



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.48 OF 2025

Sandip Haridas Patil
Aged About 45 years, Occ- Labour,
R/o Umri Smarak, Babulgaon
Dist Yavatmal
At Present District Prison, Parbhani

Petitioner

-Versus-

1. State of Maharashtra,
Through its Secretary, Home Department,
(Special) Mantralaya, Mumbai.
2. The Collector, Yavatmal, Dist
Yavatmal.

Respondents

Adv. Mir Nagman Ali Mir Jafar Ali, for the Petitioner.
Mr. Nitin Autkar, A.P.P. for Respondent Nos.1 and 2.

**CORAM : NITIN W. SAMBRE AND
MRS. VRUSHALI V. JOSHI, JJ.
DATE : 26/03/2025**

ORAL JUDGMENT (Per: Vrushali V. Joshi, J.)

1) Heard.

2) **Rule.** Rule made returnable forthwith. The Criminal Writ
Petition is heard finally with the consent of the learned counsel
appearing for the parties.

3) The petitioner being aggrieved by the detention order dated

27.12.2024 passed by Respondent no. 2 under Section 3(1) 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 (hereinafter referred to as the “MPDA Act”) has filed the present writ petition.

4) The detaining authority has relied upon the following offences in order to pass the detention order:

- (i) Crime No. 0079/2021 registered under Section 65(e) of the Maharashtra Prohibition Act, 1949.
- (ii) Crime No. 0344/2022 registered under Sections 307, 354, 294, 34 of the Indian Penal Code.
- (iii) Crime No. 0261/2024 registered under Section 65(c)(d) of the Maharashtra Prohibition Act, 1949.
- (iv) Crime No. 0528/2024 registered under Section 65(c)(d) of the Maharashtra Prohibition Act, 1949.
- (v) Crime No. 0590/2024 registered under Section 65(d) of the Maharashtra Prohibition Act, 1949.
- (vi) Crime No. 0594/2024 registered under Sections 118(1), 352, 351(2), 351(3) of Bharatiya Nyaya Sanhita.
- (vii) Crime No. 640/2024 registered under Section 65(d) of the Maharashtra Prohibition Act, 1949.

5) The petitioner has raised the grounds as under:

- (a) Two of the offences, i.e., Crime No. 79/2021 and Crime no.

344/2022 which have been relied upon by the detaining authority are stale offences and have no nexus with the passing of the detention order.

(b) Crime no. 528/2024 came to be registered on 02.05.2024 and the detention order came to be passed on 27.12.2024, hence, there is a delay in passing the detention order.

(c) The in-camera statements of the confidential witnesses 'A' and 'B' are generic in nature and they in no way indicate that the detenu has created fear in the minds of the people or the activities of detenu have been detrimental to the public order.

(d) All the cases registered against the petitioner are still pending before the competent court, hence, the counsel for the petitioner has heavily relied on the principle of **"Innocent until proven guilty"**.

6) Learned counsel for the petitioner contended that perusal of the detention order would show that the detenu has been termed as a "bootlegger" on the basis of the offences registered against him, although, in none of the offences, the Chemical Analyzers report has been submitted to show that the detenu has caused any danger to public health which vitiates the subjective satisfaction reached by the detaining authority. Perusal of opinion dated 04.06.2024 would show that the same has considered Chemical Analyzers report bearing

no.Am/T/7663/2022 and Am/T/7658/2022 but the same does not appear to be pertaining to the petitioner.

7) Learned counsel for the petitioner further contended that the date of recording and the date of the verification of the in-camera statements of the confidential witnesses are masked. Further, the detaining authority has not expressed its satisfaction about the truthfulness of the in-camera statements. It is also contented that perusal of the in-camera statements only show the endorsement that the detaining authority had merely perused the statements.

8) Learned A.P.P has filed the affidavit-in-reply and has supported the order passed by the detaining authority.

9) We have considered the arguments of both the parties and have gone through the record of the detention order. The detaining authority has considered total seven crimes and two statements for passing the detention order. Two offences are of the year 2021 and 2022. Crime No. 79 of 2021 is for the offence under Section 65(e) of the Maharashtra Prohibition Act, committed on 22/03/2021 and Crime No.344 of 2022 is for the offence punishable under Sections 307, 355, 294 r/w 34 of the Indian Penal Code, committed on 27.05.2022. These offences though are stale

offences, are considered for passing the detention order. The petitioner has placed reliance on the judgment of this Court in the case of *Moreshwar Sudhakar Nighot Vs. State of Maharashtra and anr. (Criminal Writ Petition No.464 of 2024) decided on 19/12/2024*, wherein this Court has made an observation regarding passing of detention order based on stale offences.

10) The Hon'ble Apex Court in the case of *Khaja Bilal Ahmed Vs.State of Telangana and ors, 2019 DGLS(SC) 1677* in para 15 has observed as under:-

15. In the present case, the order of detention states that the fourteen cases were referred to demonstrate the "antecedent criminal history and conduct of the appellant". The order of detention records that a "rowdy sheet" is being maintained at PS Rain Bazar of Hyderabad City and the appellant "could not mend his criminal way of life" and continued to indulge in similar offences after being released on bail. In the counter affidavit filed before the High Court, the detaining authority recorded that these cases were "referred by way of his criminal background... (and) are not relied upon". The detaining authority stated that the cases which were registered against the appellant between 2009 and 2016 "are not at all considered for passing the detention order" and were "referred by way of his criminal background only". This averment is plainly contradictory. The order of detention does, as a matter of fact, refer to the criminal cases which were instituted between 2007 and 2016. In order to overcome the objection that these cases are stale and do not provide a live link with the order of detention, it was contended that they were not relied on but were referred to only to indicate the antecedent background

of the detenu. If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.”

Extraneous material is considered for passing the detention order.

11) The offences which are considered are under Section 65(e) of the Maharashtra Prohibition Act. In all the offences, the Chemical Analysers Report is awaited and if the Chemical

Analysers Report is not available, no conclusion about *prima facie* involvement of the petitioner in the said crimes could be arrived at and if that is so, no further conclusion regarding involvement of the petitioner in prejudicial activities can be arrived at.

12) The Hon'ble Apex Court in the case of *District Collector, Ananthapur V/s. V. Laxmanna* reported in 2005 DGLS (SC) 2745 in Paragraph Nos.7 and 8 has made following observations:-

"7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy such material should also be given to the detenu to afford him an opportunity to make an effective representation.

8. Therefore, while holding that dealing with arrack which is dangerous to public health would

become an act prejudicial to the maintenance of public order attracting the provisions of the Act. It must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of the such material should be given to the detenu."

13) The two statements are identical and state about the general behaviour of the petitioner and similar incidents have been narrated by both the witnesses. In a recent judgment of the Hon'ble Apex Court in the case of *Arjun Ratan Gaikwad Vs. The State of Maharashtra and ors arising out of SLP (Cri.) No.12516 of 2024* the Hon'ble Apex Court in paragraph No.17 of the said judgment has observed as under:-

17. "Insofar as the statement of the two unnamed witnesses are concerned, the allegations are as vague as it could be. In any case the statements which are stereotype even if taken on its face value would show that the threat given to the said witnesses is between the appellant and the said witnesses. The statements also do not show that the said witnesses were threatened by the appellant in the presence of the villages which would create a perception in the mind of the villagers that the appellant herein is a threat

to the public order”.

14) The detaining authority is required to record the satisfaction that the activity of manufacturing illicit liquor is causing great prejudice to the maintenance of public order. The activity of bootlegging may be prejudicial to the maintenance of the public health, but it is also required to be found by the authority that such activities is prejudicial to the maintenance of the public order. There is a huge difference between public health and maintenance of public order. It is not necessary that any danger to public health would always lead to unrest and breach of peace among the members of public. We are therefore, of the view that the statements of the witnesses are not sufficient to pass the detention order and the incidents mentioned in said statements also does not show that it would lead to a conclusion which is beyond that of disturbance of public health, and therefore, we are of the view that there is no requisite satisfaction arrived at by the detaining authority. In this view of the matter, we find that the impugned order cannot be sustained in the eyes of law.

15) In the result, the Writ Petition is allowed in terms of it's

prayer clause (i). The petitioner be set at liberty forthwith, if not required in any other crime.

16) Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J) (NITIN W. SAMBRE, J)