



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

CRIMINAL WRIT PETITION NO. 609 OF 2024

Ishwar s/o. Madhukar Magade,
Aged about 30 years,
Occupation : Agriculturist,
R/o. Kinhiraja, Tah. Malegaon,
Dist. Washim (In Central Prison, Nagpur). ... **PETITIONER**

...VERSUS...

1. The State of Maharashtra,
through Section Officer,
Home Department (Special),
Mantralaya, Mumbai -32.
2. The District Magistrate,
Washim, Tah. and Dist. Washim.
3. The Assistant Police Inspector,
Police Station, Jaulaka, Dist. Washim. ... **RESPONDENTS**

Mr. N. B. Kalwaghe, Advocate for the Petitioner.
Mr. A. B. Badar, A.P.P. for Respondent Nos.1 to 3/State.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 28.01.2025
JUDGMENT PRONOUNCED ON : 14.02.2025

JUDGMENT (PER : MRS. VRUSHALI V. JOSHI, J.):-

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.
2. By this writ petition, the petitioner has challenged the detention order dated 23.04.2024, passed under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and

Person Engaged in Black Marketing of Essential Commodities Act, 1981, (hereinafter referred to as “MPDA Act”) by the District Magistrate, Washim, and the same approved by respondent No.1 under Section 3(3) of the said Act on 03.05.2024 and further confirmed the same on 24.06.2024.

3. Three crimes which are taken into account for passing the detention order are as under:

(a) Crime No. 375/2023 dated 05.12.2023 for the offences punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949, registered at Police Station, Jaulka, District Washim.

(b) Crime No. 46/2024 dated 11.02.2024 for the offences punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949 registered at Police Station, Jaulka, District Washim.

(c) Crime No. 90/2024 dated 02.04.2024 for the offences punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949 registered at Police Station, Jaulka, District Washim.

4. The petitioner has assailed the impugned order on several grounds. One such ground relates to the unavailability of Chemical Analyzer's Report (C.A.report) of the above mentioned three crimes relied upon for passing the detention order, to be placed before respondent No.2.

5. Other major grounds raised in the present matter are as under :

(i) That the offences of which the laboratory reports for samples of alcohol are taken up for examination, pertain to old crimes i.e. Crime Nos. 244/22, 140/23, 172/23 and 234/23.

(ii) That, the impugned detention order has been passed after a delay of twenty days from the last alleged offence dated 02.04.2024 and the order of detention has been passed on 23.04.2024.

(iii) That, the petitioner was served with notice under Section 41(A)(1) of the Code of Criminal Procedure, 1973, and not arrested in any of these offences.

6. Learned Counsel for the petitioner Mr. Kalwaghe submitted that no reference is made to any chemical analysis of the content of liquor to arrive at subjective satisfaction by the detaining authority. He stated that, the confidential statements of the witnesses were recorded on 31.03.2024 even prior to when the last offence was registered on 02.04.2024.

7. Among the three crimes which form a basis of the order of detention, one is pending before the competent Court and the other two are under investigation.

8. It is submitted by the learned Counsel for the petitioner that, the Advisory Board failed to submit its report before the respondent No.1

within seven weeks from the date of detention as prescribed under Section 11(1) of the MPDA, Act. The period expired on 11.06.2024. Learned Counsel for the petitioner placed reliance on the judgment of the Hon'ble Apex Court in *Khaja Bilal Ahmed vs. State of Telangana and Others* reported in *(2020) 13 SCC 63*.

9. It is further submitted that, nowhere it is stated that the petitioner himself was either involved in disturbing the public tranquility of the society or participating in violent activities.

10. Learned A.P.P. Mr. Badar, strongly opposed the submissions made by the petitioner and placed reliance on the affidavit-in-reply. He argued that, the C.A. reports of previous crimes too, as per the opinion of the District Civil Surgeon, do reveal that, given samples of liquor which contain ethyl alcohol are injurious to human body, excess consumption of which may cause death. It is further stated that, after minutely observing record of the petitioner and being subjectively satisfied, the detaining authority, with a view to prevent him from acting in a manner prejudicial to the maintenance of public peace and order, passed the said order of detention. Thus, there is no delay in passing the detention order.

11. Learned A.P.P further submitted that, the bootlegging activities of the petitioner continued in the locality of Kinhiraja, Tah. Malegaon, District Washim, and a preventive action was taken against him under

Section 93(B) of the Maharashtra Prohibition Act, 1949, after the commission of the last crime, i.e. Crime No. 90/2024.

12. The Advisory Board passed opinion dated 24.06.2024 by considering the material and representation of the petitioner and heard the Counsel of the petitioner as well and, therefore, opined that, the order of detention is just and proper.

13. We have heard both the learned Counsel.

14. The learned Counsel for the petitioner took us through the order of the detention dated 23.04.2024 passed by the detaining authority. Three crimes were considered are under Section 65(e) of the Maharashtra Prohibition Act, 1949. The offences were committed within the period of six months. Admittedly, the Chemical Analyzer's reports are not filed on record of the said offences. While passing the detention order, the C.A. report and the opinion in earlier offences is considered. The respondent has admitted in his reply that the C.A. reports in all the three offences are awaited. The detaining authority has relied on the C.A. reports in earlier offences which is not permissible. The authority has considered the material as regard recently registered three offences against the petitioner, which are punishable under the provisions of the Maharashtra Prohibition Act along with the earlier offences, ought not to have formed the basis for ordering detention. The subjective satisfaction recorded by the detaining authority

for ordering detention sans consideration of the aforesaid issue i.e. in absence of report from the Forensic Science Laboratory in the recently registered offences, the order of detention has been passed.

15. The Hon'ble Apex Court in the matter of ***District Collector, Ananthapur Vs. V. Laxmanna*** reported in ***2005 DGLS (SC) 274*** in paragraph Nos.7 and 8 has observed as under :

"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."

16. Drawing support from the observations made by the Hon'ble Apex Court in the judgment referred above, it has to be held that the offences which are punishable under the provisions of the Maharashtra Prohibition Act could be effectively dealt with under the said Act. Hence, such act of committing an offence or involving into the offence punishable under the aforesaid Act cannot be said to be detrimental to the maintenance of the public order.

17. The detaining authority has also relied on the statements of the two confidential witnesses. It appears that the statements of both the witnesses are identical. The petitioner has placed reliance on the judgment of the Hon'ble Apex Court in *Arjun S/o. Ratan Gaikwad Vs. The State of Maharashtra and Ors.* decided on 11.12.2024 wherein the Hon'ble Apex Court has observed that if the confidential statements are identical stating about the detenu engaged in production of handcrafted liquor for the last few years. Therefore, due to said activities, there have been various problems for the Government machinery. Stating further that, due to the fear and terror created by the appellant, nobody appears to raise complaint against him. The Hon'ble Apex Court has placed reliance on *Ram Manohar Lohia Vs. State of Bihar and Anr.* reported in *(1966) 1 SCR 709*, wherein, the distinction between a public order and law and order has been discussed. It is observed that 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 witnesses. It does 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 public order.

19. Without C.A. reports, the detention order is passed and the statements are identical, as per observations of the Hon'ble Apex Court, which is not sufficient, thus, the order passed by the detaining authority is required to be set aside.

20. For the aforesaid reason, the petition deserves to be allowed.

21. We hereby quash and set aside the detention order dated 23.04.2024 passed by the respondent No.2 and the order of confirmation dated 24.06.2024 passed by the respondent No.1.

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

23. Rule is made absolute in aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)