



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

CRIMINAL WRIT PETITION NO. 417 OF 2024

Latabai W/o. Ganpat Kale

....Petitioner

Versus

1. The State of Maharashtra and others

....Respondents

....

Advocate for Petitioner : Mr. M.P. Kale

APP for Respondents : Mr. G.A. Kulkarni

...

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

DATE : 08 APRIL 2024

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

1. Rule. Rule is made returnable forthwith with the consent of the parties. Heard litigating sides finally at the admissions stage.

2. Petitioner is assailing order of detention dated 22.12.2023 passed by respondent no. 2 – District Magistrate, under Section 3 (1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and 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).

3. Respondent no. 2 – Detaining Authority arrived at subjective satisfaction to declare petitioner as Bootlegger on the basis of following material :

- i. C.R. No. 952 of 2023 punishable under Section 65 (b) (d) of the Maharashtra Prohibition Act, 1949, registered on 16.12.2023.
- ii. C.R. No. 954 of 2023 punishable under Section 65 (b) (d) of the Maharashtra Prohibition Act, 1949, registered on 18.12.2023.
- iii. Chapter Case No. 9 of 2023 under Section 93 of Maharashtra Prohibition Act, registered on 13.07.2021.
- iv. Chapter Case No. 11 of 2023 under Section 93 of Maharashtra Prohibition Act, registered on 21.06.2023.
- v. Two in-camera statements of anonymous witnesses.

4. Learned counsel for the petitioner submits that there was no adequate material against petitioner to hold her a bootlegger and the subjective satisfaction is perverse. He would submit that the Detaining Authority did not consider orders of acquittals recorded in earlier offences pitted against her. He would submit that in-camera statements were liable to be discarded. It is further submitted that the activities of the petitioner were not detrimental to the maintenance of public order. Lastly, it is contended that there was as such no material to resort to the drastic action against the petitioner.

5. Learned counsel for the petitioner relies on the following judgments :

1. *Rekha Versus State of Tamil Nadu TR. Sec.To Govt. and another*, **AIR 2011 SCW 2262** ;

2. *Nilesh Charandas Gaikwad Versus State of Maharashtra*, **AIR Online 2022 BOM 5343** ;

3. *Dipak Alias Fantya Ashokrao Kawanpure Versus State of Maharashtra and others*, **AIR Online 2022 BOM 18**.

6. Learned APP supports impugned order on the basis of affidavit-in-reply. He would vehemently submit that petitioner is a habitual offender which is evident from thirteen offences registered against her. Out of them, last two offences were considered coupled with preventive action. He would submit that petitioner was not released on bail but she was served with a notice under Section 41 (A) (1) and there is no question of considering the orders enlarging her on bail. It is further submitted that due procedure of law was followed, timeline stipulated in the MPDA Act was adhered to and opportunity was given to the petitioner. Lastly, he seeks reliance upon the judgment of Supreme Court rendered in the matter of *Gautam Jain Versus Union of India*, **AIR 2017 SC (CRI) 184**, to buttress submission that by implication of Section 5 A, impugned order cannot be vitiated.

7. We have considered rival submissions of the parties. We have gone through the relevant material placed on record. The Detaining Authority has considered only two offences registered against the petitioner, both were punishable under 65 (b) (d) of the Maharashtra Prohibition Act. In both the offences, instead of arresting her she was served with notice under 41 (A) (1) of Cr.P.C. Although, there are few orders of acquittal recorded in earlier offences, those offence were not considered by the Detaining Authority, hence are not relevant.

8. As the petitioner was not released on bail, there can be no question of considering orders enlarging her on bail by the Detaining Authority. In the first offence, petitioner was found to be in possession of 12 litres of illicit liquor. In another offence, she was found to be in possession of 10 litres of illicit liquor and 12 litres of chemical to be used for manufacturing illicit liquor. Both the offences are under investigation. Considering the relevant papers of the investigation, we are of the considered opinion that the activity of bootlegging, per se, cannot be said to be detrimental to the public order. We have already taken view in similar set of facts when a detenue is pitted with two offences under Section 65 (b) (d) of the Maharashtra Prohibition Act, in case of *Rajabhau Ramdas Ade Versus The State of Maharashtra and others*, passed by this High Court in Criminal Writ Petition No. 1840 of

2023 dated 21.02.2024 and *Dhanubai @ Dhanno Yashvant Netlekar Versus State of Maharashtra and others*, **2024 SCC Online Bom 484**, the material would be scanty for drastic action of detention.

9. Learned counsel for the petitioner seeks to rely upon judgment of *Nilesh Charandas Gaikwad* (supra) in which the Detaining Authority held the detenue as a bootlegger on the basis of two offences registered under the Maharashtra Prohibition Act. Division Bench quashed the order of detention holding that the activity of the bootlegging might be prejudicial to the maintenance of public health but it was required to be prejudicial to the maintenance of public order. We also propose to take the same view in the present matter.

10. We have considered in-camera statements of both the witnesses. Those were recorded on 18.12.2023. Those were verified on 20.12.2023 by the Sub-Divisional Police Officer. The instances cited by the witnesses in the statements do not attribute any activity of bootlegging. Rather they would be suggestive of the petitioner being a 'dangerous person'. In-camera statements are corroborative in nature. We are of the considered view that statements are not reliable and should have been discarded by the Detaining Authority.

11. The Detaining Authority has recorded that activities of the detenue would indicate terror established by the detenue in the minds of

public and habitual bootlegging would be prejudicial to the maintenance of public order. There is a difference between 'public order' and 'law and order'. Record indicates that petitioner indulged in bootlegging activities previously also. However, there is no sufficient material collated to indicate that ordinary criminal law would be inadequate to curb the activities of the petitioner. We do not find such a gravity in the case in hand so as to resort to the drastic and draconian action under the MPDA Act. In this view of the matter, learned counsel for the petitioner has rightly submitted that the subjective satisfaction is not only defective but patently illegal.

12. Learned counsel for the petitioner has invited our attention to law laid down by Supreme Court in the matter *Rekha* (supra). We have gone through paragraph nos. 37 to 46. Considering the true purport of the preventive action in juxtaposition to right of the petitioner guaranteed under Article 21 of the Constitution of India, we have no hesitation to record that there was no adequate material and the case in hand does not warrant the drastic action.

13. Learned APP has vehemently pressed into service Section 5 (A) of the Act to contend that impugned order cannot be vitiated. He would place reliance on judgment of Supreme Court in the matter of *Gautam Jain Versus Union of India*. We have gone through relevant

paragraphs of the judgment. The judgment is distinguishable on the facts. In the present matter, there is no adequate material to proceed against the petitioner under the MPDA act. The in-camera statements are not reliable. On very trifling material the action of detention is proposed against the petitioner. Under these circumstances, we are of the opinion that the submissions of the learned APP cannot be accepted.

14. We therefore, pass the following order :

OPERATIVE ORDER

- I. The criminal writ petition is allowed.
- II. The impugned order dated 22.12.2023 passed by the respondent No. 2/District Magistrate, Hingoli is quashed and set aside.
- III. The petitioner shall be set at liberty.
- IV. Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]