



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

Criminal Writ Petition No. 435 / 2024

Hussain Sardar Tadvī

Age : 43 years, Occ.Labour,

R/o Chaligaon, Tq. Jamner,

District Jalgaon.

...Petitioner

Versus

1. The District Magistrate,
Jalgaon.

2. State of Maharashtra
Through its Additional Chief Secretary,
Government of Maharashtra,
Home Department (Special),
Mantralaya, Mumbai.

3. The Jail Superintendent,
Central Prison, Thane,
Dist. Thane.

..Respondents

Advocate for the Petitioner : Mr. Rohit p. Patwardhan

A.P.P. for Respondents /State : Mr. G.A. Kulkarni

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

RESERVED ON : 7 MAY 2024

PRONOUNCED ON : 10 MAY 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 assailing order of detention dated 20.02.2024 passed by the respondent no.1/District Magistrate, Nanded 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 Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience). By impugned order, petitioner is held to be a bootlegger on the basis of following record :

Sr. No.	Police Station	C.R. Number	Date of Registration	Nature of Offence
1	Pahur	55/2022	23.02.2022	Under Sections 65(e),(f)(b)(c) of Maharashtra Prohibition Act, 1949
2	Pahur	397/2022	19.11.2022	Under Sections 65(e),(f)(b)(c) of Maharashtra Prohibition Act, 1949
3	Pahur	282/2023	25.07.2023	Under Sections 65(e)of Maharashtra Prohibition Act, 1949
4	Pahur	286/2023	27.07.2023	Under Sections 65(e)of Maharashtra Prohibition Act, 1949
5	Pahur	484/2023	06.12.2023	Under Sections 65(e)of Maharashtra Prohibition Act, 1949
DETAILS OF PREVENTIVE ACTIONS				
7	Pahur	93/2021	10.08.2021	As per Section 93 of Maharashtra Prohibition Act, 1949
8	Pahur	266/2022	24.11.2022	As per Section 93 of Maharashtra Prohibition Act, 1949
9	Pahur	234/2023	18.09.2023	As per Section 93 of Maharashtra Prohibition Act, 1949

3. Learned Counsel for the petitioner Mr. Rohit Patwardhan relies on our recent judgment in the matter of **Supadu Bandu Tadvi Vs. District Magistrate, Jalgaon and Others**, Criminal Writ Petition No.112/2024. He submits that all facts and circumstances of the case in hand are identical. Petitioner and detinue in that matter are relatives and in a couple of offences,

they are co-accused. Petitioner is assailing impugned order on selfsame grounds of objections which are considered and approved in the matter of Supadu Bandu Tadvī (supra). He, therefore seeks to apply the same reasoning in the present matter.

4. He would submit that the subjective satisfaction is perverse. There is no live link. No steps were taken by the respondent to forfeit the bond and to recover money. He would further submit that in-camera statements are liable to be discarded and would be of no assistance.

5. Learned APP Mr. Kulkarni supports impugned order on the basis of affidavit-in-reply. He would submit that reasons assigned by this bench in the matter of Supadu Bandu Tadvī (supra) cannot be made applicable to the present case. He submits that the findings recorded in paragraph no.11 are based on the percentage of ethyl alcohol found in the water cannot be faulted with. He would further submit that the subjective satisfaction is intelligible one. After following due procedure of law, impugned order was passed.

6. We have considered rival submissions of the parties. In the present matter five offences, three preventive actions and two in-camera statements are pitted against the petitioner. We have also gone through our latest judgment delivered in the

matter of Supadu Bandu Tadvī (supra). In that matter also detenue was declared to be bootlegger on the basis of selfsame record which is enlisted in paragraph no.2. We have carefully considered date of registration of the offences and that of preventive actions in both the matters. Petitioner and detenue in that matter appear to be relatives. Even they are co-accused in C.R. No.397/2022 and 484/2023. In both the matters all offences are pitted under the provisions of Maharashtra Prohibition Act. Even the preventive actions are also under Section 93 of the Maharashtra Prohibition Act, equal in number in both the matters. Their place of residence is also the same. At the outset we find merit in the submissions of learned Counsel for the petitioner that quality and quantity of the record pitted against the petitioner is selfsame and we can rely upon the reasoning assigned in the matter of Supadu Bandu Tadvī (supra).

7. We have noticed only a marginal difference in the two matters. In the matter of Supadu Bandu Tadvī (supra), out of five offences the report of chemical analysis was available in first three offences whereas in the present matter it is available only in first two offences. In matter of Supadu Bandu Tadvī (supra), in paragraph no. 15 it has been recorded that there is a gap of more than ten months between the last crime having report of chemical analysis and the impugned order. Whereas, in the case in hand such a gap is of fifteen months. We further notice that the instances cited by in-camera statements in both

the matters are different which can hardly have any resemblance of any danger to the public order.

8. In the matter in hand, no report of chemical analysis is available in the last three offences. They are reported to be under investigation. In the absence of any such report, no inference can be drawn that the contraband seized was an intoxicant. On identical facts, we have recorded following findings in the matter of Supadu Bandu Tadvī (supra) :

“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.”

9. The last offence having report of chemical analysis is C.R. No.397/2022 which was registered on 19.12.2022. After fifteen months and order of detention was passed on 20.02.2024. We notice similar situation in the matter of Supadu Bandu Tadvī (supra) to hold that the gap snapped live link between crime and the preventive action. We propose to

follow the same view and for that we reproduce paragraph no.15 of the judgment in the matter of Supadu Bandu Tadvi (supra) :

“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.”

10. During the span of fifteen months from 19.11.2022 to 20.02.2024, action under Section 93 of the Maharashtra Prohibition Act was initiated on 24.11.2022 in registration no.266/2022 and on 18.09.2023 in registration no.234/2023. During this period of fifteen months, petitioner was not involved in any bootlegging activity duly supported by prima facie material of report of chemical analysis of contraband. Therefore action under Section 93 of the Maharashtra Prohibition Act would not provide in live link between C.R. No.397/2022 and detention order passed on 20.02.2024.

11. Action under Section 93 of the Maharashtra Prohibition Act was taken against petitioner on 10.08.2021; 24.11.2022 and 18.09.2023. Despite these actions petitioner continued to

indulge in activities of bootlegging. No action to forfeit the bond and to recover the amount, was taken against the petitioner. In a similar set of facts, we have held in paragraph no.17 in the judgment in the matter Supadu Bandu Tadvu (supra) that the inference of the detaining authority that ordinary penal law of the land was unable to prevent petitioner's activities is perverse, applies with equal force in the present matter also.

12. We have considered in-camera statements A and B carefully. The instances cited by the witnesses appear to be individual centric. It seems highly unbelievable that the witnesses would expressly challenge the petitioner and his activities openly when they are stated to be under threat of the petitioner. Considering the material pitted against the petitioner, we find that the subjective satisfaction is not plausible, but perverse.

13. It reveals from record that impugned order was passed on 20.02.2024. It is stated in paragraph no.8 of the affidavit-in-reply that on 22.02.2024, the proposal was forwarded to the State Government. It was approved under Section 3(3) of the MPDA Act on 01.03.2024. For securing approval period of eight days is consumed which is not properly explained by the respondents in the affidavits. This delay vitiates impugned order because respondents appear to be quite casual in applying the provisions of the Act. We have no doubt that the

impugned order is not unsustainable. We, therefore, pass following order :

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause 'C'.
- (ii) Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE

NAJEEB..