



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

CRIMINAL WRIT PETITION NO. 1533 OF 2023

Hirabai Kondiba Kale,
Age 55 years, Occ. Household,
R/o. Barmachiwadi, Tq. Kallam, Dist. Osmanabad.

... **Petitioners**

VERSUS

- 1) The State of Maharashtra
Through the Secretary Home Department
(Special) Mantralaya, Mumbai.
- 2) The Collector and the District Magistrate
Osmanabad.
- 3) The Superintendent of Police,
Osmanabad.
- 4) The Sub Divisional Officer,
Kallam, Dist. Osmanabad.
- 5) The Police Inspector, Yermala Police Station
District Osmanabad

... **Respondents**

...

Advocate for Petitioner : Mr. D.A. Madake
APP. for Respondents/State : Mr. K.N. Lokhande

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

**RESERVED ON : 15.01.2024
PRONOUNCED ON : 19.01.2024**

JUDGMENT : (PER : MANGESH S. PATIL, J.)

By invoking Article 226 of the Constitution of India the petitioner has been challenging the order passed by the respondent no. 2 dated 28.09.2023 thereby detaining her under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter 'MPDA Act').

2. Heard. Rule. Rule is made returnable forthwith. Learned A.P.P. waives service. At the joint request of the parties the matter is heard finally at the stage of admission.

3. The learned advocate for the petitioner submits that the impugned

order is a product of non application of mind. He has arrived at a subjective satisfaction arbitrarily. It is based on only two offences registered under Section 65(e) of the Maharashtra Prohibition Act (hereinafter 'the Act'). Even the investigating officer did not feel it necessary to arrest the petitioner who was merely served with a notice under Section 41A of the Code of Criminal Procedure. There is nothing to demonstrate that ordinary law was falling short to prevent the petitioner from the alleged illegal activity. No offence against body or property was ever registered against her. There is no Chemical Analysis report opining about the contraband seized from the petitioner was injurious to health, still the detaining authority has jumped to the conclusion that it was injurious to health of public.

4. The learned advocate would rely upon the decision of this Court in the matter of **Sandeep Govind Pawar Vs. State of Maharashtra; 2023 ALL M.R. (Cri.) 1698**

5. Per contra, the learned A.P.P. by referring to the affidavit in reply filed by the respondent no. 2 would submit that he has arrived at the subjective satisfaction based on the objective material. Couple of cases for manufacturing and selling illicit liquor were registered. Even a preventive action under Section 93 of the Act was resorted to. However, such action under the ordinary law was insufficient to prevent her activities. She was again involved in a recent crime for an offence punishable under Section 65(e) of the Act. The petitioner is a known bootlegger. Due to her activity there is risk to the public health which has resulted in adversely affecting public order. Statements of couple of witnesses have been recorded. These witnesses have spoken about the terror in their mind due to the activities of the petitioner. The timeline as is laid down in the law has been followed and the order of detention has been confirmed by the State Government. The opinion of the advisory board was obtained. She availed opportunity of being heard by the advisory board. Though the concerned investigating officer had simply issued notice to the petitioner under Section 41-A of the

Code of Criminal Procedure but had not felt it necessary to arrest her, that cannot be a ground to question the order of preventive detention. Both these provisions operate in different field.

6. We have carefully considered the rival submissions and perused the papers. At the outset it is necessary to emphasize that the petitioner is putting up a challenge to the order of preventive detention on specific grounds as indicated in the petition and cannot be allowed to travel beyond it.

7. It is pertinent to note that essentially the respondent no.2 has arrived at the subjective satisfaction only on the ground of registration of two crimes in the year 2022 and the latest crime committed in July 2023 for the offences punishable under Section 65(e) of the Act and preventive action initiated under Section 93 of the Act. Though the order of detention speaks about the petitioner having indulged in manufacturing illicit liquor for number of years, except pointing out the three offences under Section 65(e) of which the first two were allegedly committed in the year 2022 and the latest one in the year 2023, there is absolutely no material to substantiate this statement in the impugned order. Again, though a prohibitory action under Section 93 of the Act was initiated against the petitioner in the year 2022, a subsequent similar action though was initiated in the year 2023 has been subsequently dropped.

8. The statements of both the anonymous witnesses were recorded on the same day that is on 03.07.2023. Both are almost identical and state that the petitioner has been distilling liquor and selling it from her home. Many villagers got addicted to it. They disturbed public peace under the influence of liquor. Women and girls avoid passing by her house. She and her husband threaten and assault persons who make complaints to police about her activity. Witness 'A' has not stated about any specific incident but witness 'B' has stated that on 20.04.2023 when he was returning home, a

drunkard accosted him, caught hold by collar and started shouting. The petitioner and her husband arrived after hearing commotion and then she abused him. When he tried to tell her about the drunkard having abused him, she threatened him of dire consequences.

9. In our considered view, mere registration of couple of crimes under Section 65(e) of the Act in the year 2022 and occurrence of latest crime of similar kind in the year 2023 after lapse of almost one year since registration of the earlier crimes and the action initiated against her under Section 93 of the Act could not be said to be sufficient enough to substantiate the inference drawn by the respondent no. 2 about her being at large would be injuries to the public health and order.

10. Rather there is no record to demonstrate that the chemical analyzer had opined that the substance seized from the petitioner was injuries to health.

11. Even the statements of witness no. 'A' is as vague as it could be. Though the witness no. 'B' has stated about some incident about his personal experience, admittedly, at no point of time any crime was registered against the petitioner for having committed any offence against body or property at any point of time. In our considered view, the material relied upon by the respondent no. 2 and discussed herein above is too scant for anybody to reach a subjective satisfaction of the kind arrived at by the respondent no. 2.

12. True it is that the petitioner cannot be allowed to take a stand that the investigating officers having merely served her a notice under Section 41-A of the Code of Criminal Procedure and did not find it necessary to arrest her could have any bearing albeit, this Court has resorted to such a reasoning in the matters of *Prashant Bharat Datar Vs. State of Maharashtra and another (Criminal Writ Petition No. 914/2021)(Nagpur Bench)*, *Devidas Lalji Ade Vs. State of Maharashtra and others (Criminal Writ Petition No. 469/2022) (Aurangabad Bench)* and *Sandip Govind Pawar (supra)*. Conspicuously,

none of these decisions refer to any similar submission as is being advanced before us by the learned A.P.P. The purpose of arrest during investigation of a crime would always be aimed at facilitating the investigation. It cannot be resorted to to prevent the accused from indulging in any activity. Besides, the investigating officer will be bound by the mandate of law laid down in the matter of **Arnesh Kumar Vs. State of Bihar; (2014) 8 SCC 273** if he is to arrest the accused. As against this the purpose of order of preventive detention is essentially aimed at preventing certain individuals from continuing with certain activities which otherwise is not possible by resorting to the ordinary law of the land. Therefore, we are not in agreement with the submission of the learned advocate for the petitioner seeking to draw some inference based on the fact that the investigating officer did not feel it appropriate to arrest the petitioner and had merely served her with notices under Section 41A of the Code of Criminal Procedure.

13. The upshot of the above discussion, the subjective satisfaction arrived at by the respondent no. 2 based on the material collected by him and referred to in the impugned order, in our considered view is not sufficient to reach a conclusion that petitioner being at large would be to the detriment of public order as is contemplated under Section 3 of the M.P.D.A. Act.

14. The Criminal Writ Petition is allowed. The impugned order is quashed and set aside. The petitioner who has already been released on interim bail is set at liberty. Her bail bonds are cancelled.

15. Rule is made absolute.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-