



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.01 OF 2025

Sikander Ali s/o Basharat Ali
Age: 42 years, Occu.: Labour,
R/o. New Hudco Colony, Tq. Bhusawal,
Dist. Jalgaon

.. Petitioner

Versus

1. The State of Maharashtra
Through Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The District Magistrate,
Jalgaon, District Jalgaon.
3. The Superintendent of Police,
Jalgaon, at S.P. Office,
In front of Bus Stand,
Tq. And Dist. Jalgaon.
4. Sub Divisional Police Officer,
Bhusawal Sub Division,
Bhusawal, Tq. Bhusawal,
Dist. Jalgaon.

.. Respondents

...
Mr. N. R. Shaikh, Advocate for the petitioner.
Mrs. P. R. Bharaswadkar, APP for the respondents/State.

...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 12 FEBRUARY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. N. R. Shaikh for the petitioner
and learned APP Mrs. P. R. Bharaswadkar 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 18.07.2024 bearing No.Dandapra/KAVI/MPDA/29/2024 passed by respondent No.2 as well as the approval order dated 29.07.2024 and the confirmation order dated 18.12.2024 passed by respondent No.1, 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, four offences were considered i.e. **(i)** Crime No.66 of 2012, registered with Bhusawal City Police Station, District Jalgaon for the offences punishable under Sections 342, 387, 504, 506 read with Section 34 of Indian Penal Code, under Section 4 punishable under Section 25 of the Indian Arms Act and under Section 135 of the Bombay Police Act, **(ii)** Crime No.167 of 2022, **(iii)** Crime No.133 of 2023 and **(iv)** Crime No.26 of 2024 were

registered with Bhusawal City Police Station, District Jalgaon for the offence punishable under Sections 65(e) of the Maharashtra Prohibition Act, 1949. Learned Advocate for the petitioner submits that paragraph No.5 of the grounds of detention would show that in all four offences were considered by the detaining authority. The first offence that is considered is Crime No.66 of 2012 and it cannot be said that for passing order of detention on 18.07.2024, there was any live link between the said offence and the order. He further submits that only in respect of Crime No.167 of 2022 and Crime No.133 of 2023, CA Reports have been received and in respect of the last offence i.e. Crime No.26 of 2024, the CA report was not received. He further submits that in last three offences, the petitioner was given notice under Section 41(1)(a) of the Code of Criminal Procedure and was not arrested at all. As regards statements of in-camera witnesses 'A' and 'B' are concerned, general public was not involved. At the most law and order situation would have been created. There is inordinate delay in passing the detention order. Therefore, the impugned order is illegal and cannot be allowed to sustain.

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 relied on the affidavit-in-reply of Mr. Ayush Prasad, the District Magistrate, Jalgaon/detaining authority. 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 material before the detaining authority was sufficient to arrive at a conclusion that the petitioner was undertaking bootlegging activities and the liquor that was seized from him in some of the matters contain ethyl alcohol. Further, the statements of in-camera witnesses ‘A’ and ‘B’ show that ordinary law would not

have curtailed the bootlegging activities of the petitioner. Therefore, no fault can be found in the impugned order.

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

(i) *Nenavath 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. In ***Nenavath Bujji*** (*Supra*) itself it has been reiterated by the Hon'ble Supreme Court that illegal detention orders cannot be sustained and, therefore, strict compliance is required to be made, as it is a question of liberty of a citizen. As aforesaid, the detaining authority had considered the aforesaid four offences and two in-camera statements. Even the offence vide Crime No.66 of 2012 was considered for passing the detention order on 18.07.2024, which is against the principles laid down by the Hon'ble Supreme Court. Further, in respect of Crime No.167 of 2022 and Crime No.133 of 2022, CA reports have been received and percentage of ethyl alcohol that was found was 10% and 10% respectively. The detaining authority has not considered that in respect of last offence i.e. Crime No.26 of 2024, CA report was not received. There was no opinion of any expert medical officer certifying that the seized liquor would have been injurious or harmful to human consumption. Further, it appears that there is delay in passing the detention order. Here, the confidential statements of witnesses 'A' and 'B' were recorded on 23.02.2024 and

26.02.2024 respectively. Verification of the same was done on 02.03.2024, but proposal has been submitted by the sponsoring authority on 28.06.2024. Why there was so much delay in sending the proposal has not been explained by the sponsoring authority. There is no affidavit by the sponsoring authority explaining the said delay. Of course, after the said proposal was received by the detaining authority, there is no such delay, but still the time spent between recording of confidential statements and verification thereof till the detention order, is more than three months. If the petitioner was really a dangerous person and his criminal activities were supposed to be curtailed, then the sponsoring authority cannot afford to remain idle. It is further to be noted that on preventive actions under Section 107 and 110 of the Code of Criminal Procedure were taken. Whether those preventive actions were taken to the logical end or not has not been mentioned. Whether those actions would have curtailed the activities of the petitioner was one of the factor to be considered. Further, it is not stated as to why preventive action under Section 93 of the Code of Criminal Procedure has not been taken. As regards in-camera statements of witnesses 'A' and 'B' are concerned, the incidents in both the cases would show that

general public was not involved. At the most law and order situation would have been created. Therefore, these grounds do not justify the impugned order.

8. Thus, taking into consideration the above observations and the decisions of the Hon'ble Apex Court, at the most, the statements as well as the offences allegedly committed would reveal that the petitioner had created law and order situation and not disturbance to the public order. Though the Advisory Board had approved the detention of the petitioner, yet we are of the opinion that there was no material before the detaining authority to categorize the petitioner as a dangerous person or bootlegger.

9. For the aforesaid reasons, the petition deserves to be allowed. Hence, following order is passed :-

ORDER

I) The Writ Petition stands allowed.

II) The detention order dated 18.07.2024 bearing No.Dandapra/KAVI/MPDA/29/2024 passed by respondent No.2 as well as the approval order dated 29.07.2024 and the confirmation order dated 18.12.2024 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Sikander Ali s/o Basharat Ali shall be released forthwith, if not required in any other offence.

IV) Rule is made absolute in the above terms.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm