



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

CRIMINAL WRIT PETITION NO.742 OF 2024

Vahid Khan s/o Saifulla Khan, Aged 57 years,
Occu : Labour, R/o. Bramhanwada Thadi, Tq.
Chandur Bajar, Dist. Amravati

Petitioner

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary, Home
Department, Mantralaya, Mumbai-32
2. The District Magistrate and Collector,
Amravati, District - Amravati
3. The State of Maharashtra through P.S.O.
Bramhanwada, Tq. Chandur Bajar, Dist.
Amravati

Respondents

Adv. Rai Mahesh Vasant counsel for the Petitioner.
Adv. I.J.Damle, A.P.P. for respondent Nos. 1 to 3.

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

DATE : 07/03/2025

ORAL JUDGMENT (Per: Vrushali V. Joshi, J.)

1) **Heard.**

2) **Rule.** Rule made returnable forthwith. The Criminal Writ
Petition is heard finally with the consent of the learned counsel
appearing for the parties.

3) The petitioner came to be detained vide order dated 12.04.2024 passed by the District Magistrate, Amravati, in exercise of powers 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, ('MPDA Act' for short), thereby holding that the activities of the petitioner are that of a 'bootlegger', and Respondent no.1 confirmed the order of detention and directed to continue the same for a period of twelve months from the date of detention vide order dated 07.06.2024.

4) The proposal for detention by Respondent no.3 was issued to the Office of the District Magistrate, vide letter dated 23.03.2024. It is stated in the proposal that, eight offences were registered against the petitioner from the year 2022 to 01.01.2024, out of which two crimes, i.e., C.R. no. 389/2023 and C.R. no. 01/2024 have been taken into consideration for passing the order of detention.

5) Both of the offences are registered under Section 65(d) of the Maharashtra Prohibition Act, 1949 at the Police Station, Bramhanwada Thadi, Amravati rural, Dist- Amravati.

6) In the first Crime, i.e., C.R. no. 389/2023, seventeen litres of illicit handmade Gavathi liquor worth Rs. 1700/- was seized on 12.10.2023 in which the Chemical Analyzer's Report is available, showing the sample containing 13.10% v/v Ethyl alcohol.

7) In another Crime, i.e., C.R. no. 01/2024, a total of fourteen litres of liquor worth Rs. 1400/- was seized on 31.12.2024. In this crime, the C.A. report is still awaited from the Regional Forensic Laboratory, Amravati.

8) In both the offences, the petitioner is released on notice under Section 41-A of the Code of Criminal Procedure and the matters are pending before the concerned Court.

9) Statement of anonymous witness "B" would reveal that, in the second week of February 2024, when some people were drinking and arguing near the house of detenu, he came out with a knife and abused the crowd out loud and drove people away from there. When the witness interrupted and asked to stop the business of selling liquor as people drink alcohol and argue and abuse in the area, the detenu pointed a knife at the witness and threatened to end his life if he

reported the detenu to the police.

10) Grounds raised by the petitioner are as under:

(a) That the last criminal activity had taken place on 01.01.2024 and the detention order was passed on 12.04.2024, i.e., after a period of about hundred days from the date of last offence and therefore, there is no live link between the alleged crime and the impugned order of detention passed.

(b) That though the statements of confidential witnesses “A” and “B” were shown to be verified by the Sub-Divisional Police Officer, Achalpur Division on 26.03.2024, the proposal of detention was issued on 23.03.2024, which was three days before the verification of witness statements.

11) Learned counsel for the petitioner, Adv. Rai, submitted that there are no offences registered under the provisions of the Indian Penal Code against the petitioner. He stated that, there is no single report which would show that any person has died in the vicinity of Bramhanwada Thadi, Tah- Chandur Bajar, Dist- Amravati, and there are other shops in the said Tahsil where the liquor is readily available which has more than forty to forty three percent of alcohol.

12) The counsel for the petitioner further submitted that, merely on the basis of two crimes and two in-camera statements, the detaining authority reached to the conclusion that, petitioner is a habitual bootlegger.

13) *Per Contra*, learned A.P.P., Adv. Damle, vehemently opposed the submissions made on behalf of the petitioner.

14) Learned A.P.P. submitted that, the in-camera statements claim that the petitioner threatened the unnamed witnesses “A” and “B” to face dire consequences if they inform or lodge complaint against him in the Police Station regarding his business of selling illicit handmade Gavathi (Taddi).

15) Learned A.P.P. further argued that the material placed on record before the detaining authority is coupled with Chemical Analyzer’s reports which have also been placed under observation, therefore it nullifies the contention of the petitioner that there is no report available.

16) He added that in order to curb the criminal activities of the petitioner, preventive action has been initiated against him under

Section 144 of the Code of Criminal Procedure, Section 95 of the Maharashtra Prohibition Act, 1949, so also under Section 56 of the Maharashtra Police Act, 1951 and nonetheless, there is no change in the behaviour and attitude, on the contrary, an increase in his criminal graph appears from his illegal activities and all the efforts of police have been proven ineffective.

17) Learned A.P.P. further submitted that the detaining authority has been subjectively satisfied about the veracity of the said in-camera statements. Also, notice under Section 41-A of the Code of Criminal Procedure had been issued in view of the case of Arnesh Kumar. Therefore, taking into consideration all these aspects, the order of detention issued is just, legal and proper in the eyes of law and is necessitated to be continued.

18) We have considered the rival submissions of both the parties.

19) We have gone through the record with the help of the

learned counsel appearing for the petitioner as well as the learned Assistant Government Pleader for the State. On perusal of the detention order, it appears that the order considers the criminal history of the petitioner about bootlegging and his involvement in earlier offences punishable under the prohibition Act.

20) Recently registered two offences are considered by the detaining authority, in one of the offence Forensic Science Laboratory report is available and in another offence it is not yet received. As such, it has to be inferred that before passing the detention order the detaining authority was not conscious of the fact as to the absence of the report from Forensic Science Laboratory in relation to the petitioner's involvement in the offence of bootlegging. The detaining authority has considered the material as regards the recently registered two offences against the petitioner punishable under the provisions of Maharashtra Prohibition Act. The earlier offences ought not to have been the basis for ordering the detention. The subjective satisfaction recorded by the detaining authority for ordering detention sans

consideration of the aforesaid issue i.e. absence of report from Forensic Science Laboratory in one of the offence which is considered by the authority for passing the detention order.

21) The Hon'ble Apex Court in the matter of ***District Collector, Ananthapur V/s. V. Laxmanna*** reported in 2005 DGLS (SC) 2745 in Paragraph Nos.7 and 8 has made following observations:-

"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."

22) Moreover, the authority has relied on the statements of the confidential witnesses. Two statements of the confidential witnesses are considered. On perusal of the said statements, it appears that a general statement is made by both the witnesses. The general character of the petitioner is stated by the detaining authority and the statements are identical. In the recent judgment in the case of ***Arjun Ratan Gaikwad Vs. The State of Maharashtra and ors.*** reported in ***Criminal Appeal arising out of SLP (Cri.) No.12516 of 2024*** in paragraph No.,17 it is observed as under:-

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.

23) In that view of the matter, we do not find that the subjective satisfaction of the detaining authority that the activities of the petitioner were prejudicial to the maintenance of the public order is substantiated .

24) In view of the above mentioned observations, the impugned order passed by the detaining authority is hereby quashed and set aside. Hence, we pass the following order.

25) The Writ Petition is allowed in terms of it's prayer clause (i) and(ii). The petitioner be set at liberty forthwith, if not required in any other crime.

26) Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J) (NITIN W. SAMBRE, J)