



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1004 OF 2025

Raghunath Shivaji Rathod
Age: 70 years, Occu.: Labour,
R/o. Dharavati Tanda, Tq. Parali (V),
District Beed.

.. Petitioner

Versus

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

.. Respondents

...
Mr. Sudhakar T. Mahajan, Advocate for the petitioner.
Mr. V. K. Kotecha, APP for the respondents/State.
...

**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

DATE : 03 SEPTEMBER 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. Sudhakar T. Mahajan 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 03.05.2025 bearing No.2025/RB-Desk-1/POL-MPDA/09 passed by respondent No.1 as well as the approval order dated 13.06.2025 and the confirmation order dated 23.07.2025 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 order and the material which was supplied to the petitioner by the detaining authority after passing of the order. He submits that though eight offences were registered against the petitioner, yet for the purpose of passing the impugned order, only two offences were considered i.e. Crime No.219 of 2024 dated 23.12.2024 and Crime No.06 of 2025 dated 05.01.2025. Both these offences were registered with Sambhajinagar Parali Police Station, District Beed for the offences punishable under Section 65(e) of the Maharashtra Prohibition Act. 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 order or to arrive at the conclusion that the petitioner is a bootlegger. It appears that in respect of both the offences, the CA reports

have not been received, as it is not stated how much percentage of ethyl alcohol was found in the substance. He further submits that in respect of both the offences the petitioner has been given notice under Section 35(3) of Bharatya Nagarik Suraksha Sanhita, 2023 and was not arrested at all. Though twice preventive actions under Section 93 of the Maharashtra Prohibition Act, 1949 were taken against the petitioner, however, it was not taken to the logical end. As regards the statements of in-camera witnesses 'A' and 'B' are concerned, at the most law and order situation would have been created and not the public 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 is relying upon the affidavit-in-reply filed by Mr. Vivek Johnson, the District Magistrate, Beed. 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 FIR. 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 23.07.2025.

6. At the outset, we would like to rely on the decisions of the Hon'ble Supreme Court in ***Nenavath Bujji etc. Vs. State of Telangana and others, [2024 SCC OnLine SC 367]*** and ***Ameena Begum Vs. The State of Tamilnadu and Ors., [2023 LiveLaw (SC) 743]***; wherein the detention law has been summarized and has been said to be draconian measure. Further, it has been observed that illegal detention orders cannot be allowed to sustain and, therefore, strict compliance is required to be made, as it is a question of liberty of a citizen. As aforesaid, out of the eight offences involving the present petitioner, the learned District Magistrate has considered two offences i.e. Crime 219 of 2024 dated 23.12.2024 and Crime No.06 of 2025 dated 05.01.2025 registered with Sambhajinagar Parali Police Station, District Beed for the offences

punishable under Section 65(e) of the Maharashtra Prohibition Act. In both the offences, 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. 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.09 of 2024 and Chapter Case No.29 of 2024 were proposed under Section 93 of the Maharashtra Prohibition Act and it is stated that final bond was taken, 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.

7. Further, in both the offences it can be seen that the petitioner was given notice under Section 35(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 (Old 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.”

8. Perusal of the statements of in-camera witnesses 'A' and 'B' would show that the incidents in both the cases are personal in nature and general public is not involved. Those statements would have created at the most law and order situation and not the public 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 stands allowed.
- II) The detention order dated 03.05.2025 bearing No.2025/RB-Desk-1/POL-MPDA/09 passed by respondent No.1 as well as the approval order dated 13.06.2025 and the confirmation order dated 23.07.2025 passed by respondent No.2, are hereby quashed and set aside.
- III) Petitioner – Raghunath Shivaji Rathod shall be released forthwith, if not required in any other offence.
- IV) Rule is made absolute in the above terms.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm