



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.300 OF 2025

Sharukh alias Shahrukh Yunus Khatik
Age: 32 years,
R/o. Lakhani Park, Navapur,
Taluka Navapur, District Nandurbar.

.. Petitioner

Versus

1. District Magistrate,
Nandurbar.
2. The State of Maharashtra
Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department,
Mantralaya, Mumbai.
3. The Superintendent
Nashik Central Prison,
Nashik.

.. Respondents

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Mr. Rupesh A. Jaiswal h/f Ms. Jayshree Tripathi, Advocate for the petitioner.
Mr. A. M. Phule, APP for respondents/State.

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

DATE : 04 APRIL 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Rupesh A. Jaiswal holding for learned
Advocate Ms. Jayshree Tripathi 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 29.10.2024 bearing No.Home/Desk-2/MPDA-D.O.-1/WS-406/2024 passed by respondent No.1 as well as the approval order dated 07.11.2024 and the confirmation order dated 18.12.2024 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, all the five offences were considered i.e. **(i)** Crime No.782 of 2021 registered with Navapur Police Station, District Nandurbar for the offences punishable under Sections 326, 325, 143, 147, 148, 149, 323 and under Section 3 punishable under Section 25 of the Arms Act, **(ii)** Crime No.289 of 2023 registered with Navapur Police Station, District Nandurbar for the offences punishable under Sections 353, 307, 427 read with Section 34 of Indian Penal Code, **(iii)** Crime No.1182400324423 of 2024 registered with Kakrapar Police Station, Gujarat State for the offences punishable under Sections

65, 81, 83, 119(b), 116(b), 98(2) of the Gujarat Prohibition Act, 1949, **(iv)** Crime No.384 of 2024 registered with Navapur Police Station, District Nandurbar for the offences punishable under Sections 307, 324, 323, 504, 143, 147, 148, 149 of Indian Penal Code and **(v)** Crime No.453 of 2024 registered with Navapur Police Station, District Nandurbar for the offences punishable under Sections 65E, 83, 86, 108 of Maharashtra Prohibition Act. 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 a bootlegger. There was no live link in respect of Crime No.782 of 2021 and Crime No.289 of 2023, which were also considered for passing the detention order. As regards Crime No.1182400324423 of 2024 registered with Kakrapar Police Station, Gujarat State under Section 65(e), 81, 83, 119(b), 116(b), 98(2) of the Gujarat Prohibition Act and Crime No.453 of 2024 registered with Navapur Police Station, District Nandurbar for the offences punishable under Sections 65E, 83, 86, 108 of the Maharashtra Prohibition Act, it appears that the CA reports were not received. Therefore, in fact, the material placed before the detaining authority has not been considered by him properly and, there was no subjective satisfaction arrived at, before passing of the order or to arrive at the conclusion, that the petitioner is a bootlegger. He further submits that though the petitioner has been released on bail in all of the offences, which were considered,

yet the bail orders have not been considered at all. He further submits that as regards statements of in-camera witnesses 'A' and 'B' are concerned, the incident in both the cases are personal in nature. 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 relies on the affidavit-in-reply of Dr. Mittali Sethi, the District Magistrate, Nandurbar/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 material before the detaining authority was sufficient to arrive at the

subjective satisfaction. So also, the affidavits-in-reply of Dr. Rajendra Tanaji Bhalwane, Deputy Secretary, Government of Maharashtra, Home Department, Mantralaya, Mumbai and Ms. Aruna Arjunrao Mugutrao, Adult, Superintendent, Nashik Road Central Prison, Nashik have also been produced. 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) 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];*

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

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

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

(vi) 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. The first and the foremost fact that is required to be considered is that the first two offences those have been considered are dated 19.12.2021 and 10.06.2023 respectively. The last offence that was registered against the applicant was on 15.08.2024. The order of detention has been passed on 29.10.2024. Therefore, it can be said that there was no live link between the offences those have been allegedly occurred on 19.12.2021 and 10.06.2023 and the detention order. As regards Crime No.384 of 2024 is concerned, the facts would show that at the most law and order situation would have been created and not the public order. As regards Crime No.1182400324423 of 2024 registered with Kakrapar Police Station, Gujarat State and Crime No.453 of 2024 registered with Navapur Police Station, District Nandurbar, the CA reports were not before the detaining authority on the date of passing of the detention order. Therefore, how much percentage of ethyl alcohol

was found therein could not have been gathered by the detaining authority. Further, as regards chapter cases are concerned, one was under Section 107 of the Code of Criminal Procedure in 2022, wherein bond of one year has been taken from 08.09.2022 and second was under Section 56 of the Maharashtra Police Act, wherein notice of externment proceeding was served on the petitioner and the said proceeding was dropped on the request of police station, as they want to initiate stronger action against the petitioner. 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. Another important point to be noted is that though the petitioner was released on bail in all the offences which were considered for passing the detention order, yet the detaining authority has not considered the bail orders while passing the detention order. We would like to rely on the decision in ***Joyi Kitty Joseph Vs. Union of India and Ors., [Criminal Appeal No.____ of 2025 (arising out of Special Leave Petition (Crl.) No.16893 of 2024) decided by the Hon'ble Supreme Court on 06.03.2025]***, wherein reliance has been placed on the decision in ***Ameena Begum v. State of Telangana and others, [(2023) 9 SCC 587]*** and it has been observed that preventive

detention is impermissible when the ordinary law of the land is sufficient to deal with the situation was *per incuriam* to the Constitution Bench decision in ***Haradhan Saha vs. State of W.B. [(1975) 3 SCC 198]***, in the limited judicial review available to constitutional courts in preventive detention matters. However, in ***Ameena Begum (Supra)***, the Hon'ble Supreme Court explained the true distinction between a threat to "law and order" and acts "prejudicial to public order" and it is stated that it cannot be determined merely by the nature or quality of the act complained of, but in the proper degree and extent of its impact on the society. Further, it is observed that "When bail was granted by the jurisdictional Court, that too on conditions, the detaining authority ought to have examined whether they were sufficient to curb the evil of further indulgence in identical activities; which is the very basis of the preventive detention ordered. The detention order being silent on that aspect, we interfere with the detention order only on the ground of the detaining authority having not looked into the conditions imposed by the Magistrate while granting bail for the very same offence; the allegations in which also have led to the preventive detention, assailed herein, to enter a satisfaction as to whether those conditions are sufficient or not to restrain the detenu from indulging in further like activities."

8. 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.

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 is allowed.
- II) The detention order dated 29.10.2024 bearing No.Home/Desk-2/MPDA-D.O.-1/WS-406/2024 passed by respondent No.1 as well as the approval order dated 07.11.2024 and the confirmation order dated 18.12.2024 passed by respondent No.2, are hereby quashed and set aside.

III) Petitioner - Sharukh alias Shahrukh Yunus Khatik 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