



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

CRIMINAL WRIT PETITION NO.698 OF 2024

Arjun s/o. Ratan Gaikwad,
Age : 30 years, Occ. Labour,
r/o.Kansur Vasti, Tq. Pathri,
Dist. Parbhani

..Petitioner

Vs.

1. The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai - 32
2. The District Magistrate,
Parbhani
3. The Superintendent of Police,
Parbhani
4. Sub-Divisional Police Officer,
Parbhani

..Respondents

Mr.P.P.More, Advocate h/f. Mr.K.B.Jadhav, Advocate for petitioner
Mr.G.A.Kulkarni, APP for respondents

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
RESERVED ON : JULY 31, 2024
PRONOUNCED ON : AUGUST 20, 2024**

JUDGMENT (*Per R.G.Avachat, J.*) :-

Rule. Rule made returnable forthwith. Heard finally with
the consent of learned counsel for the parties.

2. The challenge in this Writ Petition under Article 226 of the Constitution of India, is to the order dated 05.03.2024, passed by respondent no.2 – District Magistrate, Parbhani, under Section 3(2) 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 (“MPDA Act”, for short), detaining the petitioner for a period of 12 months, so as to prevent him from indulging in the activities as bootlegger and thereby, prevent breach of maintenance of public peace. The order of detention has been confirmed by the State of Maharashtra in Department of Home, vide order dated 14.03.2024.

3. Learned counsel for the petitioner would submit that although six crimes under Section 65(e) of the Maharashtra Prohibition Act were registered against the petitioner, two of them have been closed in exercise of the powers under Section 258 of the Code of Criminal Procedure. The last, i.e. sixth, crime is pending investigation. In none of the crimes, the petitioner was arrested. He was simply issued with notice under Section 41-A of Cr.P.C. Same suggests, the authorities concerned even did not wish the petitioner to be arrested in connection with any of the crimes registered

against him. He would further submit that none of the C.A. reports of the samples of illicit liquor, allegedly seized from the petitioner, disclose that consumption thereof was injurious to the health of a human being. The petitioner has neither been convicted in any of the offences of serious nature nor any such crime has even been registered against him. The in-camera statements are got up. The impugned order is outcome of malafide exercise of the powers and authority vested in respondent no.2. The same is also vague and violates the provisions of M.P.D.A. Act. No prescribed procedure under said Act has been followed before the petitioner was detained. Learned counsel for the petitioner relied on the following judgments:-

(i) Pesala Nookaraju Vs. Government of Andhra Pradesh and ors., 2023 SCC OnLine SC 1003;

(ii) Prakash Chandrakant Kanjar Vs. State of Maharashtra and anr., (Criminal Writ Petition No.1285 of 2023 decided on 19.10.2023 by Bombay High Court, Bench at Aurangabad).

4. Learned APP would, on the other hand, took us through the affidavit-in-reply filed by respondent no.2 – District Magistrate and then took us through the order of detention. He would submit that within a span of less than six months, i.e. from 25.03.2023 to

20.9.2023, six cases under Section 65(e) of the Maharashtra Prohibition Act were registered against the petitioner. The petitioner's such activities continued even after a preventive measure, chapter case under Section 93 of the very Act, was initiated against him. The petitioner even executed a bond in the sum of Rs.1 Lakh, assuring to keep good behaviour. Still, he continued his activities of manufacturing illicit liquor and sale thereof. The in-camera statements of the witnesses indicate that the vicinity, wherein the petitioner manufacture illicit liquor, is affected by his activities. The consumers of illicit liquor would gather in large number and on consumption of alcohol, they would vomit in the area. Foul-smell of manufacture of illicit liquor would spread in the area. It is a popular area. It was, therefore, found necessary to have recourse to Section 3(2) of the M.P.D.A. Act, to prevent the petitioner from indulging in the activities prejudicial to maintenance of public order. Learned APP relied on the following decisions:-

- (i) Phulwari Jagdambaprasad Pathak Vs. R.H.Mendonca, 2000(3) Crimes 112;
- (ii) Kanuji S. Zala Vs. State of Gujarat & ors., AIR 1999 SC 2269

Learned APP would, ultimately, urge for dismissal of the Writ Petition.

5. Considered the submissions advanced. Perused the order impugned herein besides the affidavit-in-reply.

6. Before advertng to the factual matrix, let us have reference to the relevant provisions of the M.P.D.A. Act, which reads thus:-

“2. In this Act, unless the context otherwise requires-

(a) “acting in any manner prejudicial to the maintenance of public order” means –

(ii) in the case of a 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.

Explanation: For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, *inter alia* if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health or disturbance in public safety and tranquility or disturbs the day to day life of the community by black-marketing in the essential commodities which is resulting in the artificial scarcity in the supply of such commodities and rises in the prices of essential commodities which ultimately causes inflation or disturbs the life of the community by producing and distributing pirated copies of music or film products, thereby resulting in a loss of confidence in administration.

(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. The order of detention reads thus:-

2. It has been noticed that you are having criminal background as per definition of bootlegger prescribe in the said Act. You are illegally preparing the handmade liquor from chemicals. You are involved in setting up the handmade liquor. The handmade liquor is injurious to the public health and dangerous to the human life. You are aware about this, even then you are openly preparing the handmade liquor and distributing and selling it at Kansur, Pathari city and nearby villages. There are various instances of death due to consumption of handmade liquor. The State Excise Department Parbhani had registered various offences against you for making, preparing, distributing, possessing the handmade liquor. All the offences registered against you are under Maharashtra Prohibition Act and same are registered with the office of Inspector of State Excise Parbhani. Because of said criminal habit of yourself, and illegal and hazardous preparation of handmade liquor, illegally distributing, selling in the nearby vicinity due to this the law abiding people are losing faith in law and there is danger to the life of human being. Due to your said activities there is danger to the public peace of villages Kansur, Pathari city and nearby villages of the District. Due to your illegal activities, the State Excise Department on various occasion registered offences against you. The action under section 93 of the Maharashtra Prohibition Act as a restraining action was taken against you, but there is not any effect and you continue the criminal activities.

8. In paragraph 3 of the detention order, a list of six crimes registered against the petitioner under Section 65(e) of the

Maharashtra Prohibition Act has been given besides the details as to preventive action taken against him. Same is reproduced below for ready reference:-

Sr. No.	Office with whom offense registered	Crime No, Date and Section	Charge sheet and Date	Remark
1	Sub-Inspector, State Excise, Pathhari	20/2023, dt. 29/1/2023, Maharashtra Prohibition Act Sec.65(e)	SCC No.211/2023 dt.25.3.2023	Subjudice
2	Inspector, State Excise, Parbhani	61/2023, dt.18/3/2023, Maharashtra Prohibition Act Sec.65(e)	SCC No.335/2023, dt.23/8/2023	Subjudice
3	Inspector, State Excise, Parbhani	89/2023, dt.24/4/2023, Maharashtra Prohibition Act Sec.65(e)	SCC No.338/2023 dt.23/8/2023	Subjudice
4	Inspector, State Excise, Parbhani	126/2023 dt.17/05/2023, Maharashtra Prohibition Act Sec.65(d)(e)	SCC No.358/2023, dt.4/9/2023	Subjudice
5	Inspector, State Excise, Parbhani	253/2023, dt.09/09/2023, Maharashtra Prohibition Act Sec.65(e)(f)	SCC No.419/2023, dt.20/9/2023	Subjudice
6	Inspector, State Excise, Parbhani	327/2023, dt.18/10/2023, Maharashtra Prohibition Act Sec.65(e)(f)		On Investigation

Preventive Action

Sr. No.	Office who taken preventive action	Preventive action	Status	Offences registered after preventive action
1	Inspector of State Excise, Parbhani	Proposal No.DET112023/173/In sp. Dated 26/04/2023 forwarded to Ld. Deputy Divisional Magistrate, Pathari, for action under section 93 of Maharashtra Prohibition Act (Security for Good behaviour)	Deputy Divisional Magistrate, Pathari, obtained good behavior bond of Rs.1,00,000/-	Though preventive action was taken under section 93 even then continued the offences of bootlegging and on 9/9/2023 offence is registered
2	Inspector of State Excise, Parbhani	Proposal No. DET.112023/279/Insp. Dated 10/09/2023 forwarded to Ld. Deputy Divisional Magistrate Pathari for cancellation of good behaviour bond of Rs.1,00,000/- as further offences registered	Pending before Deputy Divisional Magistrate, Pathari	Through procedure of cancellation of good behavior bond was pending even then bootlegging activities continued and all 18/10/2023 offence is registered

9. It is further observed in the detention order that inspite of the fact that the aforesaid cases were registered against the petitioner from time to time, there has been no effect on him. The petitioner continued his activities of distillation of handmade liquor and sale thereof. It has further been observed that the activities of the petitioner were harmful to human life. The detaining authority

was subjectively satisfied that the action under Section 3(2) of the M.P.D.A. Act was warranted against the petitioner. The order further records the details of the FIRs registered against the petitioner. It further refers/records the gist of the in-camera statements of the witnesses. Then, in paragraph 11 of the order, it has been observed thus:-

11. I have considered your actions and all the ramifications of such actions from all angles. I have also considered the serious consequences of your actions on public order. From the above facts and from the records placed before me, I am convinced that you are a bootlegger as defined in the said Act and I am convinced that your release would adversely affect the public order of Kansur, Pathari city and adjoining areas. Existing laws are not enough to curb your criminal and dangerous activities. As witnesses do not come forward to testify against you. I am convinced from the above mentioned incident number that you have created terror in the minds of the residents of the above mentioned areas. Due to this, the public order in the said area has been adversely affected and the daily life has been disrupted and the action taken under the prevailing law to curb such activities has been futile. Therefore, I have no option but to book you under Maharashtra Slum Hooligans, Handicrafts, Drug Offenders, Dangerous Persons, Unlicensed Exhibitors, Video Pirates, Sand Smugglers and Black Marketers of Essential Commodities Act, 1981.

10. It is undisputed that within a span of less than six months, i.e. from 25.03.2023 to 20.9.2023, five offences punishable under Section 65(e) of the Maharashtra Prohibition Act were

registered against the petitioner. Thereafter, again on 18.10.2023, similar crime came to be registered against him. Same is pending investigation. In none of the crimes, the petitioner was arrested. The reason there-behind is that those offences were not punishable with imprisonment for more than seven years. The record further indicates that the petitioner executed a bond under Section 93 of the Maharashtra Prohibition Act to maintain peace and good behaviour. It was executed on 22.04.2023. Post execution of the bond, the petitioner indulged in the activities of distillation and sale of handmade/illicit liquor.

11. It is a matter of common knowledge that consumption of illicit liquor is necessarily injurious to health. The detaining authority has observed in its order that the witnesses, who gave their statements on the condition of anonymity, disclosed that the persons residing in the vicinity, whereat the petitioner distills and manufacture illicit liquor, feel unsecured. Women and children of that area even apprehend to move freely. Consumers and persons of criminal background throng at the petitioner's liquor den. Such persons consume illicit liquor to such an extent that they behave disorderly in that area itself. They vomit and even disturb the tranquility of the area. Both the witnesses have further disclosed the

petitioner to have met them in the months of February, 2023 and March, 2023 and threatened them of dire consequences, if they came in his way of running the liquor den. These statements have been duly verified by the Superintendent of Police (Excise).

12. It is true, in paragraph 66 of the judgment of the Apex Court in the case of **Pesala Nookaraju** (supra), it has been observed thus :-

“66. 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.”

It is also true that in the case of **Prakash** (supra), this Court held that issuance of notice under Section 41-A of Cr.P.C. itself

indicates the authorities did not wish to arrest the petitioner therein. It was also observed that without resorting to the provisions of the ordinary law of land, recourse to stringent provisions of preventive detention may not be had. Those were observations made in the facts and circumstances of the case.

13. The C.A. reports in all the cases registered against the petitioner indicate that the samples drawn contained ethyl alcohol in various percentage. True, it is below 24.60%. The in-camera statements indicate that the activities of the petitioner were prejudicial to maintenance of public order. In the case of it has been observed by the Apex Court thus:-

“4. In our opinion there is no substance in this contention. In none of the three cases relied upon by the learned counsel the point whether public order can be said to have been disturbed on the ground that the activity of the detainee was harmful to the public health arose for consideration. It appears that in those three cases, the detaining authority had not recorded such satisfaction. Moreover, in those cases the detaining authorities had referred to some incidents of beating but there was no material to show that as a result thereof even tempo of public life was disturbed. In this case, the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health. The detaining authority has also stated that the statements of witnesses clearly show that as a result of violence resorted to by the petitioner even tempo of the public life was disturbed in those localities for some time. The material on record clearly shows that members of the public of those localities had to run away from there or to go inside their houses and close their doors.

5. What is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. It is also well settled that whether the material was sufficient or not is not for the Courts to decide by applying an objective test as it is a matter of subjective satisfaction of the detaining authority. The observations made by this Court in *Om Prakash v. Commissioner of Police*, 1989 Supp.(2) SCC 576 : (AIR 1990 SC 496 : 1990 CriLJ328) that “as in *Piyush Mehta Case* (AIR 1989 SC 491 : 1989 CriLJ 956), the materials available on record in the present case are not sufficient and adequate for holding that the alleged prejudicial activities of the detenu have either affected adversely or likely to affect adversely the maintenance of public order within the meaning of Section 4(3) of the Act and as such, the order is liable to be quashed” are to be understood in the context of the facts of that case.”

14. Learned APP was right in submitting that the in-camera statements can be relied on for passing the detention order. He even has rightly relied on the judgment of the Apex Court in the case of **Phulwari Jagdambaprasad Pathak (supra)**, wherein the in-camera statements of the witnesses, who did not give day, date or even the time of the incident have been relied upon.

15. So far as regards non-arrest of the petitioner in any of the crimes registered against him and issuance of notice under Section 41-A of Cr.P.C. is concerned, we propose to rely on the following decisions of the Apex Court:-

(i) **Mohd. Salim Khan Vs. Shri.C.C.Bose, Deputy Secretary to the Government of West Bengal and anr., 1972**

AIR (SC) 1670, wherein it is observed thus:-

“A. West Bengal (Prevention of Violent Activities) Act, 1970 (President’s Act 19 of 1970), Sections 3(1) and 3(3) – Detention order after **discharge** of petitioner in criminal case – A valid order of detention could be passed against him in connection with those very incidents.

(ii) **Nenavath Bujji etc. Vs. The State of Telangana and ors., AIR 2024 SC 1610**, observed thus:-

25. The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence. It is not a parallel proceeding. It does not overlap with prosecution even if it relies on certain facts for which prosecution may be launched or may have been launched. An order of preventive detention, may be made before or during prosecution. An order of preventive detention may be made with or without prosecution and in anticipation or after discharge or even acquittal. The pendency of prosecution is no bar to an order of preventive detention. An order of preventive detention is also not a bar to prosecution. [See : Haradhan Saha Vs. the State of W.B., 1974 Cri. L.J. 1479]

16. The Apex Court, in the case of **Vijaykumar Vs. Union of India and others, (1988)2 SCC 57** has observed – Whether the offence for which the detainee was jailed, was bailable or not is immaterial for the purpose of preventive detention. In view of the

same, in the present case, the petitioner has not been arrested in connection with any of the crimes registered against him, which found basis of his detention order would, therefore, be of no consequence.

17. Admittedly, the preventive measure under Section 93 of the Maharashtra Prohibition Act was taken against the petitioner. Still, he continued to indulge in manufacture of handmade/illicit liquor and sale thereof. The in-camera statements indicate that the activities of the petitioner were causing disturbance to day-to-day activities of the inhabitants of that area. Same necessarily affected maintenance of public order. The detaining authority (respondent no.2), after having considered all the aspects of the matter, came to the subjective satisfaction and passed the order impugned herein.

18. In the facts and circumstances of the case, we find no error in the impugned order or any other reason to interfere therewith. In the result, the petition is dismissed. Rule is discharged.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP