have been registered against him. To put it in other words, if the detention is on the ground that the detenu is indulging in manufacture or transport or sale of liquor then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Prohibition Act but if the liquor sold by the detenu is dangerous to public health then under the Act 1986, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to it that the liquor dealt with by the detenu is liquor which is dangerous to public health to attract the provisions of the 1986 Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.”

9. Coming to the case in hand, the detaining authority took into consideration five (5) pending cases against the Petitioner for the offence

punishable under the Maharashtra Prohibition Act, 1949. Admittedly, as regards last two (2) offences shown in the above referred chart, there are no Reports of the Chemical Analyzer. Therefore, there was no material before the detaining authority to establish that the liquid/substance seized during the raid was the substance contemplated in the definition of 'bootlegger' or dangerous for the human health. These are the offences of the year 2023 and the last one was a month prior to passing of the detention order. Thus, the finding recorded by the detaining authority that the Petitioner was dealing with the *Tadi* (Toddy) which was dangerous for the human health, was perverse. The observation in respect of presence of Ethyl alcohol & chloride hydrates in the liquid as per the Chemical Analysis report was in respect of the offences mentioned at Sr. Nos. 1 and 3, which were registered in the year 2022. There is much time gap between the said offences and impugned order. Accepting the same as it is, it is clear that there was no live link so as to establish prejudicial activities of the Petitioner and passing the order of detention. On this count, the impugned orders become unsustainable.

10. The other grounds in respect of two in-camera statements taken into consideration for detaining the Petitioner show that, in the first in-camera statement at (a) no specific date and incident is mentioned. It refers to incident of first week of December-2022. The second in-camera statement at (b) refers to the incident of January in respect of which no date or year finds place. So, absence of specific date in both the aforesaid in-camera statements, would render them doubtful. The transcript or gist of the said in-camera statements referred to in the

impugned orders show that they are generalized, attributing role of intimidation to the Petitioner. The generalized and vague in-camera statements would hardly form the basis to pass the impugned orders by the detaining authority.

11. The challenge to the impugned orders succeeds on the above grounds. In view of the above discussion, the impugned orders cannot be allowed to sustain. Hence, we proceed to pass following order:-

ORDER

- [i] Criminal Writ Petition is allowed.
- [ii] Order of detention dated 28th December, 2023 passed by Respondent No. 3 – District Magistrate, Dharashiv in D.O. No.2023/UPCHITNIS/MAG-3/KAVI-987 and confirmation order dated 08th January, 2024 passed by Respondent No.2 – State of Maharashtra, Home Department are hereby set aside. Petitioner be released forthwith, if not required in any other case.

[NEERAJ P. DHOTE]
JUDGE

[R. G. AVACHAT]
JUDGE

SG Punde