



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1645 OF 2024

Ayyub Bashir Tadv
Through Tayab Ayyub Tadv
Age : 30 years, Occ : Labour,
R/o Kusumba, Tq. Raver,
Dist. Jalgaon.

..APPLICANT

-VERSUS-

1. The State of Maharashtra
Through its Secretary,
Home Department (Special),
Mantralaya, Mumbai 32.
2. The District Magistrate,
Collector Office, Jalgaon.
3. The Superintendent
Central Prison,
Bhaykheda, Arther Road,
Chinchpokali, Mumbai.

..RESPONDENTS

...
Advocate for the applicant : Mr. A.J. Patil
APP for Respondent- State : Mrs. R.P. Gour

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

DATED : 11th DECEMBER, 2024.

JUDGMENT (PER ROHIT W. JOSHI, J.) :

. Rule. Rule made returnable forthwith with the consent of
parties.

2. The petitioner, who is son of the detenu, has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India in order to challenge the detention order dated 18.07.2024 passed against his father, by the District Magistrate, Jalgaon/ respondent No.2 under 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 (hereinafter referred to as "MPDA"), which has been confirmed by respondent No.1 vide approval order dated 29.07.2014. The order is passed on the ground that the detenu is a bootlegger and is threatening health of ordinary citizens of village Kusumba, Tq. Raver, Dist. Jalgaon.

3. The sequence of events leading to initiation of detention till the confirmation of detention by the respondent no.1 followed by the Advisory Board is as under :-

Sr. No.	Date	Particulars of Events
1.	07.03.2024	The Police Inspector, Police Station, Raver recorded confidential statements of two witnesses.
2.	25.03.2024	Based on the material available with Police

		Inspector including the confidential statements, he has forwarded proposal for detention of the detenu to respondent No.2, through the respondent no.3/ Superintendent of Police.
3.	09.05.2024	The shortcomings in the proposal were communicated by the office of respondent No.3 to the Police Inspector and the proposal was remitted back.
4.	22.06.2024	Thereafter, fresh proposal was forwarded by the Police Inspector to respondent No.3.
5.	27.06.2024	Based on the proposal received from the Police Inspector, respondent No.3 has sent a proposal for detention of the detenu to the respondent No.2.
6.	02.07.2024	The confidential statements recorded by the Police Inspector came to be verified by respondent No.2.
7.	18.07.2024	Respondent No.2 has thereafter issued order of preventive detention against the detenu in exercise of powers conferred under Section 3(2) of the MPDA.

8.	18.07.2024	Along with detention order, committal order is also issued by respondent No.2 on the same day i.e. on 18.07.2024 directing the detention of the detenu in Central Prison, Mumbai.
9.	19.07.2024	Detention order is served on the detenu on 19.07.2024 along with the reasons for detention.
10.	18.07.2024	The matter was reported to respondent No.1.
11.	29.07.2024	The approval order is issued by respondent No.1.
12.	29.07.2024	The matter came to be referred to the Advisory Board.
13.	02.08.2024	The matter was placed before the Advisory Board.
14.	29.08.2024	The Advisory Board afforded opportunity of hearing to the detenu.
15.	11.09.2024	The Advisory Board issued Report approving preventive detention.

4. Perusal of the reasons recorded by respondent No.2 for issuance of order of preventive detention indicates that the detenu is considered to be a bootlegger, whose activities are detrimental to public health. Reference is made to five offences registered against the

detenu under the Maharashtra Prohibition Act, 1949 and two instances of preventive action taken against him under Section 93 of the said Act. The details thereof are as under :-

Sr. No.	Date	Crime Number	Sections of Maharashtra Prohibition Act	Percentage of Ethyl Alcohol
1.	07.10.2020	85/2020	65(c) and (d)	52%
2.	28.06.2021	210/2021	65(f), (b) and (c)	22%, 6%, 3%
3.	27.08.2022	310/2022	65(f), (b) and (c)	3%, 4%, 11%
4.	07.10.2023	424/2023	65(e)	22%
5.	03.03.2024	73/2024	65(f)(b) and (c)	---

5. The first four offences are pending trial before the competent court. The fifth matter i.e. Crime No.73/2024, is under police investigation. It will be pertinent to mention here that the detenu was not arrested in relations to any of the aforesaid FIRs. Apart from this, preventive action is taken against him under Section 93 of the Maharashtra Prohibition Act, on two occasions, as under :-

Sr. No.	Date	Crime Number	Section of Maharashtra Prohibition Act
1.	13.09.2021	08/2021	93

2.	01.12.2023	39/2023	93
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6. Heard Mr. A.J. Patil, learned Advocate for the petitioner and Mrs. R.P. Gour, learned APP for the respondent/State. Perused the impugned orders and record with the able assistance of both the learned respective Advocates.

7. Learned Advocate for the petitioner has raised following contentions to challenge the detention order :-

- (i) There is no live link between the alleged offence/s and order of detention;
- (ii) There is unexplained delay on account of which the detention order should be quashed;
- (iii) Chemical Analyzer's report has not been obtained with respect to Crime No.73/2024, on the basis of which the detention order is passed;
- (iv) The offences registered against him are not such as to adversely affect the maintenance of public order;
- (v) In none of the offences he has been arrested, which implies that the same are not serious offences; and
- (vi) Bonds have not enforced under the ordinary law and recourse is taken to preventive detention.

8. To counter the contention raised by learned Advocate for the petitioner, learned APP strenuously argued as under :-

- (i) there is certainly live link between the offence taken into consideration and the order of detention;
- (ii) the delay in the present case is properly explained and therefore, the order cannot be set aside merely on account of delay;
- (iii) the samples collected during the investigation of Crime No.73/2024 were forwarded for Chemical Analyzer's report and the detention order against the detenu need not be quashed only on the ground that the report is awaited;
- (iv) activities of a bootlegger are also associated with other law or issues and material on record clearly demonstrates that the detenu imposes a serious threat to public order;
- (v) the fact that the detenu is not arrested in the crimes referred in the reasons for detention, by itself would not a ground for quashing and setting aside the order of detention; and
- (vi) merely because bonds are not enforced will not entitle the detenu to have the detention order quashed, in as much as, the competent authority can take recourse to both avenues.

9. The first contention raised by learned Advocate for the petitioner pertains to live link between the offence taken into consideration and the order of detention. The second ground

pertaining to delay is also related with this. Hence, we propose to deal with both these grounds together. It is apparent from the record that the confidential statements have been recorded by the concerned Police Inspector on 07.03.2024, on the basis of which he had sent a proposal to respondent No.2 for detention of the detenu through respondent No.3. There is clear gap of 17 days between two dates. Respondent No.3 had initially returned the matter to the Police Inspector due to technical defects in the proposal. This was done on 09.05.2024 i.e. after period of 44 days. After the proposal was remitted to the Police Inspector, fresh proposal was sent by the Police Inspector to respondent No.3 on 22.06.2024 i.e. after period of 43 days. Respondent No.3 has thereafter forwarded the proposal to respondent No.2 on 27.06.2024. The verification of statements is done after forwarding the proposal on 02.07.2024. Finally, the detention order has been passed on 18.07.2024. There is gap of 20 days between the proposal initiated by respondent No.3 and order of detention issued by respondent No.2. Thus, the process for preventive detention which commenced on 07.03.2024 with recording of confidential statements by the Police Inspector or at least from 25.03.2024 when the Police Inspector forwarded the proposal to the competent authority i.e. respondent No.2 through respondent No.3 – Superintendent of Police has culminated on 18.07.2024. There is a gap 114 days 25.03.2024 i.e. the date on which proposal was initially sent by the Police

Inspector to the respondent no.2.

10. In this backdrop, we refer to the date of registration of offence which is taken into consideration by respondent No.2 for arriving at subjective satisfaction. This date is 03.03.2024. There is gap of 136 days i.e. after four and half months between registration of the offence and issuance of the detention order. It is obvious that live link between the offence and the order of detention is broken. Delay in proceeding with the matter is immense. There is no plausible explanation for the same. Even if there was some plausible explanation, we are of considered opinion that such enormous delay in processing the matter can never be accepted in the matters of preventive detention. We are of the opinion that the order of preventive detention is liable to be quashed in view of the delay caused resulting in breaking the live link between alleged act and the order of detention.

11. The order of preventive detention is issued on the ground that the petitioner is a bootlegger. The term "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. We may forthwith record that although the sample seized in relation to offence on the basis of which subjective satisfaction is formed is sent

to the Chemical Analyzer, the report was not received till the date of issuance of detention order. The relevant column in the reasons recoded by respondent No.2 in support of detention order is left blank. Thus, with respect to the relevant offence, there was no material to indicate that substance seized was a substance which will adversely affect the health of public. Rather, there was nothing to infer that substance seized was liquor or intoxicating drug or other intoxicant. As regards four offences referred in the reasons for detention, true it is that in the said samples as per Chemical Analysis report the content of ethyl alcohol varies from 3% to 53% in eight samples collected, however, the Chemical Analyzer's report in relation to the said samples does not record that the consumption of said substance was dangerous to human lives. We are recording this although as per the detention order the said offences are not the foundation of the detention order but are referred only in order to show history of the detenu. In this regard, we may refer to judgment of the Hon'ble Supreme court in the matter of ***District Collector, Ananthapur Vs. V. Laxmanna***, (2005) 3 SCC 633, wherein the Hon'ble Supreme Court has held as under :-

"7. We do not think that this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack 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 Excise Act but if the arrack sold by the detenu is dangerous to public health then under the

Act, 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 arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the 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.

8. Therefore, while holding that dealing with arrack, which is dangerous to public health would become an act prejudicial to the maintenance of public order attracting the provisions of the Act, it must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of such material should be given to the detenu.”

12. The said judgment of the Hon'ble Supreme Court is in relation to provisions which are *pari materia* with Maharashtra Prohibition Act. The said judgment has been followed recently by this Court in the matter of ***Dhanubai @ Dhanno Yashvant Netlekar Vs State of Maharashtra and others (Criminal Writ Petition No.1527/2023 decided on 08.02.2024)***, wherein this Court has held that although the Chemical Analyzer's Report may indicate certain percentage of alcohol in the samples seized by the Investigating Agency, unless there is specific opinion by the Chemical Analyzer that the seized material would be dangerous to human lives detention

under the MPDA will not be permissible although the appropriate action may be taken under the Maharashtra Prohibition Act. We are with respectful agreement with the said judgment of this Court which is even otherwise is binding on us. The present case stands on better pedestal in as much as in the most recent offence which according to the detaining authority is the founder of the order, Chemical Analyzer Report was not available as on the date of passing of the detention order. It appears that the report is still awaited. The order warrants interference on this count as well.

13. Perusal of the reasons will indicate that in none of the five offences registered against the detenu, he was arrested. This is indicative of the fact that the offences registered against the detenu are not serious offences even according to the prosecution agency. The detaining authority should have taken into consideration this vital aspect. Although, we cannot interfere with subjective satisfaction of the detaining authority, we can certainly interfere when relevant and material factors are not taken into consideration to record that satisfaction is vitiated by non-application of mind qua relevant material which is not considered. In the present case, the fact that detenu was never arrested in relation to any of the offences registered against him is a crucial fact, which ought to have been taken into consideration by the detaining authority. Failure to take into consideration the said

aspect, vitiates subjective satisfaction which in turn renders the order of preventive detention illegal. The order of preventive detention is liable to be quashed on this count as well.

14. The reasons recorded by the detaining authority further indicate that on two occasions i.e. on 18.02.2021 and 01.12.2023 bonds were obtained from the detenu under Section 93 of the Maharashtra Prohibition Act, 1949. It is apparent from the reasons recorded by the detaining authority that on two occasions i.e. on 18.09.2021 and 01.12.2023, preventive action has been taken against the detenu under Section 93 of the Maharashtra Prohibition Act. Learned Advocate for the petitioner contends that the authorities could have enforced the bonds executed by the detenu, rather than taking recourse to the provisions of MPDA for curtailing his liberty by passing the order of preventive detention. It is now well settled that in cases where the detenu allegedly commits breach of the bond executed under Section 93, the bonds should be enforced rather than passing orders of preventive detention. The order of preventive detention cannot be a shortcut for the regular action that can be taken against the detenu in accordance with the relevant provisions of common penal law. In case of breach of conditions of bond obtained under section 93 of the Maharashtra Prohibition Act, the respondents could have taken recourse to the relevant provisions of the Criminal

Procedure Code for enforcing the bonds. The order of preventive detention is liable to be quashed on this count itself. This Court has also taken this view recently in the matters of, Rajtilak Tarachand Visave v/s The State of Maharashtra and others (Criminal Writ Petition No.452/2024 decided on 9th May, 2024) and Supadu Bandu Tadvi v/s. District Magistrate Jalgaon (Criminal Writ Petition No. 112 of 2024 decided on 07.05.2024).

15. The impugned order of preventive detention is also liable to be quashed in view of consistent view of this Court that where a person, who has executed a bond under section 93 of the Prohibition Act commits breach of conditions of the bond necessary steps for forfeiture of amounts under the bonds should be taken rather than taking recourse of passing orders of preventive detention.

16. Thus the impugned order of preventive detention fails to pass the muster and is liable to be quashed and set aside and we do hereby do the same by passing the following order –

ORDER

- I) The Writ Petition stands allowed.
- II) The detention order dated 18.07.2024 bearing No.Dandapra / Kavi/MPDA/25/2024 passed by respondent No.2 as well as the approval order dated 29.07.2024 and the confirmation order dated

11.09.2024 passed by respondent No.1 stand quashed and set aside.

III) Petitioner - Ayub Bashir Tadavi 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

sga/