



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

CRIMINAL WRIT PETITION NO.160/2025

Mulchand s/o Rama Jadhav,
age 65 Yrs., Occ. Labour,
R/o Mohana Bk., Tq. Mehkar,
Dist. Buldana.
(Presently lodged in Buldana Jail)

... Petitioner

- Versus -

1. State of Maharashtra, through
Section Officer to the Govt. of
Maharashtra, Home Department
(Special), Mumbai - 32.
2. The District Magistrate and
the Collector, Buldana.
3. The Superintendent of Police,
Buldana, Distt. Buldana.
4. Police Station Officer,
P.S. Janefal, Tq. Mehkar,
Dist. Buldana.

... Respondents

Mr. A.J. Thakkar, Advocate with Mr. Sagar A. Thakkar, Advocate
for the petitioner.

Mr. A.B. Badar, A.P.P. for respondent Nos.1 to 4.

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

DATE OF RESERVING THE JUDGMENT: 20.3.2025.

DATE OF PRONOUNCING THE JUDGMENT: 2.4.2025.

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

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

2. By the present petition, the petitioner seeks to invoke the extraordinary writ jurisdiction of this Court to quash and set aside the detention order passed by respondent No.2 on 9.9.2024 which was confirmed by respondent No.1 on 23.10.2024 under the provisions 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”).

3. The detaining authority has relied upon the following offences in order to pass the detention order:-

(i) Crime No.415/2021 registered under Section 65(E) of the Maharashtra Prohibition Act,

- (ii) Crime No.181/2022 registered under Section 65(E) of the Maharashtra Prohibition Act,
- (iii) Crime No.303/2022 registered under Section 65(E) of the Maharashtra Prohibition Act,
- (iv) Crime No.46/2023 registered under Section 65(E) of the Maharashtra Prohibition Act,
- (v) Crime No.133/2023 registered under Section 65(E) of the Maharashtra Prohibition Act,
- (vi) Crime No.201/2023 registered under Section 65(E) of the Maharashtra Prohibition Act,
- (vii) Crime No.340/2023 registered under Section 65(E) of the Maharashtra Prohibition Act and
- (viii) Crime No.109/2024 registered under Section 65(E) of the Maharashtra Prohibition Act.

4. One of the major grounds on which the petitioner has relied is mentioned as under:-

(a) The statements of confidential witnesses have not been verified by the detaining authority. Moreover, both the statements are cyclostyled copies of each other. Hence the subjective satisfaction reached by the detaining authority is vitiated.

5. Learned Advocate for the petitioner Mr. Thakkar submitted that a detailed representation was submitted to respondent No.1 but the detaining authority erred in not examining the representation submitted by the petitioner. He further stated that a bare perusal of the impugned order clearly shows that no subjective satisfaction has been recorded about the unwillingness of the witnesses/victims to come forward and give statement against the petitioner.

6. *Per contra*, learned A.P.P. Mr. Badar vehemently opposed the submissions made by the petitioner. He submitted that the petitioner through his Advocate made a representation to

respondent No.1 which has been decided after granting ample opportunity of hearing to the petitioner and thereafter the detention order was confirmed. Further, learned A.P.P argued that the detaining authority after verifying and considering all the material placed before it had a dialogue with the authority who had recorded and verified the in-camera statements and thereafter only the detaining authority has passed the detention order. Furthermore, on perusal of the grounds of detention it appears that the criminal activities of the petitioner have created a sense of fear in the minds of people. Therefore, the detaining authority has rightly reached the subjective satisfaction.

7. The petitioner is detained as a bootlegger. As mentioned above, eight offences are considered for passing the detention order against the petitioner. The offences are from 2021 to 2024. It appears that stale offences are considered for passing the detention order. The C.A. Reports in earlier six offences are on record, however, it is the requirement of the Act to

consider the recent crimes within six months to pass the detention order. C.A. Reports in recent crimes are not produced and considered by the detaining authority. Stale offences have no bearing on the provability of the detenu engaging in criminal activities.

8. The petitioner has relied on the judgment in Khaja Bilal Ahmed V/s. State of Telangana reported in (2020) 13 SCC 632 the Hon'ble Apex Court has held that 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.

9. The C.A. Reports of earlier six offences are not sufficient to come to the conclusion that the bootlegging activity of the petitioner is prejudicial to public health; one Toxicology Report of Civil Surgeon is also filed along with record, however, it

is not considered while passing the detention order. If we consider it, it appears that opinion is given if the liquor containing ethyl alcohol is consumed in large quantity then it is injurious to health. It depends on consumption of quantity of liquor. Therefore, though C.A. Reports and opinion are placed on record, they are of no use. The C.A. Reports in recent crime are neither considered nor made available.

10. 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."

11. Without considering recent C.A. Report the detention order is passed which cannot be sustained in the eye of law.

12. Furthermore, two confidential statements which are considered for passing the detention order is a mere formality. Two identical statements are considered wherein the general character of the petitioner is mentioned by both the witnesses.

Stereotype statements are considered for passing the detention order.

13. The Hon'ble Apex Court in the recent judgment about stereotype statements in case of Arjun S/o Ratan Gaikwad V/s. The State of Maharashtra and others in Criminal Appeal No.5204/2024 (Arising out of SLP (Cri.) No.12516/2024) decided on 11.12.2024 has in para 17 has observed as under:-

“17. Insofar as statements of the two unnamed witnesses are concerned, the allegations are as vague as it could be. In any case the statements which were 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 villagers which would create a perception in the mind of the villagers that the appellant herein is a threat to the public order.”

14. On the basis of C.A. Reports in earlier crimes the order for detention cannot be passed. It is clear that there is non-availability of the C.A. Reports in recent crimes to prove that the liquor is injurious to the health of public at large, no public order is disturbed, stale offences are considered since 2021

whereas it is necessary to consider the offences within the period of six months from the date of passing the detention order or from the date of sending the proposal. The statements are also not helpful to pass the detention order they being identical statements made by both the witnesses.

15. For the aforesaid reasons, the detention order passed by respondent No.2 dated 9.9.2024 which was confirmed by respondent No.1 on 23.10.2024 is vitiated and accordingly needs to be quashed and set aside.

16. The writ petition is allowed in terms of prayer clauses (1) and (2).

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

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

Tambaskar.