



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.244 OF 2025

Ramdhan Namdev Jadhav
Age: 55 years,
R/o. Kavtha Kej Tanda,
Ausa, District Latur.

.. Petitioner

Versus

1. District Magistrate,
Latur.
2. The State of Maharashtra
(Through the Secretary Home
Department (Spl.),
Mantralaya, Mumbai.
3. The Superintendent
Chhatrapati Sambhajinagar
Central Prison,
Chhatrapati Sambhajinagar.

.. Respondents

...

Mr. Rupesh A. Jaiswal, Advocate for the petitioner.
Mr. A. M. Phule, APP for respondents/State.

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**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 27 MARCH 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

1. Heard learned Advocate Mr. Rupesh A Jaiswal for the petitioner and learned APP Mr. A. M. Phule for the 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 31.12.2024 bearing D.O. No.2023/MAG/MPDA/Desk-2/WS-483 passed by respondent No.1 as well as the approval order dated 10.01.2025 and the confirmation order dated 06.02.2025 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, only one offence was considered i.e. Crime No.162 of 2024 registered with Bhada Police Station, Taluka Ausa, District Latur for the offence punishable under Section 65(f) of the Maharashtra Prohibition Act, under Section 123 of the Bhartiya Nyaya Sanhita. It appears that in respect of Crime No.162 of 2024, the CA report has not been received, as it is not stated how much percentage of ethyl alcohol was found in the substance. Therefore, in fact, the material placed before the detaining authority has not been considered by her properly. There was no subjective satisfaction arrived at before passing of the order or to arrive at the conclusion that the petitioner is a bootlegger. The statements of witnesses 'A' and 'B' would show that at the most law and order situation would have arisen and not

the public order. The order being illegal deserves to be quashed and set aside.

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 Ms. Varsha Thakur – Ghuge, the District Magistrate, Latur/detaining authority. She supports the detention order passed by her and tries to demonstrate as to how she had arrived at the subjective satisfaction. She further states that her order has been approved by the State Government and also by the Advisory Board. Thereafter, the confirmation has been given. 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. At the outset, it is to be noted that the detaining authority has considered only one offence i.e. Crime No.162 of 2024 for passing the detention order. Perusal of paragraph No.4 of grounds of detention would show that in respect of Crime No.162 of 2024, the CA report has not been considered by the detaining authority while passing the detention order. The material was not sufficient before the detaining authority to categorize the petitioner as bootlegger. Further, the material on record was not sufficient to arrive at a conclusion that the activities of the petitioner were creating public order situation. At the most, even if we consider that he was selling illicit liquor or manufacturing it, then it would have created law and order situation. Further, it appears that Chapter Case No.98 of 2022 was proposed under Section 93 of the Maharashtra Prohibition Act, however, it is not stated whether 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.1 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. Statements of witnesses 'A' and 'B' would show that they both had gone to meet the petitioner and then they had advised the petitioner that

he should not sell country liquor, as it is causing destruction of marital life of many persons, destroying the youths and then the petitioner after making his associates consume liquor asked them to raise quarrel with the witnesses and then those co-accused went in front of the house of these witnesses, abused and threatened them. The statements of these two witnesses are in fact copy paste. Two persons cannot speak in the same language and this basic fact ought to have been taken note of by the detaining authority. When the detaining authority has not taken note of the copy paste statements of witnesses 'A' and 'B', it shows non application of mind.

9. 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.

10. 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 31.12.2024 bearing D.O. No.2023/MAG/MPDA/Desk-2/WS-483 passed by respondent No.1 as well as the approval order dated 10.01.2025 and the confirmation order dated 06.02.2025 passed by respondent No.2, are hereby quashed and set aside.
- III) Petitioner – Ramdhan Namdev Jadhav shall be released forthwith, if not required in any other offence.
- IV) Rule is made absolute in the above terms.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm