



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.186 OF 2025

Kiran Shrawan Koli
Age: 28 years,
R/o. Bholane,
Taluka and District Jalgaon.

.. Petitioner

Versus

1. District Magistrate, Jalgaon,
Jalgaon.
2. The State of Maharashtra
(Through Additional Chief Secretary
to Government of Maharashtra,
Mantralaya, Home Department,
Mantralaya, Mumbai.
3. The Superintendent
Thane Central Prison, Thane.

.. Respondents

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Mr. Rupesh A. Jaiswal h/f Ms. Jayshree Tripathi, Advocate for the petitioner.
Mr. N. R. Dayama, APP for respondents/State.

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

DATE : 17 MARCH 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. R. A. Jaiswal holding for learned
Advocate Ms. Jayshree Tripathi for the petitioner and learned APP Mr. N.
R. Dayama 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/26/2024 passed by respondent No.1 as well as the approval order dated 29.07.2024 and the confirmation order dated 11.09.2024 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, four offences were considered i.e. **(i)** Crime No.363 of 2022 registered with State Excise Duty Flying Squad, Jalgaon for the offence punishable under Section 65(a)(e) of the Maharashtra Prohibition Act, 1949, **(ii)** Crime No.24 of 2023 registered with State Excise Duty Flying Squad, Jalgaon for the offence punishable under Section 65(a)(e) of the Maharashtra Prohibition Act, 1949, **(iii)** Crime No.31 of 2023 registered with State Excise Duty Department, Jalgaon for the offence punishable under Section 65(a)(e) of the Maharashtra Prohibition Act, 1949 and **(iv)** Crime No.42 of 2024 registered with State Excise Duty Department, Jalgaon.

for the offence punishable under Section 65(a)(f)(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.363 of 2022 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 Nos.363 of 2022, Crime No.24 of 2023 and Crime No.31 of 2023, CA Reports have been received and in respect of the last offence i.e. Crime No.42 of 2024, the CA report was not received. He further submits that in all the four 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, they are copy paste. The incidents in those statements would show that general public was not involved. At the most law and order situation would have been created. 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. As regards the first offence i.e. Crime No.363 of 2022 is concerned, there was no live link and therefore, it cannot be considered for passing the detention order on 18.07.2024. Further, in respect of Crime Nos.24

of 2023, Crime No.31 of 2023, CA reports have been received and percentage of ethyl alcohol that was found was 46% and 9% respectively. The detaining authority has not considered that in respect of last offence i.e. Crime No.42 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 the action under Section 93 of Maharashtra Prohibition Act was taken against the petitioner on 31.05.2023 i.e. Chapter Case No.61 of 2023 and obtained bond of Rs.15,000/- for two years from the petitioner. Again action under Section 93 of Maharashtra Prohibition Act was taken against the petitioner on 21.09.2023 i.e. Chapter Case No.205 of 2023 and obtained bond of Rs.25,000/- for a period of three years. However, it is not stated whether the final order was passed or not and if at all, it was passed then why upon disobedience or recurring of the offence, the bond that was got executed from the petitioner was not put for execution i.e. the amount under the same was not recovered. Section 93 of the Maharashtra Prohibition Act, 1949 prescribes for demand of security for good behaviour to be taken from such person. Section 93 (1) of the said Act empowers a District Magistrate or a Sub-Divisional Magistrate, whenever he receives information that any person within the local limits of his jurisdiction habitually commits or attempts to commit or abets the

commission of any offence punishable under this Act, such Magistrate may require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, as the Magistrate may direct. If the said procedure would have been taken to the logical end, the Magistrate i.e. respondent No.2 was entitled/empowered to take such bond of good behaviour maximum for a period of three years. Further, sub-section (2) of Section 93 of the said Act prescribes that the provisions of Code of Criminal Procedure would be applicable to any proceedings under sub-section (1) of Section 93 as if bond referred to therein were a bond required to be executed under Section 110 of the said Code. Section 110 of the Code then prescribes the procedure for breach of such bond. That means there is inbuilt mechanism in the Maharashtra Prohibition Act to curtail the activities of a habitual offender. These proceedings under the Act were not taken to the logical end. Therefore, the statement by respondent No.1 that ordinary law would not have curbed the activities of the petitioner and only the detention order would have taken care of said activities in the public interest cannot be upheld.

8. As regards in-camera statements of witnesses 'A' and 'B' are concerned, they are copy paste and 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.

9. Further, in all the offences it can be seen that the petitioner was given notice under Section 41(1)(a) of the Code of Criminal Procedure and was not arrested at all. This aspect ought to have been properly considered. Reliance can be placed on the recent decision of the Hon'ble Supreme Court in ***Arjun s/o Ratan Gaikwad Vs. The State of Maharashtra and others, [Criminal Appeal (Arising out of SLP (Crl.) No.12516 of 2024 dated 11.12.2024 :: 2024 INSC 968]***, wherein it has been observed that :-

“16. In the present case, all the six cases are with regard to selling of illicit liquor. Though six cases are registered, the Excise Authority did not find it necessary to arrest the appellant even on a single occasion. It would have been a different matter, had the appellant been arrested, thereafter released on bail and then again the appellant continued with his activities. However, that is not the case here.”

10. 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.

11. 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/26/2024 passed by respondent No.1 as well as the approval order dated 29.07.2024 and the confirmation order dated 11.09.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner – Kiran Shrawan Koli 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