



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1107 OF 2025

Shahuraj s/o Vishwambhar Vairale
Age: 48 years, Occu.: Labour,
R/o. Madansuri,
Tq. Nilanga, District Latur.

.. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary
Home Department (Special),
Mantralaya, Mumbai.
2. The Collector and the District
Magistrate, Latur.
3. The Superintendent of Police,
Excise Department, Latur.
4. The Police Inspector,
State Excise, Nilanga,
District Latur.

.. Respondents

...
Mr. D. A. Madake, Advocate for the petitioner.
Mr. A. M. Phule, APP for the respondents/State.
...

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

DATE : 25 SEPTEMBER 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.)

. Heard learned Advocate Mr. D. A. Madake 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 22.07.2025 bearing No.2025/MAG/MPDA/Desk-2/WS-221 passed by respondent No.2 as well as the approval order dated 31.07.2025 and the confirmation order dated 26.08.2025 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 order 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 two offences were considered i.e. **(i) Crime No.73 of 2025** dated 12.0.2025 registered with Inspector, State Excise, Flying Squad, Latur, District Latur for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949 and **(ii) Crime No.91 of 2025** dated 29.03.2025 registered with Inspector, State Excise, Nilanga, District Latur for the offences punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949. Learned Advocate for the petitioner submits that the detaining authority has considered two offences and two in-camera statements for the purpose of passing the detention order. He 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 been received, however, in the detention order it is not stated as to 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 Bharatiya Nagarik Suraksha Sanhita, 2023 and was not arrested at all. 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 Mrs. Varsha Thakur-Ghuge, the District Magistrate, Latur. She supports the detention order passed by her and tries to demonstrate as to how she 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 26.08.2025.

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, the learned District Magistrate has considered only two offences i.e. Crime No.73 of 2024 dated 12.03.2025 registered with Inspector, State Excise, Flying Squad, District Latur and Crime No.91 of 2025 dated 29.03.2025 registered with Inspector, State Excise, Nilanga, District Latur for the offences punishable under Section 65(e) of the Maharashtra Prohibition

Act. In both the offences though CA reports were received, yet in the detention order it is not stated as to how much percentage of ethyl alcohol was found therein. The material was not sufficient before the detaining authority to categorize the petitioner as bootlegger. Further, the impugned order states that twice actions under Section 93 of Maharashtra Prohibition Act, 1949 were taken against the petitioner, which 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. The said procedure was started on 15.09.2024 and 15.10.2024. If it 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 in built 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.2 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 all the offences it can be seen that the petitioner was given notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (old Section 41(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 22.07.2025 bearing No.2025/MAG/MPDA/Desk-2/WS-221 passed by respondent No.2 as well as the approval order dated 31.07.2025 and the confirmation

order dated 26.08.2025 passed by respondent No.1, are hereby quashed and set aside.

III) Petitioner – Shahuraj s/o Vishwambhar Vairale 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