



Corrected order (correction has been carried out in view of speaking to minutes order dated 09.02.2024)

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

Criminal Writ Petition No. 1527 / 2023

Dhanubai @ Dhanno Yashvant Nettlekar

Age : 50 years, R/o Harivithal Nagar, Jalgaon,

Tal and District Jalgaon.

...Petitioner

Versus

1. State of Maharashtra
Home Department (Special)
Mantralaya, Mumbai.
2. The District Magistrate, Jalgaon,
Office of the District Magistrate, Jalgaon.
3. The Superintendent,
Woman Central Prison, Akola,
District Akola.
4. The Superintendent of Police, Jalgaon
7, Mahatma Gandhi Rd, Jilha Peth,
Pratap Nagar, Jalgaon – 425001.
5. Police Inspector,
Ramanandnagar Police Station, Jalgaon
Near Govt Engineering College,
Kolhe Nagar, Jalgaon 425001.

...Respondents

— — —

Mr. Vivek Punjabi h/f Mr. Pratik P. Kothari, Advocate for the Petitioner.

Mr. M.M. Nerlikar, Addil.P.P. for Respondent /State.

— — —

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

RESERVED ON : 12 JANUARY 2024

PRONOUNCED ON : 8 FEBRUARY 2024

JUDGMENT [Per Shailesh P. Brahme, J.] :

. Rule.

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

Heard the learned Counsel for the litigating sides finally.

3. The petitioner has questioned an order dated 31.08.2023 passed by the respondent no.2 detaining the petitioner by branding him as a 'bootlegger' under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience). The impugned order is approved by the respondent no.1 under Section 3(3) of the MPDA Act, on 17.10.2023.

4. The action under the provisions of the Act was taken against the petitioner on the basis of the offences registered against her, the preventive actions under Section 93 of the Maharashtra Prohibition Act and the two statements of the anonymous witnesses recorded

against her. The details of the offences registered against the petitioner is recorded in paragraph no.4 of the impugned grounds of detention. The gist of the depositions of the witnesses is recorded in paragraph no.4.5 of the order of detention.

5. Considering the activities of the petitioner, the respondent no.2/detaining authority formed subjective satisfaction in paragraph no.8 that the petitioner falls in the categories of 'dangerous person' and 'bootlegger'. Her being at large is harmful to the lives of the public in general and it would disturb public tranquility, law and order and general public peace.

6. The petitioner has been held to be indulging in illegally selling liquor. It is further recorded that the reports of the chemical analysis collected during the course of investigation of various offences registered against her, show percentage of the alcohol found in the water to the tune of 24%, 20%, 8%, 23%, 14%, 9%, 18%. It is held to be hazardous for consumption of general public and it is harmful for human life which is likely to cause jaundice, accumulation of water in stomach, cancer. It is likely to deplete blood level in the body, giving rise to the risk of death.

7. Learned Counsel for the petitioner submits that the petitioner

was acquitted in ten criminal cases registered under Section 65 of Maharashtra Prohibition Act from time to time. In two cases, the proceedings were closed under Section 258 of the Code of Criminal Procedure. Only three actions were initiated under Section 93 of the Prohibition Act. The petitioner has suffered conviction only in one case. Therefore according to the Counsel, this material is not sufficient to bring the petitioner within the ambit of dangerous person or a bootlegger. Ordinary course of laws would be sufficient to deal with the activities of the petitioner.

8. He would further submit that the reports of the chemical analysis collected during the investigation of the offences registered against the petitioner, do not spell out any opinion that the consumption of the contraband would be dangerous for human consumption and hazardous to public health. Without there being any experts' opinion, the respondent no.2/detaining authority has arrived at conclusion in paragraph no. 10 and 11 of the impugned order which reflects lack of application of mind.

9. Learned Counsel for the petitioner submits that petitioner was not arrested in any of the matters. Only on couple of occasions, she was served with notice under Section 41 (A)(1) of Code of Criminal Procedure which shows that the activity alleged against the petitioner

is not of serious nature, requiring arrest. This would cast doubt on the subjective satisfaction of the detaining authority. It is further submitted that though the petitioner was running business since 8 to 10 years prior to the impugned action, no offence as such was registered against her. The criminal activities of the petitioner is confined to the offences under the provisions of Maharashtra Prohibition Act and not under any other provisions of Penal Laws. Hence it would be perverse to brand her as dangerous person and to detain her.

10. Lastly learned Counsel would submit that entire action of the respondent no.2 and the approving authority is without application of the mind and the activities of the petitioner could have been curbed by the regular criminal laws instead of resorting to MPDA Act.

11. To buttress the submissions, learned Counsel for the petitioner seeks to rely upon following judgments :

- (i) Devidas Lalji Ade Vs. State of Maharashtra & Ors.
2023 ALL MR (Cri) 130
- (ii) Prakash Chandrakant Kanjar Vs. State of Maharashtra & Anr.
Criminal Writ Petition No.1285/2023.
- (iii) Sandeep Govind Pawar Vs. State of Maharashtra & Ors.
2023 ALL MR (Cri) 698.
- (iv) A.ST. Arunachalam Pillai Vs. Southern Roadways Ltd. & Anr.
AIR 1960 SC 1191.

12. The learned APP referred to the affidavit in reply to oppose the petition and to justify the action taken against the petitioner by the detaining authority which is confirmed by the respondent no.1. He referred to the criminal antecedent of the petitioner, the papers of investigation especially reports of the chemical analysis collected during the course of investigation of the various offences against her. Learned APP would refer to paragraph no.5 and 6 of grounds of detention to demonstrate the material considered to arrive at subjective satisfaction and objectively assessing her activities. He would refer to paragraph no.7 to 12 of the grounds of order of detention to demonstrate as to how subjective satisfaction is arrived at by the detaining authority.

13. Learned APP submitted that the petitioner has indulged in the criminal activities repetitively and has created a terror in the vicinity. A deterrent action was required to be taken considering the notoriety of the petitioner. The acquittal recorded against the petitioner in the matters is not the sole relevant factor. Despite the preventive actions taken against her, she has not stopped indulging in the criminal activities.

14. Learned APP submitted that the reports of the chemical analysis collected in the various offences registered against the petitioner

demonstrate the percentage of the alcohol. The detaining authority has rightly held that the consumption of a liquor is injurious to the public health. He would vehemently submit that the activities of the petitioner could not have been curbed by the regular criminal laws and therefore the drastic action was required to be taken against her.

15. It is further submitted that the arrest of the petitioner is not relevant consideration for taking action under the provisions of the MPDA Act. Though the petitioner was served with a notice under Section 41 (A)(1) of the Code it would not mean that the activities of the petitioner is of the lesser evil. Learned APP would submit that the impugned action seeks to achieve two purposes, deterrent and reformative.

16. Learned APP seeks reliance upon the following judgments :

- (i) Pesala Nookaraju Vs. Government of Andhra Pradesh;
Criminal Appeal No.2304/2023
- (ii) Ambhika Magasvargiya Mastyavaivasaik Sahakari Sanstha Maryadit Vs. State of Maharashtra & Ors., W.P. No.8607/2019
- (iii) Ramesh Balu Chavan Vs. Commissioner of Police Solapur, 2017 ALLMR (Cri.) 3683

17. Before we enter into the merits of the matter, it would be relevant

to refer to the objections raised by the learned APP Mr. Mahendra Nerlikar, for following submissions made by the petitioner for the first time in the High Court :

- (i) The petitioner was acquitted from ten offences and has not been arrested in any of the offences and as such there is no incriminating material against him to arrive at subjective satisfaction.
- (ii) The petitioner was being served only with a notice under Section 41 (A)(1) which is indicative of the fact that his arrest was not required.
- (iii) There is no subjective satisfaction as the reports of the chemical analysis which are sought to be pitted against the petitioner do not spell out opinion that consumption of contraband was injurious to public health.

18. He would submit that the petitioner was granted leave to amend the petition by order dated 22.12.2023. Without amending memo, the learned Counsel for the petitioner preferred to work out the matter and argued certain points which are not incorporated in the grounds of objection of the petition. Learned APP submits that he is surprised by the submissions of the petitioner and he has no opportunity to deal with the submissions as affidavit-in-reply was already filed. Learned APP

submits that if a petition is filed under Chapter XVII, Rule 1 of High Court Appellate Side Rules, it is incumbent to raise specific grounds of objections.

19. Learned Counsel for the petitioner has countered the above submissions. He would submit that already grounds of objection especially ground no. F and G have been raised and there was sufficient opportunity to the respondent to counter the submissions. He would submit that the submissions advanced by the petitioner are borne from the grounds of detention and record. No submission is advanced which is alien to the reasoning or the grounds of objection of the detaining authority. He would further submit that the submissions go to the root of the matter and it is permissible to raise such grounds.

20. Learned APP has relied upon the order passed by the Division Bench on 14.02.2022 in the matter of Ambhika Magasvargiya Mastyavaivasaik Sahakari Sanstha (supra) as well as Ramesh Balu Chavan (supra) to buttress the preliminary objection. Learned Counsel for the petitioner has countered it by relying upon judgments of the Supreme Court in the matter of A.ST. Arunachalam Pillai (supra).

21. We have considered the rival submissions of the parties on the

ground of preliminary objection. The petition has been filed under Article 226 and 227 of the Constitution of India. The grounds of detention cum reasons assigned by the respondent no.2/detaining authority are assailed by the petitioner. The present matter falls under the provision of Chapter XVII Rule 18 of the Appellate Side Rules. If petition is purely filed under Article 226 of the Constitution of India then it would fall under Chapter XVII Rule 1. In the present matter, the petitioner is not invoking original jurisdiction of the High Court. The composite jurisdiction original and supervisory is being invoked by the petitioner. Therefore the order which is sought to be relied by the learned APP in the matter of Ambhika Magasvargiya Mastyavaivasaik Sahakari Sanstha (supra) would have no application to the matter in hand.

22. We have not been pointed out any submission made by Counsel which is not dealt with by the detaining authority. Neither anything is being pointed out by the respondents which is being raised for the first time in the writ petition. The submissions are being borne from the record produced before the detaining authority. We are of the considered view that when the High Court is examining sustainability of orders of detention referring to the grounds of objections and reasons for arriving of subjective and objective satisfaction, no separate ground

of objection need to be incorporated in the memo when those are already borne from the record.

23. Only when the submission which is totally alien or which is outside the record placed before the detaining authority or which is being pressed into service for the first time in the High Court need an incorporation in the memo of petition. The petitioner has already raised ground no. F and G. The submission in respect of purport of report of chemical analysis or purport of notice under Section 41 (A)(1) of the Code, are borne from the record. We find the preliminary objection raised is unsustainable. If the submissions go to the root of the matter then those are required to be considered by the Writ Court. We find that the submissions raised by the petitioner are substantive and need adjudication.

24. We have considered the submissions of the learned Counsel on merits. We have gone through the relevant record with the assistance of learned Counsel. The impugned order of detention was passed on 31.08.2023. The proposal under Section 3(3) of the Act was approved on 11.09.2023 by the respondent no.1. Thereafter the matter was placed before the advisory Board. The petitioner was heard on 09.10.2023. The Advisory Board confirmed the order of detention by

order dated 17.10.2023.

25. Learned Counsel for the petitioner submitted that the detaining authority has recorded in paragraph no. 11 that the contraband seized from the petitioner in various offences is harmful to the human lives and considering the percentage of the alcohol, it is hazardous for human consumption. We have gone through the reports of the chemical analysis in respect of the liquid collected during the course of investigation of the respective offences under Section 65 of the Maharashtra Prohibition Act. We do not find that in any of the reports, there is a specific opinion of the analyzer that consumption of the liquid would be dangerous to human lives. We have not been pointed out any material on record on the basis of which, the subjective satisfaction has been arrived at by the detaining authority. The respondent no.2/detaining authority is not an expert. To come to conclusion that consumption of contraband having particular percentage of alcohol would be hazardous to public lives, need an expert's opinion. In the absence of the exercise required to be undertaken by the detaining authority to confirm from the experts, the consequences and repurcation recorded in paragraph no.11 of the grounds of detention are unsustainable and perverse.

26. A useful reference can be made to the judgment rendered by a co-

ordinate bench in the matter of Satyavan Shakha Rathod Vs. Commissioner of Police and Others in Criminal Writ Petition Stamp No. 15879/2023 decided on 25.10.2023 which is squarely applicable to the facts of the present matter for quashing the detention order. Similar type of arguments were noted by the Apex Court in the matter of **District Collector, Ananthapur Vs. V. Laxmanna**, (2005)3 SCC 633. Paragraph No.7 and 8 reads as follows :

“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.”

27. In this regard, learned Counsel for the petitioner is justified in

placing reliance upon the judgments of Prakash (*supra*); the relevant paragraph 15 reads as follows :

“15. So far as regards the challenge on the other ground is concerned, it is to be stated that, registration of the last two crimes, being C.R. No.31/2023 and 159/2023 and two in-camera statements appear to have triggered the sponsoring authority to put up a proposal for petitioner’s detention. Admittedly, C.A. reports of the illicit liquor seized from the petitioner appear to have not been available for being presented before the detaining authority. There was, therefore, nothing before the detaining authority to reach to a conclusion that the illicit liquor seized from the petitioner in those two crimes was unfit for human consumption. Although there were C.A. reports pertaining to the illicit liquor seized from the petitioner in connection with the other crimes relied on, none of the C.A. reports indicate the said liquor was unfit or hazardous for even consumption although it contained ethyl alcohol in different percentage. The facts of the case in case of Pesala (*supra*) would indicate the seized illicit liquor therein was subjected to chemical analysis. The C.A. reports indicate the same was unfit for human consumption. It is true that the detaining authority has, in the order of detention, observed the consumption of illicit liquor was harmful.

However, there was no material before him to substantiate his view. In case of Pesala, the Apex Court, observed in paragraph No.65 as under :

“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 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.”

28. Learned Counsel for the petitioner vehemently submitted that there is only one conviction recorded against the petitioner and in almost ten matters, she was acquitted. According to him the alleged criminal activity of the petitioner can be dealt with by the regular criminal law and resorting to MPDA Act is not required. We have considered the criminal antecedents of the petitioner. It reveals from record that there are in all sixteen offences registered against her. All the offences are under the provisions of Section 65(e) of Maharashtra Prohibition Act. Out of them, she was acquitted in ten offences. Only in case of offence bearing No.65/2021 there is imposition of fine of Rs.300. In case of two offences, the matter was directed to be closed under the provisions of Section 258 of the Code of Criminal Procedure. In three cases, the proceedings are still pending at various levels.

29. It also reveals that the preventive action has been taken against the petitioner under Section 93 of the Maharashtra Prohibition Act on three occasions. After the last preventive action registered on 24.07.2023 bearing no. 5/2023, only one offence bearing C.R. No. 267/2023 has been registered under the provision of Section 65(e) of

the Prohibition Act. There appears to be tendency to indulge in offences under the provisions of Maharashtra Prohibition Act. There is no record available that any offence under other penal provisions has been registered and action has been taken against the petitioner. After last preventive action registered on 24.07.2023, only one offence bearing C.R. No.267/2023 has been registered against her which cannot be said to be alarming number. We do not find any aggravated form of activity of the petitioner. We find that the petitioner could have been dealt with under regular criminal law instead of resorting to provision of MPDA Act.

30. The grounds of objection of detention recorded by respondent no.2 shows that in paragraph no.8, it is recorded that the petitioner falls within the meaning of dangerous person as well as she is also branded as a bootlegger. We are of the opinion that there is material on record to suggest that petitioner can be branded as a bootlegger. But there is no evidence on record to bring her within purview of 'dangerous person'. The petitioner appears to be involved in a peculiar type of offence under the prohibition act. We do not find that any other offences registered against her under Indian Penal Code or any other criminal law.

31. Learned Counsel for the petitioner has also referred to the

statements of two anonymous witnesses. The record shows that the petitioner was indulging in the illegal activity of selling of liquor for last 8 to 10 years preceding action of detention. The witnesses also referred to the terror established by the petitioner and her notorious activities of threatening, abusing the persons concerned. During this period no offence under Chapter XVI or XVII of Penal Code has been registered against her. Therefore, we find force in the submissions made by the petitioner by referring to paragraph no.15, 16 and 18 of the judgment of Devidas Lalji Ade (supra). They are as follows :

“15. That leaves three registered offences against the Petitioner i.e. C.R.Nos. 125/2021, 373/2021 and 468/2021 referred to herein above. Admittedly, in none of these offences the Petitioner was arrested. He was merely served with a notice under Section 41-A(1) of the Code of Criminal Procedure, 1973 in each offence. That means the notice was given to the Petitioner where his arrest was not required. Thus, in all these registered offences, the investigating agency did not feel it necessary to arrest the Petitioner. In Paragraph No.4 of the grounds there is a reference that the action was initiated under Section 93 of the Maharashtra Prohibition Act for execution of bond on 06.09.2021. The bond was for security. Those proceedings were dropped on 24.11.2021. No action was taken for the alleged breach of the bond.

16. Thus, it is quite clear that action was knowingly not taken by the police authorities under the ordinary law. In this view of the matter, resorting to this extraordinary step of detaining the Petitioner by way of preventive detention order can not be justified. In this context, observations of the Hon'ble Supreme Court in the case of Mallada K Sri Ram Vs. State of Telangana and others reported in 2022 SCC OnLine SC 424 are important. It is observed in Paragraph No.15 thus -

“A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the “maintenance of public order”. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order

has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law.”

18. In the present case, the Petitioner was not even arrested in the three registered offences and, therefore, these observations are applicable to the present case. Learned APP submitted that the Petitioner’s activities are prejudicial to the maintenance of public order, however, the detaining authority has failed to record a satisfaction as to why ordinary law of the land was ineffective in curbing his activities. Merely stating that ordinary law of the land was not effective to curb his activities is not enough. In the Petitioner’s case no steps were taken under normal law to curb his activities and hence it can not be said they were ineffective. Therefore resorting to passing of the detention order was not necessary. It shows non-application of mind on the part of the detaining authority. In this situation, it was not necessary to have resorted to this extraordinary remedy without exercising the powers under the ordinary law.”

32. The learned Counsel for the petitioner has also sought reliance upon the judgment of Prakash (supra). Paragraph no.23 is the relevant to support the submissions of the petitioner which is as

follows :

“23. The aforesaid two in-camera statements have been verified by the Sub-Divisional Police Officer. Relying on this statement, the learned A.P.P. would submit that, the activities of the petitioner were necessarily prejudicial to maintenance of public order. He would further submit that, it is well settled that, whether material was sufficient or not is not for the Court to decide by applying objective basis. The detaining authority had rightly arrived at the subjective satisfaction based on the two in-camera statements. In our view, in first instance, we are of the view that, it is very risky to rely on the only in-camera statements to sustain the order of detention in the facts and circumstances of the case. Close reading of both those statements no way lead to us to infer that the persons with whom the witness had a wrangle, had consumed illicit liquor at the petitioner’s liquor den. The petitioner, giving threats to those 2 witnesses and his associates manhandling them, was at the most, in the facts and circumstances of the case, an issue of maintenance of law and order. The petitioner has been allegedly running business of illicit liquor for 4 – 5 years next before the action of his preventive detention was taken. There is not a single incident reported at the police station alleging him to have abused and assaulted anyone. No crime for the offences punishable under any of the Sections of the Indian Penal Code has ever been registered against him with such allegations. It is, therefore, reiterated that, the in-camera statements taken at their face value, it would at the most be a question of law and order. Based on such statements alone, the order of detention, in our view, in the present case, does not sustain. For all the aforesaid reasons, we find the petition deserves to be allowed. Hence the order :

ORDER

- (I) The Criminal Writ Petition is allowed in terms of prayer clause (b) and (c).
- (ii) The petitioner be set at liberty forthwith if not required in any other case.”

. We are of the opinion that this aspect of the matter is not properly appreciated by the detaining authority. There is no subjective satisfaction on this aspect of the matter and the impugned order is

unsustainable.

33. Learned Counsel for the petitioner has also made submissions on the purport of notice under Section 41(A)(1). However our bench has taken a view in the matter of Vinod (*supra*). The relevant portion of paragraph no.36 is as follows :

“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.”

. We are not inclined to approve submissions in respect of notice under Section 41(A)(1) of the Code.

34. Learned APP has referred to judgment of Pesala (supra) especially paragraph no. 64, 65 and 71. The judgment of the Supreme Court is distinguishable on the facts. We have already expressed our reservations for the subjective satisfaction recorded by the respondent no.2 in the case in hand. Similarly, we are not in the agreement with learned APP for relying upon the judgment of the Division Bench in the matter of Ramesh Balu Chavan (supra).

35. Learned APP has not made any submissions on the application of Section 5A of the Act, albeit there is a plea raised in the affidavit-in-reply. We have already recorded that the subjective satisfaction of the detaining authority is not only doubtful but perverse. The material on record is not adequate to take recourse to the drastic provision of action under the Act. The criminal antecedent and the statements of two witnesses are not sufficient to show involvement of the petitioner to the criminal overtact under Penal Code or other Criminal Law. The grounds of detention which are the basis for passing impugned order are unsustainable. We do not find impediment of Section 5A of the Act

to quash the impugned order.

36. For the reasons stated above, we are inclined to allow writ petition. We therefore pass following order.

ORDER

(i) The order dated 31.08.2023 passed by the respondent no.2/detaining authority, detaining the petitioner under Section 3(2) of MPDA Act is quashed and set aside.

(ii) Needless to state that the order of approval passed by the respondent no.1 dated 17.10.2023 is also unsustainable and quashed and set aside.

(iii) The petitioner shall forthwith be released from imprisonment. The rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]