



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

**CRIMINAL WRIT PETITION NO.1598 OF 2024**

Ashok Balu Koli  
Age: 36 years,  
R/o. Near Saibaba Temple,  
Samata Nagar, Jalgaon,  
Tq. And Dist. Jalgaon.

***.. Petitioner***

***Versus***

1. District Magistrate, Jalgaon,
2. The State of Maharashtra  
(Through the Secretary Home  
Department (Spl.) Mantralaya,  
Mumbai.
3. The Superintendent  
Central Prison Mumbai,  
Mumbai.

***.. Respondents***

...  
Mr. R. A. Jaiswal, Advocate for the petitioner.  
Mr. A. D. Wange, APP for the respondents-State.  
...

**CORAM : SMT. VIBHA KANKANWADI &  
S. G. CHAPALGAONKAR, JJ.**

**DATE : 24 OCTOBER 2024**

**JUDGMENT (Per Smt. Vibha Kankanwadi, J.)**

. Heard learned Advocate Mr. R. A. Jaiswal for the petitioner  
and learned APP Mr. A. D. Wange 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 detention order dated 30.05.2024 bearing No. Dandapra/KAVI/MPDA/18/2024 passed by respondent No.1 as well as the approval order dated 10.06.2024 and the confirmation order dated 23.07.2024 passed by respondent No.2, 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 petitioner, yet for the purpose of passing the impugned order, five offences were considered i.e. Crime No.166 of 2022, Crime No.346 of 2022, Crime No.30 of 2023, Crime No.265 of 2023 and Crime No.110 of 2024. All the aforesaid offences were registered with Ramanand Nagar Police Station, District Jalgaon for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949. Learned Advocate for the petitioner submits that in respect of the last offence which is considered

under the caption “Details of offences registered recently within six months”, the detaining authority had taken note of Crime No.110 of 2024 registered under Section 65(e) of the Maharashtra Prohibition Act, 1949, however, on the date of passing the detention order, the CA reports were not received. There was no live link in respect of other four offences, which were also considered. Further, there was no opinion of an expert obtained to state that the said amount of ethyl alcohol alleged to have been found in the liquor that was seized; it was dangerous to the health of people at large. The statement of in-camera witnesses is stereotyped. Further, action was taken under Section 93 of the Maharashtra Prohibition Act, 1949 against the petitioner, however, it was not taken to the logical end. This shows that the action against the petitioner was predetermined. The representation of the petitioner has not been considered properly and till today, it has not been informed to the petitioner as to what decision has been taken on his representation.

5. Per contra, the learned APP strongly supports the action taken against the petitioner. He submits that 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 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, who has tried to demonstrate as to how he had arrived at the conclusion that the petitioner is a bootlegger. Further, the opinion of the Advisory Board would clearly show that each and every aspect has been considered to state that there was material before the District Magistrate for passing the detention order.

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) *Ameena 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 (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. It is to be noted that as per the detention order, the detaining authority has considered the above five offences, which were registered from 10.06.2022 against the

petitioner. The dates on which those cases came to be registered are required to be noted i.e. 10.06.2022, 22.11.2022, 07.02.2023, 27.07.2023 and 30.03.2024. If we consider that the detaining authority as well as Advisory Board states that the petitioner is a habitual seller of illicit liquor, question then arises as to when it can be said to be habitual. In a year, there are two offences registered against the petitioner. If he was so habitual, then why almost daily action has not been taken by the police. It has to be then clarified as to what is habitual. The District Magistrate has not considered that in respect of last offence, CA report was not received. The Advisory Board in its opinion states that absence of that report is not fatal on the background that in the earlier offences ethyl alcohol was found. We respectfully disagree with the said opinion. The first and the foremost fact to be noted is that in the opinion, the Advisory Board was under the opinion that only last offence was considered by the detaining authority for passing detention order along with two in-camera statements. If that was so, then how the percentage of ethyl alcohol found in the earlier cases could have been considered by the District Magistrate, is a question. Further in paragraph No.11, the percentage of ethyl alcohol of six cases have been considered,

whereas detention order is passed on the basis of five cases. There is no expert opinion placed on record and made available to the petitioner. On this point, reliance can be placed on the decision in ***Yogesh Bharat Rajput Vs. State of Maharashtra and others, [Criminal Writ Petition No.105 of 2024 decided by the Coordinate Bench of this Court on 27.03.2024]***, in which reliance has been placed on the decision in ***Ganesh @ Nana Gangaram Koli Vs. State of Maharashtra and Ors., [Criminal Writ Petition No.1530 of 2023 decided by the Coordinate Bench of this Court on 09.02.2024]***. If we consider the first offence out of those offences i.e. first in chronology, then that offence was registered on 10.06.2022, whereas the detention order has been passed on 30.05.2024. It cannot be said that there was live link between those two cases. Similar is the case of second offence which came to be registered on 22.11.2022. The basic structure that is required to be considered while passing detention order is that there has to be a live link, which is missing here. If we omit to consider the last offence that was committed on 30.03.2024 of which CA report was not before the District Magistrate, then the offence which was prior in time to that offence was registered on 27.07.2023. There

would be then gap of almost nine months till the date on which the detention order was passed. Still, the petitioner is then branded as habitual offender and therefore, considered as a bootlegger. Non consideration of the representation and failure of the State to communicate the decision of the representation filed by the petitioner would certainly affect his fundamental right.

8. Another important point to be noted herein is that the in-camera statements is containing such material in general also regarding the character of the petitioner as if those witnesses were certifying authority. Both the witnesses have stated that when they were passing from the place where the petitioner used to sell the liquor, at that time, they had dashed with some drunken person and they started abusing the witnesses. At that time, petitioner came along with his associates and started saying that the witness was harassing his customers. Witness 'A' says that petitioner told him that as a result of dash, his customer has sustained injury and he should give amount of Rs.2,000/- for the medical expenses of his customer. Till then he should keep his motorcycle with the petitioner. He also says that due to the terror of the petitioner, the people who had gathered did not say anything and he went back to house by walk. He went to

petitioner in the morning, gave him Rs.2,000/-and took his motorcycle. All these facts are in fact qua the witness. In fact, on the day when the incident had taken place it was *Dhulivandan* i.e. the second day of *Holi*. It cannot be stated that those persons who dashed the motorcycle of the witness had consumed liquor from the shop or place where the petitioner was selling liquor. Same is the case with another witness. It is to be noted that there is no shop of the petitioner from where he was allegedly selling the illicit liquor. It is almost on lonely place behind the water tank. 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

13.02.2024. 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 petitioner and only the detention order would have taken care of said activities in the public interest cannot be upheld.

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 petitioner, yet we are of the opinion that there was no material before the detaining authority to categorize 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)** The Writ Petition is allowed.

**II)** The detention order dated 30.05.2024 bearing No. Dandapra/KAVI/MPDA/18/2024 passed by respondent No.1 as well as the approval order dated 10.06.2024 and the confirmation order dated 23.07.2024 passed by respondent No.2, are hereby quashed and set aside.

**III)** Petitioner – Ashok Balu Koli shall be released forthwith, if not required in any other offence.

**IV)** Rule is made absolute in the above terms.

**[ S. G. CHAPALGAONKAR ]**  
**JUDGE**

**[ SMT. VIBHA KANKANWADI ]**  
**JUDGE**

scm