



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

CRIMINAL WRIT PETITION NO.175/2025

Harish S/o Nandkishor Meshram
Aged about 28 Years, Occ. Labour
R/o Sawlapur, Tah. Arvi,
Distt. Wardha.

... Petitioner

- Versus -

1. State of Maharashtra,
Through Section Officer,
Home Department (Special),
2nd Floor Main Building Mantralaya,
Madam Cama Road, Mumbai-400032.

2. District Magistrate
Distt. Wardha.

3. Sub-Divisional Police Officer
Arvi, Distt. Wardha.

4. Police Station Officer,
Police Station Arvi,
District Wardha.

5. Superintendent, District Prison,
Distt. Wardha.

... Respondents

Mr. Nikhil D. Dawda, Advocate for the petitioner.
Mr. S.S. Hulke, A.P.P. for the respondents.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 24.4.2025.
DATE OF PRONOUNCING THE JUDGMENT: 5.5.2025.

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

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

2. The petitioner has filed the instant writ petition being aggrieved by the detention order dated 05.11.2024 passed by respondent No.2 and the confirmation order dated 02.01.2025 passed by respondent No.1 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 “M.P.D.A. Act”) which declared him as a ‘bootlegger’.

3. The order of detention is based on two in-camera statements of confidential witnesses along with three offences committed within the last six months which are as under:–

- (i) Crime No.811/2024 registered at Police Station, Arvi, Distt. Wardha under Section 65(f) of the Maharashtra Prohibition Act, 1949,
- (ii) Crime No.722/2024 registered at Police Station, Arvi, Distt. Wardha under Section 65(f) of the Maharashtra Prohibition Act, 1949 and
- (iii) Crime No.647/2024 registered at Police Station, Arvi, Distt. Wardha under Section 65(f) of the Maharashtra Prohibition Act, 1949.

4. The petitioner, in order to challenge the order of detention, has raised the following grounds:-

- (a) It is essential on part of the respondent No.1 to confirm the detention within seven weeks from the date of passing the detention order and though the detention order came to be passed on 05.11.2024 it was confirmed on 02.01.2025 which shows that it did not come to be confirmed within the prescribed time period.

(b) A bare perusal of crimes, which have been taken into consideration for passing the detention order, would reveal that all the complaints are identical in nature.

(c) Both the in-camera statements are identical in nature which pertain to the same alleged incident. Hence, no evidentiary value can be attached to such statements.

5. The learned Advocate appearing on behalf of the petitioner contended that the respondents failed to show that after consumption of the alleged illicit liquor made by the petitioner, any one created uproar in the locality under the influence of alcohol. It was further contended by the learned Advocate for the petitioner that it was nowhere mentioned that the drunken people used to abuse in filthy language at a public place. Hence there is nothing on record to show that the petitioner is acting in a manner prejudicial to the maintenance of public order.

6. It was further submitted by the learned Advocate for the petitioner that the respondents detained the petitioner

on the apprehension that the petitioner will engage himself in similar unlawful activities which would be prejudicial to the maintenance of public order. It is the stand of the petitioner that he has been released on bail in all the crimes which have been pending against him and the petitioner has not committed any crime since July 2024. Hence, such action on the part of the respondent authority is unwarranted.

7. It is the case of the petitioner that as per the communication issued to the petitioner by respondent No.1, the right of the detenu to represent against the detention order came to be terminated. Furthermore, no fresh communication was issued to the petitioner by the Advisory Board seeking his representation and granting him personal hearing. Hence, the orders granting detention of the petitioner and confirming the same are against the principles of natural justice.

8. On the other hand, the learned A.P.P has filed an affidavit-in-reply denying the contentions raised by the petitioner. The learned A.P.P submits that the detenu was made

aware of his right to make a representation and he was also given the opportunity to make a representation against the detention order while he was present before the Advisory Board on 18.12.2024 through video conferencing. Pursuant to considering the opinion of the Advisory Board, respondent No.1 confirmed the detention order on 02.01.2025. Additionally, the respondents submit that the order of detention has been passed by taking into consideration the clandestine criminal activities of the detenu which created a hindrance in the public. Hence, it cannot be said that the order of detention is untenable in the eyes of law. The learned A.P.P further submits that Section 12 of the M.P.D.A. Act nowhere specifies the time period of seven weeks for the State Government to confirm the order of detention. On the contrary, Section 11(1) prescribes a time limit of seven weeks for the Advisory Board to submit their report to the State Government which is reproduced below:-

“11(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State Government or from the person concerned, and if, in any

particular case, the Advisory Board considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the State Government, within seven weeks from the date of detention of the person concerned”.

9. The respondents further submitted that all the crimes registered against the detenu were under the Maharashtra Prohibition Act due to his illicit liquor business. Moreover, the residents of that area were afraid to testify against him due to the instant threat to their lives. At last, two witnesses came forward to depose against the detenu only on the assurance that their names will not be disclosed. Hence, this shows the imminent threat of the detenu and his involvement in illicit liquor business. In regards to bail orders, the respondents submit that there is no such statutory provision which prohibits the detaining authority not to consider the said proposal if the detenu is enlarged on bail. The respondents further submitted that the purpose of detaining an individual is to prohibit him from continuing nefarious activities which would result in the breach of public order.

10. Heard both sides and perused the record.

11. The petitioner is detained as a bootlegger considering above mentioned 3 recent offences about bootlegging. Three offences are registered within six months under Section 65(f) of the Maharashtra Prohibition Act. In all the offences the notice under Section 41(1)(a) of the Criminal Procedure Code was issued against the petitioner. It appears from the record that in all the three offences reports of chemical analyzer are made available and ethyl alcohol is found in the samples which were sent for the forensic analysis. On perusal of the record it appears that though three offences are considered for passing the detention order, the antecedents of the petitioner are also considered and discussed in detail i.e. earlier 7 offences are also considered in detail which shows that the detaining authority has considered stale offences for passing the detention order which is not permissible under the M.P.D.A. Act.

12. Two confidential statements on which the detaining authority has relied shows that though in said statements serious allegations are made by the witnesses but the said statements are not verified by the S.D.P.O or the person who has recorded it. A specific procedure is given in the M.P.D.A. Act for verification of the statements and subjective satisfaction and the correctness of the statements depends on the verification of it. On perusal of the original statements it appears that they are not verified by the P. I. in whose presence it was recorded and it is not mentioned in said statements who has recorded the same. The detaining authority has made an endorsement that it is personally verified by S.D.P.O. but it appears that the S.D.P.O. has not verified it. It is endorsed as 'seen and verified' by the S.D.P.O. on 14.10.2025 and marked as subjectively satisfied. Without any verification said statements cannot be considered. Therefore, the statements are out of question to be considered for passing the detention order. The petitioner has relied on the judgment of this Court in Criminal Writ Petition No.817/2023 (Pawan S/o Dhiraj

Hiranwar V/s. The State of Maharashtra and others) delivered on 21.3.2024. The petitioner has also relied on the judgment of this Court (Aurangabad Bench) in case of Dhanubai @ Dhanno Yashvant Netlekar V/s. State of Maharashtra and others reported in **2024 ALL MR (Cri) 3532** in support of his argument that if the detaining authority has failed to record a subjective satisfaction as to why ordinary law of the land was ineffective in curbing his activities and no steps were taken under normal law to curb his activities then it cannot be said that the ordinary law was ineffective.

13. As the stale offences are considered and the statements on which the authority has relied on are not verified it is not useful for passing the detention order.

14. For the aforesaid reasons, the impugned order passed by the detaining authority is required to be quashed and set aside.

15. Writ petition is allowed in terms of prayer clause Nos.(i) and (ii).

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.)