

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1319 OF 2025

Madhukar Aawba Hegade

..Petitioner

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. Harshvardhan Suryavanshi for Petitioner.

Mr. S. V. Gavand, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 17 APRIL 2025

JUDGMENT: (*Per Sarang V. Kotwal, J.*)

1. Heard Mr. Harshvardhan Suryavanshi, learned counsel for the Petitioner and Mr. Gavand, learned APP for the State.

2. The Petitioner is a 70 year old person. He has challenged the Detention Order issued by the Respondent No.2-District Magistrate, Kolhapur, under section 3 of The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons engaged in Black-Marketing of Essential Commodities

Act, 1981 (for short 'MPDA Act'), dated 23.01.2025, bearing No.Desk-7/Home/Pol/MPDA/SR/01/2025. Apart from the Detention Order, the Detaining Authority passed the Committal Order directing that the Petitioner be detained at Yerwada Central Prison, Pune.

3. The Petitioner was served with the grounds of detention. The grounds of detention are divided in different paragraphs. The Paragraph-3 lists 10 offences and 2 preventive actions taken against the petitioner in the past. Those offences were registered at the instance of Kagal police station, or State Excise Flying Squad, Kolhapur, or Sub-Inspector, State Excise Department, Kagal. All those offences were U/s.65(e) of the Maharashtra Prohibition Act, 1949 (for short 'said Act'). Those offences were registered between the period 14.04.2021 to 12.06.2023. In all these offences, the cases were pending before the competent courts. Two preventive actions were U/s.110 of the Cr.PC. and U/s.93 of the said Act. Those actions were taken by Kagal police station in the year 2021 and by the State Excise Department, Kagal, in the year 2023. On both these occasions, a bond was taken from him for a period of

one year.

4. The paragraph-4 of the grounds of detention mentions that, in the recent past the petitioner's involvement was noticed in three offences and in two 'in-camera' statements. It was specifically mentioned by the Detaining Authority that, while passing the Detention Order, the Detaining Authority relied upon these three registered offences and the two confidential statements mentioned in paragraph-5(A) and 5(B). The registered offences were as follows:

- i) C.R.No.147 of 2024 registered at the instance of Inspector, State Excise Department, Kagal, U/s.65(e) and 98 of the said Act. On that date, on the basis of information the petitioner was seen suspiciously wandering near one house. He was taken into custody and the house was searched. During search, one plastic can of 35 liters of capacity, one plastic bucket and four steel glasses were found in the corner. 25 liters of country liquor was found in that house and, therefore, the offence was registered. However, the petitioner was not arrested; instead, Notice U/s.35(3) of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') was served on him.
- ii) C.R.No.162 of 2024 registered at the instance of the Inspector, State Excise Department, Kagal, U/s.65(e) and 98 of the said Act, on 26.08.2024,

on similar allegations. 30 Liters of country liquor was found in one house. Again in this case, the petitioner was not arrested. He was given Notice U/s.35(3) of the BNSS.

- iii) C.R.No.211 of 2024 registered at the instance of the Inspector, State Excise Department, Kagal, under sections 65(e) and 98 of the said Act, on 25.10.2024. On that occasion, 30 sealed bottles of 180 ml capacity were found in petitioner's possession. Again in this case, the petitioner was not arrested and he was served with a notice U/s.35(3) of the BNSS.

In C.R.No.211 of 2024, importantly, it is mentioned by the Detaining Authority that the samples taken during the investigation were sent for chemical analysis and the report was awaited.

The C.A. report was available only in the first two offences mentioning that, there was 30.87% and 30.93% v/v of ethyl alcohol was found in those samples. Significantly, no such report was available in the third case when the Detention Order was passed.

5. The 'in-camera' statement of the witness 'A' was recorded on 03.12.2024. It refers to general allegations that the Petitioner was indulging in the activities of selling country liquor near his

residence. But the statement was specifically in respect of the particular incident which had taken place in the first week of November 2024 at 5:00p.m. At that time, this witness was allegedly threatened by the Petitioner that if the witness made a complaint about the petitioner's business then the Petitioner would not leave him alive. This 'in-camera' statement was verified by the Deputy Superintendent, State Excise Department, Kolhapur, on 23.12.2024.

6. The 'in-camera' statement of witness 'B' was recorded on 04.12.2024. Again here general allegations were made about the petitioner indulging in the business of selling country liquor near his residence. The statement was with reference to a particular incident which had allegedly taken place in the second week of November 2024. Again the petitioner had allegedly threatened this witness. This 'in-camera' statement was verified by the Deputy Superintendent, State Excise Department, Kolhapur, on 24.12.2024.

This is the material, based on which, the Detention

Order was passed.

7. Learned counsel for the Petitioner submitted that the grounds of detention show non application of mind on the part of Detaining authority because in Paragraph-6 the Detaining Authority had mentioned that the action taken against the Petitioner under the normal law of land was found to be insufficient. This satisfaction is incorrect because the Petitioner was not even arrested in the three registered offences. Learned counsel further submitted that, in C.R.No.211 of 2024 referred to herein above, the C.A. report was not even available, therefore, the Detaining Authority could not have taken that offence into consideration to reach the subjective satisfaction that the Petitioner was indulging in the bootlegging activities. He submitted that the 'in-camera' statements referred to the vague allegations about the petitioner indulging in such activities. The incidents mentioned by both these witnesses 'A' and 'B' referred to the threats issued to them, which would at the highest fall within the meaning of 'dangerous person' as defined U/s.2(b-1) of the MPDA Act, but these particular incidents do not cover the definition of

‘Bootlegger’ as mentioned U/s.2(b) of the said Act. He submitted that, on both these counts, the Detention Order is liable to be set aside. He relied on the Judgment of a Division Bench of this Court, at Aurangabad, passed in the case of *Devidas Lalji Ade Versus The State of Maharashtra*¹.

8. Learned APP submitted that the Petitioner was continuously indulging in these activities which is evident from the fact that recent three offences were registered against him and there were two ‘in-camera’ statements. He submitted that, though, he was not arrested in the registered offences, his continuous activities necessitated issuance of Detention Order. Mr. Gavand further submitted that the ‘in-camera’ statements also referred to the bootlegging activities on the part of the petitioner and, therefore, the Detaining Authority has rightly relied on those ‘in-camera’ statements.

9. We have considered these submissions. The Detaining Authority, as mentioned earlier, in paragraph-4 of the grounds of detention has specifically mentioned that, while passing the

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Detention Order, he had relied only on the three registered offences i.e. C.R.No.147 of 2024, C.R.No.162 of 2024 and C.R.No.211 of 2024, as well as, two 'in-camera' statements of witnesses 'A' and 'B'. Therefore, the grounds of detention will have to be tested on the basis of this particular material. In this case, as rightly submitted by the learned counsel for the Petitioner, in C.R.No.211 of 2024 the C.A. report was still awaited. Therefore, there was no concrete material to reach the subjective satisfaction that the subject matter of the said C.R. i.e. the incident dated 25.10.2024 attracted any of the activities which are mentioned in the definition of 'bootlegger' defined U/s.2(b) of the MPDA Act. This is the first lacuna in the Detention Order which shows non application of mind. The Detaining Authority could not have relied on the said registered offence.

10. The Detaining Authority in Paragraph-6 has categorically stated that the action taken against the petitioner under the normal law of land is found to be insufficient and ineffective to deter the petitioner from indulging in bootlegging activities prejudicial to the maintenance of public order. In this context, it is

very significant that, in none of the registered offences mentioned herein above which are the subject matter of passing of the Detention Order, the detinue was arrested. Therefore, there is no basis to reach a conclusion that the normal law of the land was ineffective to curb his activities. The concerned authorities had not even thought it fit to arrest him in connection with those activities. Therefore, there was no basis to reach his conclusion or satisfaction that the normal law of land was ineffective to curb the activities of the petitioner. In that context, learned counsel has rightly relied on the case of Devidas (supra). The relevant paragraph-18 from that Judgment is as follows:

“18. In the present case, the Petitioner was not even arrested in the three registered offences and, therefore, these observations are applicable to the present case. Learned APP submitted that the Petitioner’s activities are prejudicial to the maintenance of public order, however, the detaining authority has failed to record a satisfaction as to why ordinary law of the land was ineffective in curbing his activities. Merely stating that ordinary law of the land was not effective to curb his activities is not enough. In the Petitioner's case no steps were taken under normal law to curb his activities and hence it can not be said they were ineffective. Therefore resorting to passing of the detention order was not necessary. It shows non-application of mind on the part of the detaining authority. In this situation, it was not necessary to have resorted to this extraordinary remedy without exercising the powers under the ordinary law.”

11. If the petitioner was arrested in either of these offences, he could have been released on bail within a short time, but passing of the Detention Order has resulted into possibility of keeping him in custody for one year.

12. As far as the 'in-camera' statements are concerned, the verification was made about two particular incidents mentioned by the Witnesses 'A' and 'B'. Perusal of those 'in-camera' statements regarding those instances show that both these witnesses were threatened, but that particular activity would attract mischief U/s.2(b-1) of the MPDA Act; which defines 'dangerous person'.

'Bootlegger' is defined U/s.2(b) of the MPDA Act and the activities are entirely different. The said definition is as follows:

“(b) “bootlegger” means a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicants in contravention of any provisions of the Bombay Prohibition Act, 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacles or any other materials whatsoever in furtherance or support of the doing any of the

above mentioned things by or through any other person, or who abets in any other manner the doing of any such thing;”

Therefore, the incidents of issuing threats do not fall within the activities listed in this definition. The said definition refers to the activities of a person who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of the said Act. Issuing threats would fall within the meaning of activities committed by a dangerous person U/s.2(b-1) of the MPDA Act. Therefore, the particular incidents mentioned by both these witnesses would not attract the provision of the MPDA Act to enable the Detaining Authority to reach the conclusion that the petitioner was a ‘bootlegger’ within the meaning of MPDA Act. Therefore, the subjective satisfaction of the Detaining Authority based on those ‘in-camera’ statements would not be proper. Rest of the description in those ‘in-camera’ statements are general and vague, for which no effective representation could have been made by the Petitioner; thereby affecting his valuable right of making earliest effective representation against the Detention Order.

13. As a result of the above discussion, it is clear that the Detention Order is not sustainable and is liable to be set aside.

14. Hence, the following order:

O R D E R

i) The Petition is allowed and the Rule is made absolute in terms of prayer clause (B); which reads thus:

“Issue a Writ of Habeas Corpus to the Respondents, thereby quashing and setting aside the impugned detention order dated 23.01.2025 viz MPDA Order number: Desk-7/Home/Pol/ MPDA/SR/01/2025 issued under section 3 of M.P.D Act 1981 by the Respondent and on quashing the same the Petitioner ordered for release forthwith.”

ii) The Petitioner be released forthwith if not required in any other case.

iii) The Petition is disposed of.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)