



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1076 OF 2024

Krishna Sitaram Potdukhe
Age: 40 years,
R/o. Balapur Gavthan, behind
Rajdhiraj Dhaba,
Chhatrapati Sambhajanagar

.. Petitioner

Versus

1. Commissioner of Police,
Chhatrapati Sambhajanagar.
2. The State of Maharashtra
(Through the Secretary Home
Department (Spl.) Mantralaya,
Mumbai.
3. The Superintendent
Chhatrapati Sambhaji Nagar,
Central Prison.

.. Respondents

...
Mr. Rupesh A. Jaiswal, Advocate for the petitioner.
Mr. A. D. Wange, APP for the respondents/State.
...

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

DATE : 18 SEPTEMBER 2024

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Rupesh A. Jaiswal for the
petitioner and learned APP Mr. A. D. Wange for respondents –
State.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned Advocates for the parties.

3. The petitioner challenges the detention order dated 11.05.2024 bearing No.D.O.2024/CB/MPDA/DET-07/CR-32 passed by respondent No.1 as well as the approval order dated 17.05.2024 and the confirmation order dated 05.07.2024 passed by respondent No.2, by invoking the powers of this Court under Article 226 of the Constitution of India.

4. Learned Advocate for the petitioner has taken us through the impugned orders and the material which was supplied to the petitioner by the detaining authority after passing of the order. He submits that though several offences were registered against the petitioner, yet for the purpose of passing the impugned order, three offences were considered i.e. Crime No.187 of 2023 registered with State Excise Department, B-Division, Chhatrapati Sambhajanagar for the offences punishable under Section 328 of Indian Penal Code, under Section 65 (a), (b), (e), (d), (f), 80, 81, 83, 90, 108 of Maharashtra Prohibition Act, 1949, Crime No.70 of 2024 registered with State Excise Department, A-2 Division, Chhatrapati Sambhajanagar for the offences punishable under

Section 65 (a), (e) of the Maharashtra Prohibition Act and Crime No.76 of 2024 registered with State Excise Department, A-1 Division, Chhatrapati Sambhajanagar for the offence punishable under Section 65(b), (d), (e) Maharashtra Prohibition Act, 1949. Learned Advocate for the petitioner submits that the detaining authority has considered old and stale cases to come to the conclusion that the petitioner is bootlegger. There was no Chemical Analysis report or opinion of any expert of medical research hospital certifying that the seized liquor was injurious or harmful to human consumption. The statements of in-camera witnesses 'A' and 'B' would show that at the most law and order situation would have been created. The representation which was sent by the petitioner on 12.06.2024 has not been considered by the State immediately. The confirmation of the said detention order is also, therefore, illegal.

5. Per contra, the learned APP strongly supports the action taken against the petitioner. He submits that the petitioner is a dangerous person as defined under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the "MPDA Act"). The detaining authority has relied

on the two in-camera statements and the subjective satisfaction has been arrived at. There is no illegality in the procedure adopted while recording the in-camera statements of the witnesses. Due to the terror created by the petitioner, people are not coming forward to lodge report against him and, therefore, it affects the public order. Learned APP relies on the affidavit-in-reply of Mr. Manoj Lohiya, the then Commissioner of Police, Chhatrapati Sambhajnagar and his additional affidavit dated 21.09.2024. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. He further states that his order has been approved by the State Government and also by the Advisory Board. Thereafter, the confirmation has been given. The subjective satisfaction was arrived at on the basis of CA reports as well as in-camera statements and the contents of the FIR. In all, three offences were considered along with two in-camera statements. Chemical Analysis reports in respect of those offences showed that the percentage of ethyl alcohol was 42% in respect of two matters and in respect of third matter, the CA report was awaited. The petitioner was detained for about one year in view of order passed on 12.08.2022 under MPDA and after he was released, he

again started the same activity. This shows that the action earlier taken had not rendered any deterrence upon the petitioner. Therefore, even now there was no other activity that would have curtailed the bootlegging activities of the petitioner.

6. Before considering the case, we would like to take note of the legal position as is emerging in the following decisions :-

(i) *Nevanath Bujji etc. Vs. State of Telangana and others*, [2024 SCC OnLine SC 367],

(ii) *Ameena Begum Vs. The State of Tamilnadu and Ors.*, [2023 LiveLaw (SC) 743];

(iii) *Kanu Biswas Vs. State of West Bengal*, [1972 (3) SCC 831] wherein reference was made to the decision in *Dr. Ram Manohar Lohia vs. State of Bihar and Ors.* [1966 (1) SCR 709];

(iv) *Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta*, [1995 (3) SCC 237];

(v) *Pushkar Mukherjee and Ors. Vs. The State of West Bengal*, [AIR 1970 SC 852];

(vi) Phulwari Jagdambaprasad Pathak Vs. R. H. Mendonca and Ors., (2000 (6) SCC 751) and;

(vii) Smt. Hemlata Kantilal Shah Vs. State of Maharashtra and another, [(1981) 4 SCC 647].

7. Taking into consideration the legal position as summarized above, it is to be noted herein as to whether the detaining authority while passing the impugned order had arrived at the subjective satisfaction and whether the procedure as contemplated has been complied with or not. As aforesaid the detaining authority had taken note of three offences i.e. Crime No.187 of 2023 dated 23.11.2023, Crime No.70 of 2024 dated 17.04.2024 and Crime No.76 of 2024 dated 01.05.2024 and two in-camera statements. Perusal of the three cases would show that in two matters, the CA reports received and the ethyl alcohol that was found was 42%. When the percentage is so high it is not required that further certification by an expert is needed to arrive at a conclusion that consumption of such alcohol would be dangerous to the human life. Though in respect of last offence, CA report was still awaited, that cannot be the ground for allowing the petitioner. One more important point that requires

consideration is that in spite of previous order of detention under MPDA, the bootlegging activities appears to have not been curtailed. Within more than one year, offence Crime No.187 of 2024 has been committed wherein fake foreign liquor and articles worth Rs.5,26,828/- were came to be seized from the possession of the petitioner. The further incident was committed on 17.04.2024 and at that time, the petitioner was caught red handed with fake foreign liquor. The third offence is committed on 01.05.2024. The in-camera statements of two persons touches the illegal business of the petitioner and thereby, how the terror has been created. At the cost of repetition when all these activities are going on after the detention of one year in view of order dated 12.08.2022, then certainly the bootlegging activities would not have been curtailed with the help of ordinary law.

8. Mentioning the earlier cases in the tabular form, which was in fact the account of the offences in which the petitioner is involved, will not amount to consideration of old and stale cases to arrive at a conclusion that petitioner is a bootlegger. The representation was considered by the Government and it was also placed before the Advisory Committee and then it has been rejected. Hence, we do not find this to be a fit case where by

exercising constitutional powers of this Court under Article 226 of the Constitution of India any interference is required.

9. Writ Petition stands dismissed.

10. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm