



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

CRIMINAL WRIT PETITION NO. 700 OF 2024

Pawan s/o Zinger Shahare
Aged about 65 years, Occupation- Nil,
R/o. Sonekhari, Tah. Tirora,
District - Gondia.

... PETITIONER

...VERSUS...

1. State of Maharashtra,
Through its Home Department,
2nd Floor, Mantralaya, Mumbai – 400 032.
2. The District Magistrate, Gondia,
Collector Office, Gondia,
Tah. and District – Gondia.
3. The Superintendent,
State Excise Department, Gondia,
Tah. and District – Gondia.

... RESPONDENTS

Mr. I. N. Choudhari, Advocate for the Petitioner.
Mr. S. S. Doifode, A.P.P. for Respondents/State.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
DATE : 10.03.2025

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. The petitioner challenges the detention order dated 28.03.2024 passed by respondent No.2 as well as the approval order dated 08.04.2024 passed by respondent No.1 by invoking the powers of this Court under Article 226 of the Constitution of India and under the provisions of Section

3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the “MPDA Act”).

3. For the purpose of passing the impugned order, four crimes were considered i.e.,

(i) Crime No.585/2022 registered with State Excise, Flying Squad, Bhandara/Gondia, for the offences punishable under Section 65(e)(f) of the Maharashtra Prohibition Act, 1949.

(ii) Crime No.29/2023 registered with State Excise, Flying Squad, Bhandara/Gondia, for the offences punishable under Section 65(e)(f) of the Maharashtra Prohibition Act, 1949.

(iii) Crime No.223/2023 registered with State Excise, Flying Squad, Bhandara/Gondia, for the offences punishable under Section 65 (e)(f) of the Maharashtra Prohibition Act, 1949.

(iv) Crime No.464/2023 registered with State Excise, Flying Squad, Bhandara/Gondia for the offences punishable under Section 65(e)(f) of the Maharashtra Prohibition Act, 1949.

The petitioner has been acquitted in S.C.C.No. 408/2023, i.e. Crime No.29/2023 by virtue of order dated 05.07.2024 by the Judicial Magistrate First Class, Tirora, District Gondia.

4. The learned Counsel for the petitioner submits that the subjective satisfaction reached by the detaining authority is without considering the relevant and factual aspects of the bail orders passed in the aforesaid crimes. The respondent Nos.1 and 2 erroneously relied upon the in-camera statements of witnesses “A” and “B” ignoring the fact that the petitioner is an old aged person and not held guilty in any of the criminal matters. He further submits that last offence against the petitioner was registered on 05.10.2023 and the proposal for detention was initially forwarded on 06.03.2024. Therefore, there is no explanation about the delay caused in forwarding the proposal to respondent No.3.

5. It is the contention of the petitioner that the copy of detention order was made available to the petitioner after the approval of the said order on 08.04.2024.

6. The learned Counsel for the petitioner has urged that the order of detention suffers from non-application of mind. According to him, in absence of material to infer the conduct of the petitioner in the aforesaid offence registered against the petitioner, the conduct of the petitioner cannot be construed to be violating the ‘public order’.

7. Per contra, the learned Additional Public Prosecutor strongly supports the action taken against the petitioner. He submits that the petitioner is a bootlegger as defined under the MPDA Act. He further states

that this order has been approved by the State Government and also by the Advisory Board. Due to the terror created by the petitioner in the minds of people residing in the area where he operates i.e Dhanutola village and nearby areas, the tempo of life of the residents of these areas and the public order in general has been disturbed by his incessant criminal activities which are continuing unabated even after taking preventive action against him.

8. The learned Additional Public Prosecutor relied on the fact that there is no illegality in the procedure adopted while recording the in-camera statements of the witnesses and that the petitioner has been supplied with all the documents which were part of the detention order. The documents supplied to the petitioner bears acknowledgment.

9. Heard the learned Counsel for the petitioner and the learned Additional Public Procedure for the respondents.

10. The petitioner is detained as a bootlegger. While passing the detention order, the detaining authority has considered the offences committed by the detenu i.e. petitioner from 2022. Four offences are considered for passing the detention order. All the offences are registered for the offence punishable under Section 65(e)(f) of the Maharashtra Prohibition Act, 1949. Even the acquittal of the petitioner in Crime No.29/2023 is not considered. No Chemical Analyzer (C.A.) report is filed

on record. When the petitioner is detained as a bootlegger, it is necessary to bring on record the report from Forensic Science Laboratory. On perusal of the detention order, it appears that the order is passed very casually and without considering the crimes which were committed during the period of six months. The detaining authority has considered all the offences in absence of any C.A. reports. The detaining authority has not made available the C.A. reports nor it is brought before the Court.

11. The petitioner has relied on the judgment of this Court in the case of *Ravikiran s/o. Zanaklal Uike Vs. State of Maharashtra and Ors. [Criminal Writ Petition No.619/2024]* in which this Court has considered the judgment of the Hon'ble Apex Court in the case 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."

12. 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.

13. The detention order considered the earlier four offences punishable under the Maharashtra Prohibition Act, 1949 committed by the petitioner. No C. A. report is made available. The subjective satisfaction is arrived at by the detaining authority by ordering the detention sans consideration of the aforesaid issue i.e. absence of report from Forensic Science Laboratory in all the offences.

14. The detaining authority has also considered the two in-camera statements, which were not verified by the detaining authority or the

person, who has recorded it. The stereotyped statements are recorded and mechanically seen by the detaining authority which shows the casual approach of the detaining authority while passing the detention order while considering the said statements.

15. The Hon'ble Apex Court in the recent judgment about stereotyped statements in case of ***Arjun S/o. Ratan Gaikwad Vs. The State of Maharashtra and Ors. in Criminal Appeal No.5204/2024*** (Arising out of *SLP (Cri) No.12516/2024*) decided on 11.12.2024 has in para 17 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.”

16. Since the C.A. reports are not made available on record, the stale offences are considered and the statements are casually considered for passing the detention order, the order passed by the detaining authority is vitiated.

17. In view of aforesaid observations, the detention order dated 28.03.2024 passed by the respondent No.2 and the approval order dated

08.04.2024 passed by the respondent No.1 is hereby quashed and set aside.

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

18. Rule is made absolute in aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)