



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

CRIMINAL WRIT PETITION NO.93/2025

Avinash Kailas Kedar,
aged about 33 years, R/o. Behind
Nalaji Temple, Washim,
District Washim (In Jail).

... Petitioner

- Versus -

1. State of Maharashtra
Through Principal Secretary
(Appeals and Security), Home
Department, Mantralaya,
Mumbai-32.

2. District Magistrate, Washim,
District Washim.

... Respondents

Mr. Santosh D. Chande, Advocate for the petitioner.
Mr. S.M. Ghodeswar, A.P.P. for respondent Nos.1 and 2.

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

DATE OF RESERVING THE JUDGMENT: 23.4.2025.

DATE OF PRONOUNCING THE JUDGMENT: 29.4.2025.

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Rule. Rule made returnable forthwith. Heard finally

with the consent of learned Advocates for the parties.

2. The present petition pertains to quashing of detention order dated 14.11.2024 passed by respondent No.2 by exercising its powers under the provisions 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 (hereinafter referred to as the “M.P.D.A. Act”) which declared the detenu a ‘bootlegger’.

3. The detention order is based on statements of two confidential witnesses and two offences as under:-

(i) Crime No.442/2024 registered at Washim City Police Station, Washim under Section 65(e) of the Maharashtra Prohibition Act, 1949.

(ii) Crime No.608/2024 registered at Washim City Police Station, Washim under Section 65(e) of the Maharashtra Prohibition Act, 1949.

4. The petitioner has raised the following grounds for the purpose of challenging the impugned order of detention:-

(a) After the passing of committal order dated 14.11.2024 the petitioner made a representation to the respondent No.1 although respondent No.1 has failed to reply to the said representation.

(b) A bare perusal of the grounds of detention would show that the old and stale offences from the year 2021 and of the year 2023-2024 have been taken into account by the detaining authority.

(c) There is no whisper in the grounds of detention that the petitioner is shown to be continuing his criminal activities or the fact that he had committed any offence after the registration of the last crime against him.

5. Mr. Chande, learned Advocate for the petitioner, submitted that a bare perusal of the in-camera statements of confidential witness 'A' would show that the statement is silent about the details with respect to the day, date and time of the

alleged incident. Furthermore, the in-camera statement of confidential witness 'B' shows that there was a dispute between the witness and the petitioner and the witness was allegedly trying to shut the business of the petitioner. Moreover, the petitioner submits that no remark has been made in order to show that the confidential statements of witnesses 'A' and 'B' are verified. Hence, the subjective satisfaction arrived at by the detaining authority is vitiated. It is further submitted that a bare perusal of Section 3(3) of the M.P.D.A. Act would reveal that the detention order shall not remain in force for more than twelve days unless in the meantime, it has been approved by the State Government. The Advocate for the petitioner submits that there is no material on record to show the exact date of service of the said order to justify the detention of the petitioner beyond 12 days which makes the order of detention unsustainable.

6. Mr. Ghodeswar, learned A.P.P has filed affidavit-in-reply on record and has vehemently supported the

detention of the petitioner by pressing onto service the following grounds:-

The learned A.P.P submits that the confidential witnesses 'A' and 'B' gave their statements before the Police Inspector, Washim Tq. Washim, Distt. Washim, then the Sub-Divisional Police Officer, Washim, Distt. Washim verified the truthfulness of the in-camera statements and the detaining authority after being subjectively satisfied had a dialogue with the Police Officer and the Sub-Divisional Police Officer regarding the correctness and truthfulness of the statements of witnesses. Furthermore, the respondents contended that the detaining authority has appreciated all the evidence and record available against the detenu and after being subjectively satisfied with a view to prevent the petitioner from acting in a manner prejudicial to the maintenance of public order, passed the detention order. It was further submitted by the learned A.P.P that the matter was referred by the State Government to the Advisory Board and thereafter in exercise of the powers conferred under Section 12(1)

of the M.P.D.A. Act, the respondent No.1 confirmed the detention of the petitioner on 2.1.2025. Hence it cannot be said that there is any illegality in the detention order. It is further argued that the Police Officer submitted the proposal for detention against the petitioner to the detaining authority by mentioning past criminal cases registered against him although the detention order has been passed by considering recent two crimes.

7. We have considered the rival submissions of the parties and perused the record.

8. The petitioner is detained as a bootlegger. Two crimes i.e. Crime Nos.442/2024 and 608/2024 both registered for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act are considered for passing the detention order. In both the offences, notices under Section 41(a)(1) of the Code of Criminal Procedure were issued. Though the samples for Chemical Analysis were collected in these two

offences the C.A. reports are not produced on record and are not considered by the detaining authority while passing the detention order. While passing the detention order, it is necessary to consider the C.A. reports when the offence is registered under the Maharashtra Prohibition Act. In absence of C.A. reports, one cannot come to the conclusion that the detenu is a bootlegger and the liquor which he has sold is injurious to the health of public at large.

9. 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."

10. As the detaining authority has without considering the C.A. reports has passed the detention order, it is vitiated. On perusal of the detention order it appears that the C.A. reports in earlier offences are considered and on the basis of said C.A. reports, the Civil Surgeon has given the opinion which is also

considered by the detaining authority and the same is not permissible under the provisions of the M.P.D.A. Act. As the crimes, which are considered for passing the detention order are considered without C.A. reports, and the statements of the confidential witnesses "A" and "B" are general in nature, the order passed by the detaining authority is required to be quashed and set aside. Hence we pass the following order:-

Writ petition is allowed in terms of prayer clause (i).

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

Rule accordingly.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)