



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

CRIMINAL WRIT PETITION NO.53 OF 2024

Shabbir Kha S/o Sultan Kha, aged about 72 years, Occupation-Nil, R/o Karanja Bahiram, Tahsil-Chandur Bazar, District Amravati. **Petitioner**

-Versus-

1. State of Maharashtra through its Secretary Department of Home, Mantralaya, Mumbai-032.
2. The Collector And the District Magistrate, Amravati, District, Tahsil & District, Tahsil & District Amravati.
3. Police Station Officer/In-charge Police Station Shirajgaon, Tahsil Chandur Bazar, District Amravati.
4. The Advisory Board, Home Department, Through its Secretary, New Administrative Building, 12th Floor, Madam Kama Road, Hutatma Rajguru Chowk, Mantralaya Mumbai-032.

Respondents

Mr. Jaiswal h/f Shri D.I. Jain, counsel for the Petitioner.
Mr. S.S. Doifode, APP for R-1.

**CORAM : VIBHA KANKANWADI AND
MRS.VRUSHALI V. JOSHI, JJ.**

DATE : 23.07.2024

ORAL JUDGMENT (Per :Vrushali V.Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith. The Criminal Writ Petition is heard finally with the consent of the learned counsel for the parties.

2. This petition is filed to challenge the order dated 25th November, 2023 passed by respondent no.2 -District Magistrate, Amravati, in exercise of powers under Section 3(1) of 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 the MPDA, Act, 1981) and subsequently approved by respondent no.1 on 02.12.2023 under Section 3 sub-section 3 of the said Act to detain the petitioner.

3. Perusal of the detention order indicates that the detaining authority has relied upon two complaints registered against the petitioner vide Crime No. 292 of 2023 registered on 8th August 2023 for the offence punishable under Section 65(e) of Maharashtra Prohibition Act and Crime No.309 of 2023 registered on 08 September 2023 under Section 65(e) of Maharashtra Prohibition Act.

4. The allegations against the petitioner in the first crime are that the petitioner and his associates for the sale and transport of Gavathi(Taddi) drove the vehicles in a rash and negligent manner, created stench, assaulted people in public place who opposed their

illegal business. The detaining authority has also relied upon the in-camera statements of the two witnesses. The allegations in the said in-camera statements are of the nature of threatening and abuse under the influence of liquor. The detaining authority has thus relied upon the aforesaid crimes as well as two in-camera statements for recording subjective satisfaction that the petitioner is a bootlegger, and hence is required to be detained to prevent him from indulging in any prejudicial activities in future.

5. The petitioner has relied on the following grounds:

(i) The representations made by the son of the petitioner dated 02.01.2024 to respondent for expeditious consideration, revoke and communication was not considered and continued the detention

(ii) All the material is not placed before the Detaining Authority. Though the Chemical Analyzers Report reports/opinion of the experts or medical officers certifying that the seized liquor is injurious or harmful to human health particularly the opinion and chemical analyzer's reports are not placed before the detaining authority and the copies are not given to the detainee.

(iii) The third ground is that the translation of all the copies was not given to the detainee.

6. The learned APP opposed the application stating that

two offences Crime No.292 of 2023 and 309 of 2023 for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act at Shirajgaon Police station are registered against the detainee. The petitioner has committed these two offences within a month and around ten offences of same nature were already registered against him in the same Police Station. Preventive action against the petitioner under Section 93 of the Maharashtra Prohibition Act Section 144(2) of the Code of Criminal Procedure and Section 56(2) of Maharashtra Police Act were also taken against him, all these preventive actions proved ineffective in curbing down his criminal and dangerous activities. Hence, action is taken under Section 3(1) of the MPDA Act,1981.

7. The case in which the petitioner was acquitted are of the year 2016 and 2017, which shows that at that time, he was also indulged in bootlegging. The petitioner is habitual offender and has no respect for prevailing laws. His ascending graph of the committing offence under the prohibition Act proved him a habitual bootlegger and his activities are found to be prejudicial to the maintenance of the public health and public order. Therefore, the action taken by the authority is necessary. Hence, prayed to reject the petition.

8. The petitioner, who is 72 years of age is an illiterate person. On 28th November 2023, after his arrest, son of the petitioner Shaharukh Khan and daughter namely Nahid Bano

visited Amravati Central Jail. During their visit, the documents which were handed over to the petitioner were given to the son and daughter of the petitioner. Thereafter, the son of the petitioner visited the Central Jail on 02.01.2024 and he asked the Superintendent of the Jail to accept the representation made by him. Superintendent of Amravati Jail did not accept the copy of the representation from the son of the petitioner informing him that he has no power to accept the same. Thereafter, the son of the petitioner made the above representation on 02.01.2024 on the mail address of the Advisory Board. Advisory Board on 02.01.2024 has received the said representation on Mail address and on the same date, the petitioner was produced before the Advisory Board. The representation made by the son of the petitioner on behalf of the petitioner, who is illiterate is not considered by the Advisory Board. It is observed by the Hon'ble Apex Court in the case of **Aniruddha Bose Vs. Sudhanshu Dhulia, J reported in 2023 LiveLaw (SC) 529 that:-**

“Non-consideration of the representation by the Advisory Board violates an important right given to the detainee, for the reasons that in case the Court leans favourably for the detainee, the Government has no option but to release the detainee.

9. The respondent has filed reply, but has not given any explanation. The respondent has stated that it being the matter of record needs no reply. The representation is not considered by the

Advisory Board and not accepted by the jail authority, when it was submitted by the son and the detainee. It was the duty of the jailer to forward it, but it was not forwarded by the jailer and when it was received by the Advisory Board on perusal of the report of the Advisory board, it appears that the representation was not considered by the Advisory Board while confirming the detention of the detainee. The petitioner has also relied on the following judgments in support of his argument that it vitiates the detention order if the representation is not considered by the authority:-

1..Prakash Chandra Yadav @ Mungeri Yadav Vs. The State of Jharkhand and ors. Reported in 2023 LiveLaw (SC) 520.

2. S.Amutha Vs. the Government of Tamil Nadu and ors reported in 2022 LiveLaw (SC)25.

3. Criminal Writ Petition No.1074 of 2023 (Ajinkya Nilkanth Mule Vs. District Magistrate and ors.) D.O.9.10.2023.

4. Criminal Writ Petition No.1736 of 2023 (Digambar @ Digambar Vitthal Dagdade Vs. The District Magistrate ,Latur and ors. D.O. 8.02.2024.

10. The petitioner is detained considering the two offences and two statements. Both the offences on which the authority has relied are under Section 65(e) of the Maharashtra Prohibition Act. The raid was conducted and the detainee was found selling the

country liquor. In the first offence, it was in front of his house and in the second offence, at the cow-shed near his house. Though the Chemical Analyzer reports are mentioned in the ground of detention, the Chemical Analyzer reports and the opinion is not provided to the detinue and it was not placed before the detaining authority.

11. The Hon'ble Apex Court has observed in the **District Collector, Ananthapur Vs.V. Laxmanna 2005 CJ SC 400**. It is obligatory for the detaining authority to provide the material on which it has based its conclusion on the point of Chemical Analyzer reports and the liquor is injurious to health. The petitioner has also relied on the following judgments in support of his argument that the detaining authority must be satisfied on the available material that the prejudicial activities of the petitioner are dangerous to public health.:-

1. **District Collector, Ananthapur Vs.V.Laxmanna reported in 2005 CJ(SC)400.**

2. **Criminal Writ Petition(ST NO. 15879 of 2023) Satyavan Shakha Rathod Vs. The Commissioner of Police and ors D.O.25.10.2023.**

3. **Criminal Writ Petition No.1285 of 2023 (Prakash Chandrakant Kanjar Vs.The State of Maharashtra and anr.)D.O.19.10.2023.**

**4. Criminal Writ Petition NO.1527 of 2023
(Dhanubai @ Dhanno Yashvant Netlekar Vs.State
of Maharashtra and ors. D.O.8.02.2024.**

12. In this case the report of Chemical Analyzer regarding samples seized from the detenue was not before the detaining authority and there was no material before the detaining authority to record subjective satisfaction that the activities of the detenue were prejudicial to public health.

13. On perusal of the confidential statements, considered by the detaining authority, witness- A has stated that due to disturbance in the locality, when he asked the detenue to stop selling the liquor, he abused him and gave him threats.

14. In the statement made by witness-B when he has not given side to his vehicle and he fell down from the motor cycle and because of fall the container burst and the illicit liquor was spread on the road at that time, he grab the collar of the witness and asked him to give the compensation as because of him he had loss and he beat him. Both the statements does not reveal that there is any disturbance of public order. Moreover, the crime which was considered for the detention order, the detenue is acquitted in the said case.

15. Considering the above said observations, We, thus, find the substance in the present Writ Petition.

16. In the result, we find that this Writ Petition deserves to be allowed and it is allowed in terms of prayer clause (a). The detenue be released on bail.

17. Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J) (VIBHA KANKANWADI, J)