



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

CRIMINAL WRIT PETITION NO. 879 OF 2024

Mr. Kaju S/o. Tukaram Bhadade,
Age 30 Years, Occu. Labour,
R/o. Arvind Ward, Neri, Taq. Mohadi,
Dist. Bhandara – 441909,
Mob. 8208154206.

... **PETITIONER**

...VERSUS...

1. The District Magistrate, Bhandara
District Magistrate's Office.
2. Additional Chief Secretary (Home),
Department Of Home Affairs (Special),
Government of Maharashtra, Ministry,
Mumbai – 400032.
3. The Chairman, Advisory Board,
C/o. Section Officer, Room No. 10,
Home Department, Government
Of Maharashtra, Ministry, Mumbai.

... **RESPONDENTS**

Mr. Nivrutti Meshram, Advocate for the Petitioner.
Mr. S. S. Doifode, A.P.P. for Respondents/State.

CORAM : NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 03.03.2025
JUDGMENT PRONOUNCED ON : 12.03.2025

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. Invoking the powers of this Court under Article 226 of the
Constitution of India, the petitioner is challenging the detention

order No.AK/DAND-1/C.R.20/MPDA/506/2024, dated 01.06.2024, passed by Respondent No.2 - District Magistrate, Bhandara, 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, (for short, hereinafter referred to as “MPDA Act”) and confirmed by the State Government under Section 12(1) of the said Act on 23.07.2024.

3. Upon perusal of the crime chart, it appears that four offences were registered against the petitioner under the Bombay Prohibition Act, 1949. Last crime i.e., Crime No.28/2024 has been relied upon for issuing the detention order. It was registered under Section 65(e) of the Maharashtra Prohibition Act, 1949 at the Warthi Police Station, Warthi, Dist - Bhandara on 07.02.2024. Notice under Section 41(1)(a) of the Code of Criminal Procedure, 1973 has been issued in the said crime. There was availability of Chemical Analyzers report (C.A. report) in the present crime wherein, the sample contained 21.29% of ethyl alcohol.

4. In Crime No. 28/2024, ten litres of handmade liquor worth Rs.1000/- was seized from the detenu. The in-camera statements of witnesses “A” and “B” revealed that due to the involvement of petitioner in distillation and selling of Mohaful handmade liquor, the youths of the village, school students, etc., had become addicted to alcohol. If anyone did

testify against the proposed petitioner, he threatened to kill them. Therefore, nobody came forward to depose against him.

5. The grounds raised by the petitioner are as under :

(a) There was no live link between the order of detention and the offence considered for passing the detention order, as there is a delay of three to four months in passing the detention order. Further, the confidential statements have been recorded two to three months before passing the order of detention.

(b) The in-camera statements did not speak of any specific incident or event of any specific date and the said statements were general in nature. Further, the respondents did not supply copies of the in-camera statements or material regarding recording or verification of the same. It was not communicated to the petitioner. Therefore, the present petitioner was not able to make an effective representation.

6. The learned Counsel for the petitioner, Mr. Meshram, submitted that except the chemical examination reports, there was no cogent material to record specific finding that the seized samples were harmful to public health.

7. Learned Counsel for the petitioner further submitted that, it was not recorded anywhere that the detaining authority verified the unwillingness of the anonymous witnesses to give the statements of testimony against the petitioner out of fear.

8. Learned A.P.P. Mr. Doifode relied upon the affidavit-in-reply supporting the order of detention.

Mr. Doifode submitted that, after perusal of the documents on record, it could be seen that the detenu has created his identity as a 'Bootlegger' and has made it a means of livelihood by selling handmade liquor. Such incidents adversely affect the society and public health.

9. Learned A.P.P. relied on the judgment of the Apex Court in ***Deepak Purohit v/s State of Madhya Pradesh*** to emphasize that the distinction between 'law and order' and 'public order' is a matter of degree and extent of each of the act in question on society. Learned A.P.P. further submitted that statements of the confidential witnesses were recorded on 15.03.2024 and 17.03.2024 by the Sub-Divisional Police Officer, Bhandara, by calling said witnesses and tested their truthfulness for arriving at the subjective satisfaction. He argued that, the copies of detention order, grounds of detention and other documents have been served to the detenu on 01.06.2024. Further, he submitted that the copy of statements of secret witnesses were also supplied to the detenu.

10. Learned A.P.P. contended that the witnesses “A” and “B” deposed against the activities of the detenu committed against them. He further stated that when an enquiry was conducted into the criminal activities of the detenu, it was disclosed that he was making handmade liquor which is dangerous to public health. Moreover, it was disclosed that number of people suffered due to illicit liquor made by the detenu. Therefore, the petitioner is a dangerous person and fits into the definition of ‘Bootlegger’ squarely as per the MPDA Act.

11. The petitioner is detained as a bootlegger. The earlier four offences from 2022 to 2024 are discussed in the order passed by the detaining authority. For passing the detention order, the latest crime dated 07.02.2024 is considered i.e. Crime No.28/2024 for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949. It is mandatory to consider the C.A. report in this case, the C.A. report is available and it is opined that 21.29% ethyl alcohol is found. The opinion of Civil Surgeon is not there to consider whether the percentage of ethyl alcohol is injurious to health of public at large.

12. 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 factor of selling of liquor containing hazardous chemical, viz. ethyl alcohol, it appears, has had its significant impact on the satisfaction subjectively reached by the detaining authority. This factor, if separated from the other factors, which have also been considered by the respondent No.2, would considerably reduce the overall impact of the other adverse material relied upon by the authority in making the decision. When this factor is ignored, the seriousness of the alleged criminal activity of the petitioner is considerably reduced for the reason that at least 4 to 7 pending cases have put the petitioner in bad repute for selling, distributing and transporting the illicit liquor, thereby attracting relevant provisions of the Maharashtra Prohibition Act, 1949. Therefore, we are of the view that on this ground, the impugned order becomes unsustainable in the eyes of law.

14. The doubt that we have expressed regarding correctness of the impugned order gets more deeper by one more aspect, which we would discuss now.

15. On perusal of the statements of the witnesses 'A' and 'B' it appears that the same are not even verified by the person who has recorded the statements and mechanically the authority has signed the said statements as verified. It shows the casual approach of the authority in passing the detention order. Both the statements are stereotyped and on the basis of the said statements, the detention order cannot be passed.

16. The Hon'ble Apex Court in para 17 of its recent judgment has observed 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 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.”

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

18. We hereby quash and set aside the detention order dated 10.06.2024 passed by the respondent No.2 and the order of confirmation dated 23.07.2024 passed by the respondent No.1.

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

20. Rule is made absolute in the aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)