



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

CRIMINAL WRIT PETITION NO.119/2025

Sau. Sonu W/o Manoj Uke
Aged 31 Years, Occu. labour,
R/o. Station Fail, Wardha
Tahsil and District Wardha.

... Petitioner

- Versus -

1. State of Maharashtra
Through Home Department,
2nd floor, Mantralaya, Madam
Cama Road, Hutatma Rajguru
Chowk, Mumbai 400 032.

2. State of Maharashtra,
Collector and District Magistrate,
Wardha, Tahsil and District Wardha.

3. The Police Station Officer,
Police Station Wardha City,
Wardha.

... Respondents

Mr. Rajat A. Biranware, Advocate for the petitioner.
Mr. N.S. Rao, A.P.P. for respondent Nos.1 to 3.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 4.4.2025.
DATE OF PRONOUNCING THE JUDGMENT: 23.4.2025.

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

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned Advocates for the parties.

2. The petitioner is seeking to quash and set aside the detention order dated 27.09.2024 passed by respondent No.2 Collector/District Magistrate, Wardha against the petitioner as per the provisions of 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 "M.P.D.A. Act") which is confirmed by respondent No.1 on 07.11.2024.

3. For passing the detention order, the detaining authority has taken into account nine offences and relied upon one recent offence within last six months registered against the petitioner.

4. The recent offence which forms the basis of the order of detention is as under:-

(i) Crime No.990/2024 registered on 27.06.2024 at Police Station Wardha City, under Sections 65(e) and 77(a) of the Maharashtra Prohibition Act.

(ii) In Crime No.990/2024 thirteen bottles of liquor worth about Rs.30,000/- were seized. In the said crime, the Chemical Analyzer's report is awaited. The said recent crime was committed after a preventive action was taken against the petitioner under Section 110(e)(g) of the Code of Criminal Procedure, 1973. In Crime No.451/24 registered on 18.03.2024 under Sections 332, 353, 427, 294, 504, 506 read with Section 34 of the Indian Penal Code, there is no seizure and therefore, no C.A. report while in all the remaining seven crimes the Chemical Analyzer's reports are available.

In Crime No.990/2024, the detenu was released on bail after furnishing cash security of Rs.3,500/- and a personal bond of Rs. 15,000/- and in Crime No.451/2024 vide order

dated 06.04.2024 the detenu has been released on issuance of notice under Section 41(1)(A) of the Code of Criminal Procedure.

The opinion of the Civil Surgeon, District Hospital, Wardha, indicates that consumption of ethyl alcohol in excess quantity is harmful to human health and causes mental illness such as depression, anxiety, anti-social personality disorder and so on. It may also cause damage to brain and nervous system, the functioning of heart, liver, pancreas and kidney.

5. Learned Advocate for the petitioner has pressed into service various grounds to challenge the detention order, mainly as under:-

(a) The petitioner does labour work and is a single mother with an eight year old child who is dependent on her. Crime No.451/2024, punishable under Section 353 of I.P.C. has been falsely registered by the complainant who is a police authority just to add on to an offence for filling up the crime chart.

(b) The respondents had not offered opportunity to give proper explanation regarding the criminal cases and failed to

consider documents produced by the petitioner and no complaint has been lodged by any person against the detenu who is residing in the same locality.

(c) The respondents have not stated in the impugned order that there was an alarm, harm, danger to the property and public due to the pending cases against the detenu. Moreover, neither date of 'verification' is mentioned nor date of 'seen' is mentioned below the statements of secret witnesses.

6. Learned Advocate for the petitioner, Mr. Biranware, submitted that there is no reference of any discussion or interaction with the witnesses "A" and "B" by the authority who has verified the confidential statements. The statements of secret witnesses are vague because no place, date and time of incident is mentioned. He further submitted that there is no C.A. Report in Crime No.990/2024 opining that the manufacture of illicit liquor is adversely affecting the public health. He further argued that it took near about forty one days from the order of detention till the State Government issued the order of confirmation of detention.

7. Learned A.P.P. Mr. Rao has relied on the affidavit-in-reply to contradict the arguments made by the petitioner. He submitted that the petitioner is residing at her maternal family along with two brothers who are also indulging into spurious liquor business. It is submitted by the learned A.P.P. that out of the nine offences registered against the detenu, seven of them are under trial, and there no reason to register false offences against the petitioner by the police authority. The statements of the secret witnesses were recorded on 07.08.2024 and 08.08.2024 by the Senior Police Inspector, Police Station, Wardha City, Wardha and verified by the Sub-Divisional Police Officer on 26.08.2024. The respondent No.2 has also duly verified the in-camera statements of the witnesses.

8. Learned A.P.P strongly contended that the detaining authority had granted opportunity to the detenu to defend herself by making a representation. So also, the Advisory Board personally heard the detenu and after considering the entire material, recommended the State Government the detenu be

detained and for that purpose, the detention order is rightly passed. Furthermore, it is submitted that the detention order was passed on 27.09.2024 and the same was forwarded to the State Government for its approval on 30.09.2024. During intervening period, the petitioner was absconding. On 01.10.2024 the Superintendent of Wardha informed that the petitioner has been taken into custody after serving the order of detention upon her.

9. Heard the learned Advocates for the parties and perused the record.

10. The petitioner is detained as a bootlegger. One recent offence is considered for passing the detention order along with eight other offences which were committed by the petitioner within the period of one year. Crime No.990/2024 is registered against the petitioner for the offence punishable under Sections 65(e) and 77(a) of the Maharashtra Prohibition Act, 1949. In the said offence the petitioner was arrested and immediately released

on bail by the Magistrate. Though this offence is considered which was registered during the period of six months, the other eight offences are considered by the detaining authority for passing the detention order. The C.A. report in said recent offence i.e. Crime No.990/2024 is not available. It appears that relying on the C.A. reports of earlier offences, the detention order is passed. It is necessary to consider the C.A. Report placed on record to see whether the liquor is injurious to health of public at large. In this case, the C.A. Report is not available of the recent crime i.e. Crime No.990/2024. C.A. Reports of earlier offences are not helpful to the detaining authority to pass the detention order.

11. The Hon'ble Apex Court in the matter 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."

12. As C.A. Report of the recent crime i.e. Crime No.990/2024 is not available and the extraneous material i.e. eight earlier offences are considered while passing the detention order, the detention order passed by the detaining authority stands vitiated.

13. Two confidential statements on which the detaining authority has relied for passing the detention order are of similar nature. Both the statements are given by the lady witnesses. Witness "A" has stated that when she asked the petitioner why the customer is lying there in front of her house and he is vomiting/puking, at that time, petitioner quarrelled with her. In another statement, witness "B" has stated that when police came in her house to conduct raid and the witness went there to give understanding not to do such business, the petitioner quarrelled with her and gave threats. Due to fear she has not lodged the complaint. From both the statements it does not appear that it affects the 'public order'. The public order is not disturbed

because of the incidents which are mentioned by the secret witnesses “A” and “B”. C.A. Report of the recent crime i.e. Crime No.990/2024 is necessary to consider as to whether the liquor is injurious to public at large, which is not made available in the recent crime which is considered by the detaining authority while passing the detention order. Therefore, we are of the opinion that the order passed by the detaining authority is required to be quashed and set aside.

14. For the aforesaid reasons, writ petition is allowed in terms of prayer clauses B and C.

The petitioner be set at liberty forthwith, if not required in any other crime.

Rule accordingly.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)