



Judgment

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

CRIMINAL WRIT PETITION No. 332 OF 2025.

Rajendrasingh s/o Chotusingh Bavari,
Aged 55 years, Occupation
Labour, Resident of Ward No.5, Kelzar,
Tahsil Saloo, District Wardha. ... **PETITIONER.**

VERSUS

1.State of Maharashtra,
through its Secretary, Department
of Home, Mantralaya,
Mumbai-32.

2.The District Magistrate,
Wardha, District Wardha.

3.The Police Station Officer,
Police Station Seloo,
District Wardha. ... **RESPONDENTS.**

Mr. P.J. Mehta, Advocate for the Petitioner.
Mr. A.R. Chutke, A.P.P. for Respondents.

CORAM : ANIL L PANSARE AND
M.M. NERLIKAR, JJ.

Rgd.

JUDGMENT RESERVED ON : 21.08.2025.
JUDGMENT PRONOUNCED ON : 04.09.2025.

JUDGMENT (Per M.M. Nerlikar, J).

Heard. Issue Rule, returnable forthwith. Mr. A.R. Chutke, A.P.P. waives notice for Respondents. By their consent, the matter is taken up for final disposal.

2. By this petition, the petitioner has challenged the order of detention dated 18.02.2025 passed by respondent no.2 – District Magistrate, Wardha who by exercising the powers under Section 3[2] 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 (MPDA), ordered detention of the petitioner in Amravati Central Jail.

3. The facts in the present case in brief are that - the petitioner is stated to have been indulged in the activities of

handmade gavthi moha liquor in Kelzar area, within the jurisdiction of Police Station Seloo, District Wardha. Wardha District is declared as liquor prohibited dry district by the Government of Maharashtra, however, inspite of knowing this fact, the petitioner has indulged in such activities, which are in contravention of the provisions of Maharashtra Prohibition Act. It is stated that there are in all total **19** cognizable offences registered against the petitioner. In some cases action was also taken against the petitioner, but, still the petitioner continued with his illegal activities of dealing in illicit country and handmade gavthi moha liquor business, which has created terror in the area. The Authority i.e. respondent no.2 upon recording satisfaction, found it necessary to detain the petitioner to prevent him from acting in a manner prejudicial to the maintenance of public order, which is subject matter of this petition.

4. The learned Counsel for the petitioner submits that though 12 offences are registered against the petitioner, the detaining authority has relied upon only two offences. He further submits that in none of offences which are registered under the Maharashtra Prohibition Act, the petitioner was ever arrested. Even

the two offences, on which the Detaining Authority has relied, in those offences also there was no arrest, and therefore, he has invited our attention to the judgment of Hon'ble Supreme Court in case of **Arjun Ratan Gaikwad .vrs. The State of Maharashtra and others – 2025 All MR (Cri) 811 (SC)**. He further submits that the petitioner was not arrested in those offences, and he was given notice under Section 41[1][a] of the Code of Criminal Procedure, and therefore, his case was squarely covered by the aforesaid judgment of Supreme Court in case of Arjun Gaikwad [supra]. The learned Counsel for the petitioner moved on to second ground and contented that the contents of in-camera statements are vague. The subjective satisfaction cannot be arrived even if the statements are taken as it is. He further submits that the incident narrated in the statements do not lead to disturbance of public order or maintenance of public order.

5. Per contra, the learned A.P.P. has specifically supported the impugned order by stating that respondent no.2 has taken into consideration the material placed before it while passing the order. He further submits that the order of detention is based on two

offences registered under the Maharashtra Prohibition Act. However, the area of operation of petitioner was prohibited area for selling liquor. He submits that the respondent no.2 has subjectively satisfied himself and accordingly passed the order of detention. He further submits that though preventive action under Section 110(g) of the Code was taken on 10.07.2023, however, the petitioner continued with his activities of bootlegging.

The learned A.P.P. submits that the in-camera statements recorded and the contents are sufficient to enter into the aspect of subjective satisfaction. He further submits that the petitioner is a bootlegger, and therefore, due to his activities of selling illicit liquor, the people in the nearby vicinity are creating ruckus due to which the public order is disturbed, and therefore, he has prayed for dismissal of petition, being devoid of merits.

6. We have considered the rival submissions of the parties at length, basically the two grounds raised by the petitioner. The first ground is that though the Detaining Authority has relied upon the two offences registered against the petitioner i.e. Crime No.777/2024 under Sections 65F of the Maharashtra Prohibition Act,

1949 and Crime No.750/2024 under Section 65E of the Maharashtra Prohibition Act, 1949. The said offences were registered on 15.09.2024 and 10.09.2024 respectively. It reveals from the record that Crime No.777/2024 is registered on 15.09.2024, however, the petitioner was given notice under Section 35[3] of the Bhartiya Nagarik Suraksha Sanhita, 2023 as per the guidelines of the Hon'ble Supreme Court. Similarly another Crime No.750/2024 is registered on 10.09.2024, and the petitioner was given notice under Section 35[3] of the BNSS.

7. It further reveals from the record that in both these crimes, the investigating officer do not thought it fit to arrest the petitioner. However, only notice, as stated above, has been given.

8. In case of Arjun Gaikwad [supra], while dealing with the issue of arrest in the offences, in paragraph no.9 and 16 the Supreme Court has held as under :

“9. Insofar as all the six cases are concerned, they are pertaining to illicit manufacture of handmade liquor. It is to be noted that these cases are registered during the period between 29th January 2023 to 18th October, 2023. It is

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to be noted that in none of these cases the authorities found it necessary to arrest the appellant herein.

16. In the present case, all the six cases are with regard to selling of illicit liquor. Though six cases are registered, the Excise Authority did not find it necessary to arrest the appellant even on a single occasion. It would have been a different matter, had the appellant been arrested, thereafter released on bail and then again the appellant continued with his activities. However, that is not the case here.”

Therefore, considering this fact, the respondent no.2 Authority has not considered whether arrest of the petitioner would have prevented him from indulging in continuous activity of bootlegging. The Detaining Authority ought to have considered the effect of not arresting the petitioner. The authority in its ground of detention in paragraph no.13 has observed that *“I am subjectively satisfied that the ordinary laws of preventive action have failed to deter you from indulging in bootlegging activities. You have violated the conditions of the bond and you are habitual in doing the offence came under the provision of Maharashtra Prohibition Act 1949. Due to your habitual offence you have disturbed the peace and public order of*

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the area under the Seloo Police Station at near of it.” Further in paragraph no.15, it has observed that “I have considered the bond executed by you in above referred matter of you/detenu, however, from the record it is seen that you have also violated the conditions of the bond/notice given to you U/s 41[a] Crpc and U/s 35[3] BNSS 2023 even after executing the bail bonds, you have again committed the offences.”

9. Therefore, as was observed by the Supreme Court in case of Arjun Gaikwad [supra], it is crystal clear that the Detaining Authority has failed to consider that if the detenu was arrested, it would have impact on his further activities. It is further to be noted that the aspect of not arresting the petitioner is completely given go-bye by the respondent no.2. Had it been a case that the detenu was arrested, thereafter released on bail, and then again the detenu continued with the activities, the case would have been different. However, this is not the case here. Though the Authority has relied on two offences, there are series of offences committed by the petitioner under the Maharashtra Prohibition Act, and it is surprising

that in none of the offence/crime, the petitioner was ever arrested, and therefore directly invoking the draconian provisions of MPDA, would be a harsh step.

It is to be noted that the preventive action under Section 110(g) of the Criminal Procedure Code was taken and on 10.07.2023, a final bond of Rs.30,000/- for good behaviour was executed before the Special Executive Magistrate and the police inspector, local crime branch, Wardha for the period from 10.07.2023 to 09.07.2024. Even thereafter, 7 offences under the Maharashtra Prohibition Act was committed by the petitioner. Though final bond was executed by the petitioner, however, the same was not cancelled by the concerned Authority, inspite of the bond being executed for keeping good behaviour. Even this issue has not been answered by the Detaining Authority and therefore, merely observing that ordinary and normal law of the land is not sufficient to curb the activities of the petitioner is not sufficient.

10. So far as the in-camera statements are concerned, the witness "A" stated that around 6 p.m. the witness was going to his

friends place for some work, and when he was passing near the house of the petitioner, at that time in front of the house, two men were heavily intoxicated, shouting and abusing on each other, and urinating on the road. Therefore, witness "A" told to those two persons that they should not urinate at that place, as there are residential houses. At that time, the petitioner came out of the house, grabbed the witness by collar and slapped 2-3 times, took out a knife from his pocket and placed on the neck of the witness and abused him in filthy language, by uttering that why the witness was asking his customers to go. Upon this the witness was threatened and asked for help from the neighbourhood, however, due to fear no one came forward to help him, and therefore, the witness folded his hands and promised that he will never say anything to his customers.

11. Further Witness "B" has stated that in the last week of December, 2024 at around 11 a.m. when the witness was at bus stop, at that time the petitioner came in the vehicle and stopped the vehicle in front of the witness, grabbed his hand and took out a sword hanging in the vehicle in one hand and threatened that he has given information about his bhatti [place where illicit liquor is

manufactured], and therefore, he has to sustain the loss due to the information given by the witness, and accordingly slapped the witness near his ears. He further stated that the petitioner will not stop the business of illicit liquor and if further information is supplied to the police, he will kill him. Accordingly he brandish the sword in the air. Upon this, no one came forward to help the witness and people started running in different directions. Shops were shut down and shop keepers fled away. The witness however managed to escape from the clutches of the petitioner and ran away. Due to death threat and fear of intimidation, the witness did not file complaint with the police.

12. Bare perusal of both these statements would indicate that the incidences as narrated, even if taken at their face value, are not sufficient to say that public order is disturbed. Witness "A" has narrated the incident which is individual in nature. No doubt, though the act can be individual in nature, still may have some impact on the society at large. However, the statement of witness "A" does not have impact on the society at large, as the act of the petitioner is individual in nature and not affecting disturbance of

public order or prejudicial to maintenance of public order.

13. The incidence narrated by witness “B”, that petitioner brandish sword and shop keepers have shut their shops and ran away. Even if this statement is taken as it is, the degree of the act of the petitioner would not affect the public order.

14. In case of **Ram Manohar Lohia .vrs. State of Bihar and another – [1996] 1 SCR 709**, the Supreme Court has discussed as regards the distinction between ‘public order’ and ‘law and order’. Paragraph nos. 54 and 55 therein reads as under.

“54. ... Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A

mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are....

55. *It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."*

15. So far as the narration of incident on the part of Witnesses "A" and "B" is concerned, it does not affect the public order, considering the observations of the Supreme Court in aforesaid case of Ram Manohar Lohiya [supra].

Therefore, the statements fall short to bring the petitioner within the purview of public order. The respondent no.2 has failed to subjectively satisfy himself on the basis of two in-camera statements, therefore, it vitiates the order of detention based

on such vague statements. Thus, considering the above facts and circumstances, we find that the detention order cannot sustain on the ground on which it is passed. So also, his activities are not prejudicial to the maintenance of public order. The order impugned therefore, vitiates and is liable to be quashed and set aside. Hence, the following order.

ORDER

- (1) Criminal Writ Petition is allowed.
- (2) The order of detention passed by the respondent no.2 – District Magistrate, Wardha dated 18.02.2025 is hereby quashed and set aside.
- (3) The petitioner be released forthwith if not required in any other offence.
- (4) Rule is made absolute in aforesaid terms.

JUDGE

JUDGE