



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

Criminal Writ Petition No.159 of 2025

[Shilpa Suresh Rathod and another **VERSUS** State of Maharashtra, through its
Joint Secretary, Home Department (Special), Mantralaya, Mumbai and
another]

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions Registrar's orders.	Court's or Judge's order
--	--------------------------

Shri S.D. Tatake, Counsel for Petitioners.

Shri S.M. Ghodeswar, Additional Public Prosecutor for Respondents.

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

DATE : APRIL 17, 2025

1. Heard.
2. The petitioners are the husband and wife, whereas the petitioner No.2 is a detenu. Both of them have questioned the order of detention dated November 04, 2024 passed by the respondent No.2- District Magistrate, Washim, which has been confirmed by the order dated November 13, 2024 passed by the respondent No.1- State Government, whereby the petitioner No.2 is directed to be detained pursuant to sub-section (3) 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, 'the MPDA Act').
3. It is the contention of the counsel for the petitioners that the order of detention is based on the two in-camera statements and the two offences, which read as under :

Sr.No.	Police Station	C.R.No./ Date	Under Section	Present Status
5.1	Asegaon	211/24	65(E) Maharashtra Prohibition Act, 1949	Police Investigation
5.2	Asegaon	273/24	65(E) Maharashtra Prohibition Act, 1949	Police Investigation

4. It is the contention of the counsel for the petitioners that the draconian provisions of the MPDA Act are invoked thereby considering the petitioner No.2 is a regular offender in the prohibition cases, which are punishable under Section 65(E) of the Maharashtra Prohibition Act, 1949. According to him, in both these offences, the reports of the Chemical Analyzer are not available and as such the order suffers from non-application of mind, as the detention order is based on insufficient material. It is further urged that in view of the intimation under Section 41-A of the Code of Criminal Procedure, the petitioner No.2 was never arrested in the aforesaid offences and as such the order of detention cannot be sustained, as even otherwise the Police Authorities have thought it fit not to arrest the petitioner No.2 in the aforesaid offences.

5. As against above, Shri Ghodeswar, learned Additional Public Prosecutor, would urge that the criminal history of the petitioner No.2 demonstrates that he is in the habit of commission of the offences under the Maharashtra Prohibition Act, 1949. According to Shri Ghodeswar, just because the notice under Section 41-A of the said Act is not given, that by itself will not invalidate the detention order. Shri Ghodeswar would urge that considering the repeated offences committed by the petitioner No.2, the Detaining Authority was justified in recording the subjective satisfaction and that being so, the petition is liable to be dismissed.

6. We have considered the rival submissions.

7. The detention order speaks of registration of in all eight offences against the petitioner No.2, all of which are under Section 65(E) of the Maharashtra Prohibition Act, 1949.

8. Apart from above, a preventive action was taken under Section 93(b) of the very same Act, wherein the petitioner No.2 was required to furnish a bond.

9. As far as the order of detention is concerned, same is based on two offences, being Crime Nos.211 and 273 of 2024, both punishable under Section 65(E) of the Maharashtra Prohibition Act, 1949.

10. It is a fact, which is conceded by the learned Additional Public Prosecutor in response to the Court's query, that in both these offences, which are formed to be the basis for ordering detention, the reports of the Chemical Analyzer are awaited. As such, in absence of the reports of the Chemical Analyzer in both these offences, it will be difficult to infer that the petitioner No.2 is *prima facie* involved in the offences under the Maharashtra Prohibition Act, 1949 and as such the recording of subjective satisfaction can be said to be vitiated.

11. Apart from above, the petitioner No.2 was never arrested in both these offences, as he was issued a notice under Section 41-A of the Code of Criminal Procedure.

12. Once the Police Authorities have thought it fit not to arrest the petitioner in the aforesaid offences, same defies the logic as to the requirement of passing of the detention order, particularly when at the relevant time the custodial interrogation was thought not to be fit in the case in hand.

13. In this background, it will be appropriate to observe that the order of detention dated November 04, 2024 passed by the respondent No.2-District Magistrate, Washim, which has been confirmed by the order

dated November 13, 2024 passed by the respondent No.1- State Government cannot be said to be sustainable and as such, the same are hereby quashed and set aside.

14. We direct that in case the custody of the petitioner No.2 is otherwise not required, he be set free forthwith.

15. The criminal writ petition stands allowed accordingly.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

LANJEWAR