



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

CRIMINAL WRIT PETITION NO.998 OF 2024

Narendra @ Naresh Tarachand Kamble **Petitioner**
(Detained in Central Prison) Nagpur,
Aged about 43 years,
Occupation :Household,
R/o. Lokmanya Tilak Nagar, Ward
No.3, Deoli, Tah. Deoli, District-Wardha-
442101

-Versus-

1. The State of Maharashtra, **Respondents**
Through its Secretary,
Home Department (Special),
Mantralaya, 2nd Floor, Madam Cama road,
Hutatma Rajguru Chowk, Mumbai – 32.
2. Collector and District Magistrate,
Wardha, Civil Lines, Wardha.
3. The Superintendent of Police, Wardha, Civil
Lines, Wardha.
4. Sub Divisional Police Officer, Pulgaon, Tah.
Deoli, District- Wardha.
5. Police Station Officer, Police Station
Deoli, Tah. Deoli, District- Wardha.
6. The Superintendent of Prison,
Central Prison, Nagpur.

Mr. Mohan Anant Vishnu, counsel for the Petitioner.
Mr. S.S. Doifode, A.P.P. for respondent Nos.1 to 6.

CORAM : NITIN W. SAMBRE AND
MRS. VRUSHALI V. JOSHI, JJ.
DATE : 05/03/2025

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) In the present matter, the petitioner has challenged the detention order bearing No.A.K.Home/Desk-2(B) WS/1521/2024 dated 16th October 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, Wardha, and the same was approved by respondent no.1 under Section 3(3) of the said Act on 24th October 2024.

4) The proposal was initiated by respondent no.5 – Police Station Officer, Deoli, and sent to the Collector for detention of the petitioner on 02.09.2024 on the grounds that, the petitioner is indulging into bootlegging activities rendering him as a

“bootlegger”. Further, the Sub-Divisional Police Officer, Tah. Deoli, Wardha, sent the proposal to respondent no.2 on 03.09.2024. Further, respondent no.3 forwarded the said proposal received from respondent nos. 4 and 5 to the respondent no.2 on 24.09.2024.

5) The detaining authority has relied upon two offences committed within last six months, namely:

(a) C.R. no. 561/2024 dated 02.07.2024, u/s 185 of Motor Vehicles Act 1988, filed at Police Station Deoli, Wardha.(b) C.R. no. 466/2024 dated 21.05.2024, u/s 65(e) of the Maharashtra Prohibition Act 1949, registered at Police Station, Deoli.

6) Both the crimes are under trial and committed after the breach of conditions given in the bond under the preventive action initiated against the detenu.

7) Another six offences, which are under trial have also been taken into account, in which the petitioner was released after the service of notice under Section 41-A of Cr.P.C.

8) Grounds raised by the petitioner are as under:

(i) That the last objectionable incident is dated 02.07.2024, in which the petitioner is prosecuted u/s 185 of the Motor Vehicles Act 1988, whereas the detention was proposed on 02.09.2024 and in the meanwhile, there is no act committed by the petitioner to show his continuous engagement in illegal activities. Therefore, there is no live link between the act and the action taken by respondent no. 1 and 2.

(ii) That, the statements of both the in-camera witnesses “A” and “B” are carbon copy of each other and the wordings alleged to be uttered by the petitioner are not hurled at the said witnesses.

(iii) That, the petitioner was acquitted in nine of the offences and the judgments of acquittal were not even challenged in appeal. Moreover, old and stale crimes have been taken into consideration by the respondents.

9) In the first offence, which is taken into consideration for passing the detention order, i.e., C.R. no. 561/2024, the petitioner was found under the influence of alcohol, riding motor cycle bearing no. M.H.32/A.E.1553. When taken into custody and sent for medical examination, the Medical Officer stated that the said person had consumed alcohol and was under its influence.

Therefore, the said crime was registered against the detenu.

10) In the second crime, i.e., C.R. no. 446/2024, 17 litres of Gavathi Moha flower liquor worth Rs.1700/-, plastic container worth Rs. 300/- so also total material worth Rs. 2000/- was seized of which C.A report is awaited. It is pertinent to note that, the offences mentioned by the petitioner in which he was acquitted were not taken into account while passing the said detention order. The confidential statements are identical.

11) Learned counsel for the petitioner, Adv. Vishnu, submitted that, the respondents have erred in arriving at the conclusion that, the petitioner would threaten or pressurize witness in the pending trials of the petitioner.

12) The learned counsel further submitted that, the proposal was issued without the verification of statements. In none of the cases alleged to be registered by the Police it is claimed that, any customer was sent by the police and the petitioner was caught red handed in the matter violating the provisions of law so as to make him liable for prosecution for offence within the meaning of the Maharashtra Prohibition Act.

13) Learned APP has supported the order passed by the detaining authority and prayed to dismiss the petition.

14) Heard the learned counsel appearing for the petitioner and the learned Assistant Government Pleader for the State.

15) On careful perusal of the order passed by the detaining authority, it appears that there is difference in order passed in Marathi and order passed in English. In Marathi order, three offences are considered and in English order, two offences are considered for passing the detention order. As per the detention order, two offences No.561 of 2024 for the offence punishable under Section 185 of the Motor Vehicles Act and another offence is 466 of 2024 for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act,1949. In both the offences, the notice under Section 41-A was issued. In crime No. 456 of 2024 the Chemical Analyzer Report is not available. When the offence is registered under Section 65(e) of the Maharashtra Prohibition Act, it is mandatory to produce the Chemical Analyzer report to prove that it affects the public health at large. In absence of Chemical Analyzer report, it cannot be assumed that it affects the public

order and it cannot be considered for passing the detention order.

16) 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."

17) In view of the above said observations, it is necessary to be held that it is obligatory for the detaining authority to provide material on which it has based its conclusion.

18) On perusal of the confidential statements, it reveals that the contents of the statement of confidential witnesses are different in detention order than the original statements. The statement of confidential witness B is not as per the statement mentioned in the order. Therefore, the statements are not reliable. The order is passed very casually without even considering the contents in the statements of the confidential witnesses. In the recent judgment of the Hon'ble Apex Court in the case of ***Arjun Ratan Gaikwad Vs. The State of Maharashtra and ors arising out of SLP (Cri.) No.12516 of 2024*** the Hon'ble Apex Court in paragraph No.17 of the said judgment has observed as under:-

"Insofar as the statement of the two unnamed witnesses are concerned, the allegations are as vague as it could be. In any case the statements which are 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 villages which would create a perception in the mind of the villagers that the appellant herein is a threat to the public order”.

19) If the statements are stereotyped and the contents of the statement mentioned in the detention order are not similar, it shows that the authority has passed the order without applying its mind. Hence, the statements cannot be relied upon for passing the detention order.

20) 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.

21) 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.

22) Rule is made absolute in above terms.

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