



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

CRIMINAL WRIT PETITION NO.1430 OF 2023

Vinod Dhannulal Jaiswal

... **PETITIONER**

VERSUS

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

... **RESPONDENTS**

...

Advocate for petitioner: Ms. Jayashree Tripathi h/f. Mr. Rupesh A. Jaiswal
A.P.P. for respondent/State : Mr. M.M. Nerlikar

...

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

**RESERVED ON : 03.01.2024
PRONOUNCED ON: 17.01.2024**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. Learned APP waives service for all the respondents. At the joint request of the parties the matter is heard finally at the stage of admission.

2. By resorting to the provisions of Articles 226 and 227 of the Constitution of India, the petitioner is challenging the order passed by the respondent No.1 – Detaining Authority under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, void

Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (herein after the MPDA Act) dated 14.07.2023, directing his detention with a view to prevent him from acting in any manner prejudicial to the mandates of public order being a bootlegger. He has taken into consideration *inter alia*, twelve crimes registered against him of which the last three were under the provisions of Section 65(e) of the Maharashtra Prohibition Act, 1949 (the Prohibition Act) registered on 31.03.2023, 17.06.2023 and 18.06.2023. He took into consideration that even a preventive action under Section 93 of the Prohibition Act initiated against him on 31.03.2023. The respondent No.1 – Detaining Authority has also taken into consideration statements of couple of anonymous witnesses to arrive at a subjective satisfaction while passing the order of preventive detention.

3. On the very day of the order, after the grounds of detention (Exhibit-E) were communicated to the petitioner, he was committed to the prison. The order was forwarded to the State which accorded approval under Section 3(3) of the MPDA Act on 20.07.2023 which was also communicated to him on the same day i.e. 20.07.2023.

4. The petitioner then made a representation through his advocate on 10.08.2023 which was forwarded to the State Government through the Superintendent of Aurangabad Central Prison.

5. The learned advocate for the petitioner would submit that contrary to the mandate of law, the petitioner's representation was not

decided expeditiously and the delay would go to the root of the order of detention. To buttress her submission she would rely upon the decisions in the matter of **Rama Dhondu Borade Vs. V.K. Saraf, Commissioner of Police and Ors.**; (1989) 3 Supreme Court Cases 173, **Rashid Kapadia Vs. Medha**; (2012) 11 SCC 745, **Mrs. Nirmala Sawant Vs. The Commissioner of Police Pune City and Ors.**; Criminal W.P. No.3362/2022 decided on 17.01.2023 and **Akshay Mukund Gaikwad Vs. Commissioner of Police, Pimpri Chinchwad and Ors.**; Criminal W.P. No.1590/2023 decided on 20.07.2023.

6. She would submit that this is the precise and basic ground on which the petitioner is seeking to challenge the order of preventive detention. No attempt was made to explain the delay rather the order if any passed by the State Government on his representation was never communicated to him and consequently the order of preventive detention is liable to be quashed and set aside.

7. The learned advocate for the petitioner would then assail the order of detention on the ground that the Detaining Authority - respondent No.1 has taken into consideration the aforementioned three latest crimes registered against the petitioner under Section 65 (e) of the Prohibition Act. The reports of the Chemical Analyzer have been obtained but are absolutely silent as to the quality of the contraband muchless there is no express opinion that consumption of such contraband was injurious to human health. The CA reports merely give

percentage of ethyl alcohol in water as 31%, 41% and 26%, v/v. In the absence of any such opinion of the Chemical Analyzer, the subjective satisfaction arrived at by the respondent No.1 - detaining authority that the petitioner's alleged activity would be prejudicial to the public health is arbitrary and would vitiate his subjective satisfaction.

8. The learned advocate for the petitioner would then submit that there is absolutely no material to substantiate the subjective satisfaction arrived at by the respondent No.1 - detaining authority that the liquor allegedly being sold by the petitioner had either affected the societal peace or had potential of ruining the life of the families of the persons consuming it. She would submit that a vague report has been obtained by the respondent No.1 - detaining authority from the doctor of the Primary Health Center, Aurala mentioning that such a liquor distilled by the petitioner would endanger the health of the people.

9. Learned advocate for the petitioner would submit that the statements of the two witnesses are also vague. They do not disclose the specific day and date when the petitioner allegedly threatened them. Statements of these two witnesses would at the most demonstrate that the petitioner is a 'dangerous person' but would not substantiate the subjective satisfaction of the respondent No.1 - detaining authority of his being a 'bootlegger'.

10. Learned advocate for the petitioner would, lastly, submit that the petitioner was not arrested in any of the three last crimes registered

against him. Rather he was served with a notice under Section 41-A of the Code of Criminal Procedure which fact was indicative that even the Investigating Officer did not seek to arrest him which would be inconsistent with the subjective satisfaction arrived at by the respondent No.1 – detaining authority that his being at large would be prejudicial to the public order. Reliance is placed by the learned advocate for the petitioner on the following decisions :

- i. **Pesala Nookaraju Vs. The Government of Andhra Pradesh and Ors.; 2023 LiveLaw (SC) 678**
- ii. **District Collector, Ananthapur Vs. V. Laxmanna; 2005 CJ(SC) 400**

11. The learned APP would oppose the petition relying upon the affidavit of the Joint Secretary of the Home Department (Special) of the State Government and couple of affidavits of the respondent No.1 – Detaining Authority. He would submit that the requisite procedure as contemplated in law has been duly followed. Even though the petitioner had not filed any representation immediately, he was personally heard by the Advisory Board and had raised same grounds which he mentioned in the representation filed subsequently still it was considered objectively and was rejected. It was communicated to him by a speed post with a covering letter dated 14.09.2023. There was no delay in consideration of his representation and the provision of Article 22(5) of the Constitution has been complied with.

12. By referring to the decision in the matter of **Abdul Nasar**

Adam Ismail Vs. State of Maharashtra and Ors.; AIR 2013 Supreme Court 1376, the learned APP would submit that a plausible explanation has been tendered for whatever delay that had occasioned in taking a decision on petitioner's representation, in the affidavit-in-reply. It has not resulted in causing any prejudice to him since the selfsame grounds which he has taken in the representation were put up by him when he was personally heard by the advisory board. He would submit that in view of the explanation offered to in the affidavit-in-reply the petitioner is not entitled to derive any benefit on the ground of delay in deciding the representation.

13. The learned APP would then submit that this Court has inherent limitations in causing any interference in the subjective satisfaction arrived at by the detaining authority. He would submit that the very fact that the petitioner was involved in several crimes under the Prohibition Act, three of which were in the recent past, that in itself was sufficient for the respondent No.1 - detaining authority to reach to a conclusion that the ordinary law was not enough to restrain him from indulging in the activities which were having the potential of adversely affecting the public order.

14. The learned APP would advert our attention to the definition of 'bootlegger' contained in the MPDA Act. He would submit that 'maintenance of public order' is the phrase used therein. If the respondent No.1 – detaining authority has not formed his subjective

satisfaction on the ground that the contraband seized from the petitioner was prejudicial to public health, the stand of the petitioner regarding absence of any opinion of the chemical analyzer that the contraband was injurious to public health, would not sustain. He would also point out that even the preventive action taken under Section 93 of the Prohibition Act had not the desired result since the petitioner continued to indulge in manufacturing liquor illegally.

15. Learned APP would also submit that since the petitioner does not claim to possess any licence under the Prohibition Act for manufacturing or possessing liquor that in itself is sufficient to brand him as a 'bootlegger' in view of the definition contained in the MPDA Act. He would submit that huge quantity of liquor was seized from his possession. In the absence of any licence under the Prohibition Act, he having been found in possession of huge quantity of liquor in itself is sufficient to demonstrate that his being at large was prejudicial to public order.

16. We have considered the rival submissions and perused the papers. As far as the ground regarding delay in taking decision by the State Government on the petitioner's representation, the importance of taking such decision as expeditiously as possible need not be over emphasized, in view of Article 22 (5) of the Constitution of India and in the light of the decisions of the Supreme Court in the matters of **Rama Dhondur Borade** and **Rashid Kapadia** (supra) and **Harish Pahwa Vs. State of U.P. and Ors.**; AIR 1981 Supreme Court 1126. However,

simultaneously, one also needs to refer to the decision in the matter of **Abdul Nasar Adam Ismail** (supra), which in turn refers to the decision in the matter of **Harish Pahwa** (supra) and more importantly the constitution bench judgment in the matter of **K.M. Abdulla Kunhi ; AIR 1991 Supreme Court 574**. Paragraph No.14 reads as under :

14. The principles which have been laid down by the Constitution Bench and the other judgments which we have referred to earlier can be summarized. Article 22(5) of the Constitution casts a legal obligation on the Government to consider the detenu's representation as early as possible. Though no time limit is prescribed for disposal of the representation, the constitutional imperative is that it must be disposed of as soon as possible. There should be no supine indifference, slackness or callous attitude. Any unexplained delay would be a breach of constitutional imperative and it would render the continued detention of the detenu illegal. That does not, however, mean that every day's delay in dealing with the representation of the detenu has to be explained. The explanation offered must be reasonable indicating that there was no slackness or indifference. Though the delay itself is not fatal, the delay which remains unexplained becomes unreasonable. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or the range of delay, but how it is explained by the authority concerned. If the inter departmental consultative procedures are such that the delay becomes inevitable, such procedures will contravene the constitutional mandate. Any authority obliged to make order of detention should adopt procedure calculated towards expeditious consideration of the representation. The representation must be taken up for consideration as soon as such representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu.

17. A careful reading of these observations would demonstrate that even though no time limit has been prescribed under Article 22 (5) it

is constitutionally imperative that the representation is decided as early as possible. It is only if the delay remains unexplained it would be in breach of the mandate. However, every day's delay need not be explained. The explanation must be reasonable and should indicate that there was no slackness or indifference. More importantly it has been held that though the delay itself is not fatal the delay which remains unexplained becomes unreasonable.

18. In light of the above principles, if one examines matter in hand, foremost circumstance that needs to be borne in mind is the fact that admittedly the petitioner submitted his representation on 16.08.2023 to the Superintendent of Central Prison Harsul. The affidavit-in-reply filed by the respondent No.1 – detaining authority mentions that on the same day with covering letter the representation was forwarded to the Additional Chief Secretary, Home Department (Exhibit R-6). By communication dated 17.08.2023 the Home Department forwarded it to his office which was received on 25.08.2023. By that communication the State Government had solicited his opinion on all the issues raised by the petitioner (Exhibit R-7). It was received in his office on 25.08.2023 in the inward section and was received by the Naib Tahsildar serving in the Home Department on 30.08.2023. After processing the file, by communication dated 04.09.2023 he called para-wise remarks from the sponsoring authority that is Superintendent of State Excise (Exhibit R-8). The Superintendent of State Excise forwarded the para-wise remarks on

08.09.2023. Thereafter, on the very next date that is 09.09.2023 through e-mail he forwarded his remarks to the State Government (Exhibit R-9). There was a public holiday on 10.09.2023. The State Government received those remarks on 11.09.2023 (Exhibit R-10).

19. In the affidavit filed by the Joint Secretary of the Government of Maharashtra, Home Department he has substantiated the stand of the respondent No.1 – detaining authority in his affidavit-in-reply about the former's office having received the remarks of the latter on 11.09.2023. It then mentions that the Section Officer after putting up an endorsement forwarded it to the Joint Secretary on 12.09.2023 who in turn forwarded it to the Additional Chief Secretary Home on 13.09.2023 and the Additional Chief Secretary Home considered the petitioner's representation and rejected it on 14.09.2023. The affidavit expressly mentions about such rejection having been communicated to the petitioner by speed post with letter dated 14.09.2023.

20. Taking into account the fact that all the aforementioned aspect expressly mentioned in the affidavits-in-reply filed by the detaining authority and the one filed by the Joint Secretary of the Home Department have not been sought to be controverted by the petitioner by filing any rejoinder. In our considered view, the statements in the affidavit give sufficient and reasonable explanation and clearly explain the time consumed for deciding the petitioner's representation. Similarly, there is no substance in the stand of the petitioner that the order of

rejection of his representation was never communicated to him. Consequently, the first ground for challenging the impugned order of detention is not sustainable in law.

21. As has been observed in the matter of Abdul Nasar Adam Ismail (*supra*), duration of the delay in deciding the representation has to be considered in the light of the explanation sought to be assigned for the delay. It is not the duration but the explanation that is relevant. It would always depend upon the facts and circumstances of each case and the explanation offered. A short delay wherein the representation dated 11.02.2014 which was decided on 04.03.2014 in the matter of Riyaz Ahmed Vs. State of Maharashtra and Ors.; Criminal W.P. No.643/2014 decided on 02.05.2014 was held to have not been explained, whereas, in the matter of Union of India Vs. Yumnam Anand M. @ Bochaand; 2007 CRI.L.J. 2439 decided by the Supreme Court, the representation dated 18.12.1989 rejected and communicated on 30.01.1990, in the facts and circumstances mentioned therein the delay was found to be properly explained. If on the facts and circumstances peculiar to the matter in hand, as we have indicated herein above, the petitioner's representation dated 10.08.2023 was decided 14.09.2023, sufficiently explains the delay and would not go to the root of validity of the detention order in view of the explanation offered which has gone without a demur.

22. Now, to the other ground being emphasised by the petitioner regarding absence of specific observation in the Chemical Analysis Report

that the contraband allegedly seized from the petitioner's possession was not fit for human consumption or was injurious or harmful to health. Admittedly, the Chemical Analyzer Reports do not expressly opine that the contraband was harmful or dangerous to human health. It is also true that coordinate benches of this Court in the matter of **Satyavan Vs. Commissioner; Criminal W.P. (ST) No.15879/2023** and **Prakash Vs. State ; Criminal W.P. No.1285/2023** have in similar set of circumstances considered this aspect of absence of opinion in the chemical analysis report that the contraband seized was injurious to human health and have concluded that it would go to the root of the validity of the detention order.

23. It is necessary to note that the respondent No.1 – detaining authority has not expressly resorted to any reasoning on the ground that the contraband seized from the petitioner was found to be injurious to public health. The reasoning assigned by him nowhere attempts to pursue that line. In other words though there is some reference in the statements of the anonymous witnesses regarding potential of consumption of liquor adversely affecting health, the respondent No.1 - detaining authority has not formed his subjective satisfaction on the ground that the contraband seized from the petitioner was injurious to human health. If that be so, absence of opinion in the chemical analysis report regarding the contraband being injurious to human health or consumption, would be inconsequential. When the impugned order does

not proceed on that line, the petitioner's stand that in the absence of such opinion of chemical analyzer the order of detention would vitiate is not legally tenable.

24. A similar argument was repelled by a coordinate bench of this Court in the matter of **Magar s/o Pansingh Pimple Vs. State of Maharashtra and Ors.; 2006 (1) Mah.L.J.(CRL) 28**. The observations can be found in paragraph No.8 which read thus :

8. Copies of the reports of the Chemical Analyst in both the matters, which are registered against the petitioner on 26.11.2004 and 30.12.2004, are available at paper book pages 107 and 108, respectively. In both the matters, analyst has reported the percentage of ethyl alcohol V. by V. and the reports conclude, by saying that, the material can be used for distillation of intoxicated liquor and that it is medicinal/antiseptic/toilet preparation, nor a flavouring material. Advocate Shri Gorhe, by placing reliance on the observations of a Division Bench of this High Court at Bombay, in the matter of Chandrakant alias Bala v. Satish Sahany, 1996 (2) Bombay Cr.C. 15, urged that, since the sample of the matter sent to Analyser has not been found to be harmful to cause danger to life and public health, this cannot be a valid ground for detention, as held in unreported judgment of the Bombay high Court in the case of Pandu Shetti v. Commissioner of Police, in Criminal Writ Petition No. 940 of 1988, decided on 6.10.1988.

The argument is unsustainable for two reasons. Firstly, the report of the Analyser is not relied upon, for demonstrating that the preparation, which was found with the petitioner at the time of raids on 26.11.2004 and 30.12.2004, was dangerous to public health. The reports are relied upon to show that, the State has made out a prima facie case against the petitioner, regarding manufacturing of intoxicant material in breach of the provisions of the Bombay Prohibition Act. As pointed out by learned Counsel for the Petitioner, by relying upon the observations of another Division Bench of Bombay High Court, in the matter of Ramesh Ghanekar v. R.D. Tyagi, 1986 Cri.L.J. 1421 in order to justify the order of detention under Section 3

of the MPDA Act, the Detaining Authority is required to satisfy itself of two ingredients, (i) the petitioner is bootlegger within the meaning of clause (b) of Section 2 of the Act, and (ii) he is acting in any manner prejudicial to the maintenance of public order. The reliance on the reports of the Chemical Analyser is mainly for the purpose of demonstrating that the Petitioner is a bootlegger.

We are in respectful agreement with the reasoning.

25. It is in this context, it is necessary to bear in mind the fact that the impugned order of preventive detention under the MPDA Act has been passed on the ground that the petitioner is a 'bootlegger'. The definition of 'bootlegger' contained in Section 2(b) reads as under :

Section 2(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 ;

26. Bearing in mind this definition, it is quite clear that the phraseology merely indicates that it is sufficient if the activity of the person is prejudicial to the maintenance of public order. It conspicuously does not mention that the activity has to be also prejudicial to public health. If that is so, when the order of detention also does not resort to reasoning that the contraband seized from the petitioner was dangerous to human health, in our considered view, absence of opinion in the chemical analysis report that the contraband seized from the petitioner

was injurious to health would be of no consequences and will not vitiate the impugned order.

27. There is one more aspect which needs to be emphasised as regards the contraband seized from the petitioner's possession. Apart from the fact that he was allegedly involved in manufacturing/possessing illicit liquor, as can be noticed, the percentage of ethyl alcohol found in the three samples in respect of the latest three crimes was 31%, 41% and 26% in water v/v. Meaning thereby that there is no standardization or quality check which otherwise could have been there had there been production of such liquor with a requisite licence. Precisely for this reason, even we find no illegality in the subjective satisfaction arrived at by the respondent No.1 – detaining authority based on the opinion given by the Medical Officer of Primary Health Avrala that by virtue of such varied percentage of ethyl alcohol there is a possibility of even there could be percentage which would have potential of being injurious to human health.

28. As far as the statements of the two anonymous witnesses are concerned, the submission of the learned advocate for the petitioner is to the effect that accepting the statements of the witnesses, the activity of the petitioner alleged by these two witnesses at the most would show the petitioner to be a 'dangerous person' which would fall short to substantiate the version of the detaining authority seeking to brand him as a 'bootlegger'.

29. A careful perusal of the statements of these two witnesses would reveal that witness 'A' has been knowing the petitioner for 4 to 5 years. He was running a den of liquor. Many criminals gather there and create fearful atmosphere. Some people would even vomit after consuming illicit liquor and lie on road. Foul smell spread across the area and due to fear nobody was ready to file complaint against the petitioner. He also narrated that in the first week of June 2023 at about 20.30 hours when he was returning home the petitioner accosted him and at the point of knife threatened him by questioning him for informing about petitioner's activities to police and declaring that he would not stop manufacturing illicit liquor.

30. Witness 'B' also stated that he was knowing the petitioner for 5 to 6 years who was a goon and a bootlegger. There was feeling of insecurity in the people from Aurala. He also spoke about foul smell due to manufacturing of illicit liquor, women, girls and children finding it difficult in moving freely in the area, many of the resident migrated from that place. He lastly stated that in the last week of June 2023 at about 19:30 hours when he was going home, petitioner accosted him and threatened him by holding his collar for being smart and objecting to his activities and slapped him twice and in spite of he having raised alarm nobody turned up to intervene and the petitioner thereafter having left by threatening him of dire consequences if anybody would raise voice against him. We see no reason to discard these statements and version of

these two witnesses merely on the ground that they had not made any attempt to set the criminal law in motion. A common man would think twice before resorting to law if he was to take cause against the persons involved in illegal activities. That is a common human tendency and the experience.

31. The learned advocate for the petitioner has been relying upon the recent decision of the Supreme Court in the matter of **Pesala Nookaraju** (supra). She would submit that mere registration of several crimes under the Prohibition Act in itself would not be sufficient to substantiate the subjective satisfaction of the respondent No.1 – detaining authority, that his being at large would be prejudicial to the public order. In that matter the grounds of detention furnished to the detenu therein were regarding registration of cases from January 2021 to March 2022 against him under A.P. Prohibition (Amendment) Act, 2020 for distributing, storing, transporting and selling liquor, further observing that it was causing huge damage to the public health as well as public peace and tranquility. The chemical examiner's report opined that it was illicitly distilled liquor which was unfit for human consumption and injurious to health. In the backdrop of such fact situation the Supreme Court culled down the law by referring to several decisions to point out succinctly the difference in the concept of 'law and order' and 'public order'. In the context of the peculiar facts and circumstances and the law discussed following observations can be found in paragraph Nos.64 and 65 which

are being relied upon by the learned advocate for the petitioner :

64. *Thus, from the various decisions referred to above, it is evident that there is a very thin line between the question of law and order situation and a public order situation, and some times, the acts of a person relating to law and order situation can turn into a question of public order situation. What is decisive for determining the connection of ground of detention with the maintenance of public order, the object of detention, is not an intrinsic quality of the act but rather its latent potentiality. Therefore, for determining whether the ground of detention is relevant for the purposes of public order or not, merely an objective test based on the intrinsic quality of an act would not be a safe guide. The potentiality of the act has to be examined in the light of the surrounding circumstances, posterior and anterior for the offences under the Prohibition Act.*

65. *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.*

32. A careful perusal of these observations in our considered view clearly demonstrates that in the peculiar facts and circumstances and the grounds based on which the order of preventive detention was

passed therein the observations were made.

33. In the matter in hand, as we have discussed herein above, the impugned order of detention has not been passed on the ground that the illicit liquor seized from the possession of the petitioner was injurious to health so that opinion of the chemical analyzer in that regard would be necessary. Apart from the fact that in spite of the several offences having been registered against the petitioner and even preventive action having been taken, it did not apparently yield any desired effect. Based on the statements of couple of anonymous witnesses the detention order mentions above continuous activity of the petitioner having adverse effect on the public order.

34. It is therefore apparent that the facts in the matter in hand are peculiar and the observations in the matter of **Pesala Nookaraju** (supra) cannot be pressed into service as is being submitted by the learned advocate for the petitioner.

35. Turning to the submission of the learned advocate for the petitioner to the effect that the petitioner was merely issued with notice under Section 41-A of the Code of Criminal Procedure and even the Investigating Officer was never required to arrest him would be a circumstance repelling the stand of the respondent No.1 – detaining authority that the ordinary law would not be sufficient to prevent the petitioner's alleged activities, we are of the considered view that the circumstance that in spite of the petitioner having involved in as many as

twelve crimes of which eleven are in respect of offences under the Prohibition Act including the latest three ones, in itself is sufficient to demonstrate that irrespective of having been prosecuted for these many times he is continuing with the alleged activity of manufacturing/possessing illicit liquor is demonstrative of the fact that the ordinary law of the land has been unable to abate his activities as a bootlegger. Pertinently, in spite of a preventive action having been initiated against him under Section 93 of the Prohibition Act in the month of March 2023 he has been involved in subsequent two offence under Section 65(e) of the Prohibition Act in the month of June 2023. This further substantiates the inference drawn by the respondent No.1 – detaining authority that the ordinary law of the land was falling short to prevent the petitioner's activities as a bootlegger.

36. It is to be noted that Section 41-A (1) of the Code of Criminal Procedure is to be resorted to by the Investigating Officer before arresting an individual and that provision would regulate his powers to arrest an individual. Needless to state that the arrest contemplated under the Code of Criminal Procedure for carrying out the investigation into a crime by resorting to custodial interrogation would be essentially for completing the investigation. Suffice for the purpose to observe that in the matter of **Arnesh Kumar Vs. State of Bihar and Anr.; (2014) 8 SCC 273** the Supreme Court has laid down several guidelines which have to be borne in by the investigating Officer before arresting a person. We are

pointing out the law to demonstrate that the submission of the learned advocate for the petitioner that the very fact that the I.O. did not feel necessary to arrest the petitioner although the crimes were registered would be indicative of the fact that even he did not require the petitioner to be sent behind the bars, is fallacious. The arrest for carrying out investigation into a crime would be for a limited purpose of facilitating the Investigating Officer to complete the investigation. Such arrest cannot be looked upon as an action which can be aimed at preventing the accused from indulging in a similar activity rather any such approach would be inconsistent with the mandate of law laid down in **Arnesh Kumar** (supra). The action of preventive detention under the preventive detention laws would be aimed at abating the specific activities of an individual whereas the arrest for the purpose of investigation cannot be aimed at preventing him from indulging in any such activity. Precisely for this reason, we are not in agreement with the submission of the learned advocate for the petitioner that petitioner being not arrested in the crimes should be taken into account to draw an inference that even the I.O. did not feel it necessary to abate his unlawful activities. In short the purpose of arrest in respect of crime is aimed at conclusion of the investigation, whereas, detention of a person under the preventive detention law is to prevent him from indulging in certain activities.

37. In view of the above, in our considered view, the respondent No.1 – detaining authority has arrived at a subjective satisfaction based

on the objective material discussed herein above which by no stretch of imagination could be said to be arbitrary and capricious so that this Court could cause inference under Article 226 of the Constitution. None of the grounds being put forth by the petitioner to challenge the impugned order is sustainable in law and on facts.

38. The writ petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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