



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1382 OF 2024

Sau. Shobhabai Manohar @ Mohan Koli
Age: 55 years, Occu.: Household,
R/o. Lohari Bk., Tq. Pachora,
District Jalgaon.

.. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Ministry of Home Department (Special),
Mantralaya, Mumbai.
2. The District Magistrate, Jalgaon,
Collector Office Premises, Jalgaon,
Tq. And Dist. Jalgaon.
3. The District Superintendent of
Police, Jalgaon
The office of District Superintendent
of Police Opposite of S.T. Bus Stand,
Jalgaon, Tq. And Dist. Jalgaon.
4. The Superintendent of Central Prison,
Thane, Tq. And Dist. Thane.

.. Respondents

...
Mr. H. P. Randhir, Advocate for the petitioner.
Mr. S. A. Gaikwad, APP for the respondents/State.
...

**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 12 DECEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. H. P. Randhir for the petitioner and learned APP Mr. S. A. Gaikwad for the respondents – State.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the parties.

3. The petitioner challenges the detention dated 18.07.2024 bearing No.Dandapra/KAVI/MPDA/23/2024 passed by respondent No.2 and approval order dated 29.07.2024 as well as the confirmation order dated 11.09.2024 passed by respondent No.1, by invoking the powers of this Court under Article 226 of the Constitution of India.

4. Learned Advocate for the petitioner has taken us through the impugned orders and the material which was supplied to the petitioner by the detaining authority after passing of the order. He submits that though several offences were registered against the husband of the petitioner, yet for the purpose of passing the impugned order, four offences were considered i.e. **(i)** Crime No.100 of 2023 under Section 65(e) of the Maharashtra Prohibition Act, **(ii)** Crime No.200 of 2023 under Section 65(e) of

the Maharashtra Prohibition Act, **(iii)** Crime No.226 of 2023 under Section 65(f), (b), (c), (e) of the Maharashtra Prohibition Act and **(iv)** Crime No.102 of 2024 under Section 65(f) of the Maharashtra Prohibition Act. All these offences were registered with Pimpalgaon Hareshwar Police Station, District Jalgaon. Learned Advocate for the petitioner submits that there was no subjective satisfaction arrived at by the detaining authority. There was no opinion of any expert medical officer certifying that the seized liquor would have been injurious or harmful to human consumption. In all the cases, the husband of petitioner has been served with notice under Section 41(A) of the Code of Criminal Procedure. Further, action was taken under Section 93 of the Maharashtra Prohibition Act, 1949 against the husband of petitioner, however, it was not taken to the logical end. This shows that the action against the husband of the petitioner was predetermined. The statements of in-camera witnesses 'A' and 'B' would show that at the most law and order situation would have been created. Therefore, the impugned order is illegal and cannot be allowed to sustain.

5. Per contra, the learned APP strongly supports the action taken against the husband of the petitioner. He submits that the

husband of the petitioner is a dangerous person as defined under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the “MPDA Act”). The detaining authority has relied on the two in-camera statements and the subjective satisfaction has been arrived at. There is no illegality in the procedure adopted while recording the in-camera statements of the witnesses. Due to the terror created by the husband of the petitioner, people are not coming forward to lodge report against him and, therefore, it affects the public order. Learned APP is relying upon the affidavit-in-reply filed by Mr. Ayush Prasad, District Magistrate, Jalgaon. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the conclusion that the husband of the petitioner is a bootlegger. The subjective satisfaction was arrived at on the basis of CA report as well as in-camera statements and the contents of the FIR. In all, four offences were considered along with the two in-camera statements. After the subjective satisfaction, the detaining authority has passed a reasoned order, which is then confirmed with the opinion of the Advisory Board and, thereafter, confirmed by the State Government on

11.09.2024.

6. Before considering the case, we would like to take note of the legal position as is emerging in the following decisions :-

(i) Nenavath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367],

(ii) Aameena Begum Vs. The State of Tamilnadu and Ors., [2023 LiveLaw (SC) 743];

(iii) Kanu Biswas Vs. State of West Bengal, [1972 (3) SCC 831] wherein reference was made to the decision in **Dr. Ram Manohar Lohia vs. State of Bihar and Ors. [1966 (1) SCR 709];**

(iv) Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, [1995 (3) SCC 237];

(v) Pushkar Mukherjee and Ors. Vs. The State of West Bengal, [AIR 1970 SC 852];

(vi) Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751) and;

(vii) Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, [(1981) 4 SCC 647].

7. Taking into consideration the legal position as summarized

above, it is to be noted herein as to whether the detaining authority while passing the impugned order had arrived at the subjective satisfaction and whether the procedure as contemplated has been complied with or not. In ***Nenavath Buji*** (*Supra*) itself it has been reiterated by the Hon'ble Supreme Court that illegal detention orders cannot be sustained and, therefore, strict compliance is required to be made, as it is a question of liberty of a citizen. As aforesaid, the detaining authority had taken note of four offences i.e. Crime No.100 of 2023 dated 28.04.2023, Crime No.200 of 2023 dated 31.07.2023, Crime No.226 of 2023 dated 24.08.2023 and Crime No.102 of 2024 dated 06.05.2024 and two in-camera statements. Perusal of these cases would show that only in respect of Crime No.100 of 2023, CA report has been received and percentage of ethyl alcohol that was found was 9%. The detaining authority has not considered that in respect of last three offences, CA reports were not received. There was no opinion of any expert medical officer certifying that the seized liquor would have been injurious or harmful to human consumption. The impugned order states that action under Section 93 of Maharashtra Prohibition Act, 1949 was taken against the petitioner, which prescribes for demand of

security for good behaviour to be taken from such person. Section 93 (1) of the said Act empowers a District Magistrate or a Sub-Divisional Magistrate, whenever he receives information that any person within the local limits of his jurisdiction habitually commits or attempts to commit or abets the commission of any offence punishable under this Act, such Magistrate may require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, as the Magistrate may direct. The said procedure was started on 26.03.2024. If it would have been taken to the logical end, the Magistrate i.e. respondent No.2 was entitled/empowered to take such bond of good behaviour maximum for a period of three years. Further, sub-section (2) of Section 93 of the said Act prescribes that the provisions of Code of Criminal Procedure would be applicable to any proceedings under sub-section (1) of Section 93 as if bond referred to therein were a bond required to be executed under Section 110 of the said Code. Section 110 of the Code then prescribes the procedure for breach of such bond. That means there is in built mechanism in the Maharashtra Prohibition Act to curtail the activities of a habitual offender. These proceedings under the Act were not taken to the logical

end. Therefore, the statement by respondent No.2 that ordinary law would not have curbed the activities of the husband of the petitioner and only the detention order would have taken care of said activities in the public interest cannot be upheld.

8. As regards in-camera statements of witnesses 'A' and 'B' are concerned, they show at the most law and order situation would have been created. Those statements have been considered and even the detaining authority says that the petitioner is a bootlegger. In fact, except the offences under the Maharashtra Prohibition Act, there are no other offences against him. To brand the person as a 'bootlegger', there has to be a proper evidence. Therefore, these grounds do not justify the impugned order. Reliance can be placed on the recent decision of the Hon'ble Supreme Court in ***Arjun s/o Ratan Gaikwad Vs. The State of Maharashtra and others, [Criminal Appeal (Arising out of SLP (Crl.) No.12516 of 2024 dated 11.12.2024 :: 2024 INSC 968]***, wherein it has been observed that :-

“16. In the present case, all the six cases are with regard to selling of illicit liquor. Though six cases are registered, the Excise Authority did not find it necessary to arrest the appellant even on a

single occasion. It would have been a different matter, had the appellant been arrested, thereafter released on bail and then again the appellant continued with his activities. However, that is not the case here.”

9. Thus, taking into consideration the above observations and the decisions of the Hon'ble Apex Court, at the most, the statements as well as the offences allegedly committed would reveal that the petitioner had created law and order situation and not disturbance to the public order. Though the Advisory Board had approved the detention of the husband of the petitioner, yet we are of the opinion that there was no material before the detaining authority to categorize the husband of the petitioner as a dangerous person or bootlegger.

10. For the aforesaid reasons, the petition deserves to be allowed. Hence, following order is passed :-

ORDER

I) Writ Petition stands allowed.

II) Detention order dated 18.07.2024 passed by respondent No.2 bearing No.Dandapra/KAVI/MPDA/23/2024 and approval order dated 29.07.2024 as well as confirmation

order dated 11.09.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Husband of Petitioner viz. Manohar @ Mohan Ukhardu Koli shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm