



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.805 OF 2025

Ramdas Jalmsing Yerawal,
Age: 35 Yrs., occu. Labour,
R/o Bodhadi (Khu), Tq. Kinwat,
District Nanded.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Additional Chief Secretary,
Home Dept. Mantralaya,
Mumbai-400 032.
2. The District Magistrate & Collector,
Nanded. Gandhi Statue Station Road,
Nanded.
3. The Inspector, State Excise,
Kinwat, Tq, Kinwat Dist. Nanded.

.. Respondents

...

Mr. Prasanna S. Chavan, Advocate for the petitioner.
Mr. V. K. Kotecha, APP for the respondents/State.

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

DATE : 17 JULY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Prasanna S. Chavan for the petitioner
and learned APP Mr. V. K. Kotecha 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 20.05.2025 bearing No.2025/RB-1/DESK-2/T-4/MPDA/CR-27 passed by respondent No.2 as well as the approval order dated 29.05.2025 and the confirmation order dated 11.07.2025 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, three offences were considered i.e. (i) Crime No.95 of 2024 dated 20.10.2024, (ii) Crime No.17 of 2025 dated 06.03.2025 and (iii) Crime No.66 of 2025 dated 01.05.2025. All the three offences were registered with the office of Sub Inspector, State Excise, Kinwat 'A' Division, District Nanded for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949. Learned Advocate appearing for the petitioner submits 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 in respect of all the three offences, CA Reports have been received, yet in respect of last offence i.e. Crime No.66 of 2025, the percentage of ethyl alcohol has not been mentioned in the impugned order. He further submits that in all the three offences, which were considered for passing the impugned order, the petitioner was given notice under Section 35(3) Bharatiya Nagrik Suraksha Sanhita, 2023 and was not arrested at all. Further, Chapter Case No.3 of 2023 was proposed under Section 93 of Maharashtra Prohibition Act, 1949 against the petitioner, however, in view of action taken under M.P.D.A., said chapter case was dropped. The statements of in-camera witnesses 'A' and 'B' would show that 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 is relying upon the affidavit-in-reply filed by Mr. Rahul Kardile, the then District Magistrate, Nanded. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the conclusion that the petitioner is a bootlegger. The subjective satisfaction was arrived at on the basis of in-camera statements and the contents of the FIRs. After the subjective satisfaction, the detaining authority has passed a reasoned order, which is then confirmed with the opinion of the Advisory Board and, thereafter, confirmed by the State Government on 11.07.2025. Learned APP further submits that the CA reports were received in all the three offences which were considered and the percentage of the ethyl alcohol found in the substance is 19.08%, 5.11% and 34.11% respectively. It is hazardous for human consumption and, 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. At the outset, it is to be noted that only three offences were considered for passing the detention order i.e. Crime No.95 of 2024 dated 20.10.2024, Crime No.17 of 2025 dated 06.03.2025 and Crime No.66 of 2025 dated 01.05.2025 for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949. Though CA reports were received in respect of all the three

offences, however, in respect of Crime No.66 of 2025 it is not reflected in the impugned order as to how much percentage of ethyl alcohol was found therein. Even if the percentage of ethyl alcohol is taken as it is, there was no opinion of any expert medical officer certifying that the seized liquor would have been injurious or harmful to human consumption. The material was not sufficient before the detaining authority to categorize the petitioner as bootlegger. 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.

8. Further, it appears that Chapter Case No.3 of 2023 was proposed under Section 93 of the Maharashtra Prohibition Act, and the bond of good behaviour worth Rs.1,00,000/- was taken on 17.07.2023, however, thereafter, in view of the action taken under M.P.D.A., the said Chapter case was dropped. 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. As regards the statements of in-camera witnesses 'A' and 'B' are concerned, the incident in both the cases would show that general public was not involved. At the most law and order situation would have been created.

9. 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.”

Here also, not on a single occasion, the petitioner was arrested. In all the aforesaid cases, the petitioner was served with notice under Section 35(3) of the Bharatiya Nagrik Nyaya Sanhita, 2023 (Old Section 41(A) of the Code of Criminal Procedure).

11. 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.

12. 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 20.05.2025 bearing No.2025/RB-1/DESK-2/T-4/MPDA/CR-27 passed by respondent No.2 as well as the approval order dated 29.05.2025 and the confirmation order dated 11.07.2025 passed by respondent No.1, are hereby quashed and set aside.
- III) Petitioner – Ramdas Jalmsing Yerawal 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