



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.422 OF 2025

Ashok s/o Marotrao Shinde
Sakhala Plot, Dnyaneshwar Nagar,
Parbhani.

.. Petitioner

Versus

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

.. Respondents

...

Mr. Rupesh A. Jaiswal, Advocate for the petitioner.

Mr. A. D. Wange, APP for respondents/State.

...

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

DATE : 02 MAY 2025

JUDGMENT (Per Smt. Vibha Kankanwadi, J.) :-

. Heard learned Advocate Mr. Rupesh A. Jaiswal for the petitioner
and learned APP Mr. A. D. Wange 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 10.02.2025 bearing No.2025/HOME/POL-1/MPDA/CR-01 passed by respondent No.1 as well as the approval order dated 20.02.2025 and the confirmation order dated 06.03.2025 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, nine offences were considered i.e. **(i)** Crime No.231 of 2023 registered with Inspector, State Excise, Parbhani, **(ii)** Crime No.409 of 2023 registered with Inspector, State Excise, Flying Squad, Parbhani, **(iii)** Crime No.270 of 2023 registered with Inspector, State Excise, Parbhani, **(iv)** Crime No.515 of 2023 registered with State Excise, Flying Squad, Parbhani, **(v)** Crime No.206 of 2024 registered with Inspector State Excise, Flying Squad, Parbhani, **(vi)** Crime No.421 of 2024 Inspector State Excise, Flying Squad, Parbhani, **(vii)** Crime No.353 of 2024 registered with Sub Inspector State Exercise, Parbhani and **(viii)** Crime No.366 of 2024 registered with Inspector State Excise, Parbhani. All the aforesaid crimes were registered for the offence punishable under Section 65(E) fo

the Maharashtra Prohibition Act, 1949 and **(ix)** Crime No.548 of 2024 was registered with Inspector State Excise, Flying Squad, Parbhani for the offence punishable under Section 65(B) (D) (E) (F), 90, 103 of the Maharashtra Prohibition Act. Learned Advocate for the petitioner submits that paragraph No.4 of the grounds of detention would show that in all nine offences were considered by the detaining authority. As regards the first four offences i.e. Crime Nos.231 of 2023 dated 15.08.2023, Crime No.409 of 2023 dated 19.09.2023, Crime No.270 of 2023 dated 28.09.2023 and Crime No.515 of 2023 dated 06.11.2023, it cannot be said that for passing the order of detention on 10.02.2025, there was any live link between those offences and the detention order. He further submits that only in respect of aforesaid four offences, CA Reports have been received and in respect of last five offences i.e. Crime No.206 of 2024 dated 12.05.2024, Crime No.421 of 2024 dated 17.09.2024, Crime No.353 of 2024 dated 12.11.2024, Crime No.366 of 2024 dated 17.11.2024 and Crime No.548 of 2024, the CA reports were not received, as it is not stated how much percentage of ethyl alcohol was found in the substance. He further submits that in all the nine offences, the petitioner was given notice under Section 41(A) of the Code of Criminal Procedure and was not arrested at all. Learned Advocate for the petitioner further submits that though statements of witnesses 'A' and 'B' were recorded on 27.09.2024 and 30.09.2024, yet the proposal was

submitted on 07.01.2025. and therefore, there is delay in sending the proposal, which is not explained by the sponsoring authority. As regards 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 relied on the affidavit-in-reply of Mr. Raghunath Gawade, the District Magistrate, Parbhani/detaining authority. He supports the detention order passed by him and tries to demonstrate as to how he had arrived at the subjective satisfaction. He further states that his 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 a conclusion that the petitioner was undertaking bootlegging activities and the liquor that was seized from him in some of the matters contain ethyl alcohol. Further, the statements of in-camera witnesses 'A' and 'B' would 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. As aforesaid, the detaining authority had considered the aforesaid nine offences and two in-camera statements. In fact, as regards first four offences are concerned, there is no live link. Further, the detaining authority has not considered that in respect of last i.e. Crime No.206 of 2024 dated 12.05.2024, Crime No.421 of 2024 dated 17.09.2024, Crime No.353 of 2024 dated 12.11.2024, Crime No.366 of 2024 dated 17.11.2024 and Crime No.548 of 2024, CA reports were not received. There was no opinion of any expert medical officer certifying that the seized liquor would have been injurious or harmful to human consumption. Further, it appears that there is delay in passing the detention order. Here, the confidential statements of witnesses 'A' and 'B' were recorded on 27.09.2024 and 30.09.2024 respectively. In fact, those statements were not verified by District Magistrate. The

proposal has been submitted by the sponsoring authority on 07.01.2025. Why there was so much delay in sending the proposal has not been explained by the sponsoring authority. There is no affidavit by the sponsoring authority explaining the said delay. The time spent between recording of confidential statements and verification thereof till the detention order, is more than four months. If the petitioner was really a dangerous person and his criminal activities were supposed to be curtailed, then the sponsoring authority cannot afford to remain idle. Further, it is to be noted that action under Section 93 of the Maharashtra Prohibition Act has been taken against the petitioner on 15.12.2023, but it has not been taken to the logical end. Thereafter, again on 13.06.2024, action under Section 93 of Maharashtra Prohibition Act was taken against the petitioner and request was forwarded to Sub Divisional Magistrate, Parbhani to cancel the bond of good behaviour. 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. 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. 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.

8. 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.

9. 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 10.02.2025 bearing No.2025/HOME/POL-1/MPDA/CR-01 passed by respondent No.1 as well as the approval order dated 20.02.2025 and the confirmation order dated 06.03.2025 passed by respondent No.2, are hereby quashed and set aside.
- III) Petitioner – Ashok s/o Marotrao Shinde 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