



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.135/2025

Manoj Mohan Beniwal
Aged about 50 years, Occ. Labourer
R/o. Pariharpura, Wadali, Camp,
Taluka and Distt. Amravati 444 601.

...Petitioner

Santosh Mohan Beniwal
Aged about 46 years,
R/o. Pariharpura, Wadali,
Taluka and Distt. Amravati
Lodged in Central Prison,
Nagpur.

...Detenu

- Versus -

1. State of Maharashtra,
Through Home Department (Special),
2nd Floor, Mantralaya,
Mumbai 400 032.
2. Commissioner of Police,
Amravati, District Amravati.
3. Deputy Commissioner of Police,
Zone-1, Amravati.
4. Assistant Commissioner of Police,
Frezarpura Zone, Amravati.
5. Senior Police Inspector,
Police Station, Frezarpura,
District Amravati.

... Respondents

Mr. Pankaj Navlani, Advocate for the petitioner.
Mr. N.S. Rao, A.P.P. for respondent Nos.1 to 5.

CORAM: NITIN W. SAMBRE & MRS. VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT: 27.3.2025.

DATE OF PRONOUNCING THE JUDGMENT: 7.4.2025.

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

Rule. Rule made returnable forthwith. Heard finally by consent of learned Advocates for the parties.

2. By this writ petition, the petitioner, brother of the detenu, has challenged the detention order dated 08.11.2024 passed by the respondent No.2 and approved by the respondent No.1 on 18.11.2024 under Section 3(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 “M.P.D.A. Act”) tagging him as a “bootlegger” under section 2(b) of the said Act.

3. The detaining authority has given consideration to two offences and two in-camera statements in order to pass the detention order as under:-

(i) Crime No.791/2024 registered on 25.9.2024 at Frezarpura Police Station under Section 65(e)(f) of the Maharashtra Prohibition Act.

(ii) Crime No.826/2024 registered on 11.10.2024 at Frezarpura Police Station under Section 65(f) of the Maharashtra Prohibition Act.

4. The grounds raised by the petitioner are as under:-

(a) In Crime No.791/2024 the Chemical Analyzer's report only mentions the percentage of ethyl alcohol in water and it nowhere mentions the opinion of the Civil Surgeon, District Hospital, Amravati stating about the nature and quality of the contraband to the effect that consumption of such contraband is injurious to health.

(b) In Crime No.826/2024, as per the C.A. report, there is ethyl alcohol in the sample and as per the opinion of the

District Surgeon Office, General Hospital, Amravati ethyl alcohol only when consumed in excess amount can be hazardous to human health. Hence it does not appear that it will be prejudicial to the maintenance of the public order.

5. Learned Advocate for the petitioner Mr. Navlani submitted that in Crime No.791/2024, the detenu was alleged to have been in possession of 25 litres of distilled liquor when he came to be arrested by the concerned authorities, hence, there arises no question of disturbance of public order. Thus, the detaining authority erred in taking into consideration of the crime mentioned herein above for passing the detention order.

6. The petitioner further submitted that the in-camera statements of the confidential witnesses pertain to individual incidents. Furthermore, the detaining authority nowhere in the verification of the in-camera statements mentioned about the unwillingness of the confidential witnesses to speak against the

petitioner. It was further stated by the learned Advocate for the petitioner that the detaining authority did not interact with the sponsoring authority who recorded the in-camera statements or has recorded satisfaction after the interaction as to satisfy itself that the statements of the confidential witnesses were genuine.

7. The petitioner has relied on the decision of this Court in Shaikh Hussain @ Shahrukh Shaikh Fatru v/s. State of Maharashtra, Criminal Writ Petition No.873/2022, which cites the judgment of this Court in Shahjahan w/o Kalimkhan Samshadkhan Pathan V/s. State of Maharashtra & Anr. reported in 2016 ALL MR (Cri) 4233, which observed as under:-

8. *“In the absence of any record of the statements being seen by the Commissioner of the Police thereby affecting his subjective satisfaction, the petitioner is entitled to succeed in the petition. These observations are clearly attracted to the matter in hand. There is no contemporaneous material placed before us to show that the detaining authority had in fact verified the statements and had any interaction with the Assistant Superintendent of Police, who recorded his report. Similarly, by reproducing the*

contents of statements of witness A and B in the grounds of detention without the material to show that the detaining authority had in fact interacted either with the witnesses or discussed it with the authority, who verified such statements, the order of detention stands vitiated.”

8. Learned A.P.P Mr. Rao, has filed affidavit-in-reply and has strongly opposed the contentions of the petitioner by placing reliance on the detention order passed by respondent No.2. He argued that the witnesses came forward to speak against the detenu only if their identities were kept confidential which shows imminent threat of the detenu. It was further stated that the in-camera statements were recorded by Senior Police Inspector, Frezarpura, Amravati City. The proposal was then forwarded through the Assistant Commissioner to be submitted to the Commissioner of Police, Amravati. It is submitted that the Assistant Commissioner verified the in-camera statements by calling upon the witnesses. The Deputy Commissioner of Police, Zone-I, Amravati City, then interacted with the Assistant Commissioner regarding the correctness of the in-camera

statements and after being subjectively satisfied about the correctness reached at a conclusion that the detenu is a 'Bootlegger' and passed the detention order.

9. Learned A.P.P further contended that the Investigating Officer issued a letter to the Civil Surgeon, Amravati, seeking opinion upon the Chemical Analyzer's report to which the Civil Surgeon opined that the seized spurious liquor is harmful to human consumption irrespective of quantity found in the samples and is adverse to the public health. Hence, the detaining authority has rightly arrived at the subjective satisfaction that the detenu is a 'Bootlegger' and needs to be detained as his criminal activities are prejudicial to the public order.

10. Heard both sides and perused the record.

11. Though the detention order is assailed on several grounds, we propose to consider only one ground as to whether

the non-supply of the documents like opinion of the Medical Officer about the C.A. report as to whether the liquor is injurious to the health of public at large has affected the right of the detenu to make an effective representation under Article 22(5) of the Constitution of India.

12. The petitioner who is the brother of the detenu has stated that relying on the two offences under the Maharashtra Prohibition Act and the two confidential statements of the witnesses the detention order is passed. In this case, it appears that the C.A. reports in both the offences are available. Ethyl alcohol is found in samples of both the offences. The opinion of the medical expert is also available in one of the crimes.

13. The learned Advocate for the petitioner has stated that though it is not specifically mentioned in the petition that the medical opinion is not supplied to the petitioner it is mentioned in the petition that incomplete documents are supplied to the

petitioner and, therefore, his right of effective representation is infringed.

14. While arguing the matter, learned Advocate for the petitioner has stated that the opinion of the medical expert is not supplied and, therefore, there is infringement of Article 22(5) of the Constitution of India.

15. The learned Advocate has relied on the judgment of the Hon'ble Apex Court in Jaseela Shaji V/s Union of India and others reported in (2024) 9 SC 53 wherein it is observed that it is necessary to furnish copies of each and every document to which a casual or passing reference may be made in the narration of facts and which are not relied upon by the detaining authority, need not be furnished to the detenu, however, failure to furnish copies of document/documents, relied on by the detaining authority which would deprive the detenu to make an effective representation, would certainly amount to violation of the

fundamental right guaranteed under Article 22(5) of the Constitution of India.

16. In the case in hand, the C.A. reports are available and the opinion of medical expert on said C.A. reports whether quantity found in the sample is injurious to health of the public is necessary and if it is injurious then to what extent. As said document is not supplied to the detenu it definitely affects the right guaranteed under Article 22(5) of the Constitution of India. Hence on this ground alone the order passed by the detaining authority stands vitiated. The writ petition is allowed. The impugned order dated 08.11.2024 passed by respondent No.2 and confirmed by respondent No.1 on 18.11.2024 is quashed and set aside. The petitioner be set at liberty forthwith, if not required in any other crime.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)