



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

CRIMINAL WRIT PETITION NO.110/2025

Amol S/o Namdeorao Bhokate,
Aged 37 Yrs., Occu. Agriculturist,
R/o. Ward No.2, Anji (Mothi), Tah.
Wardha Distt. Wardha.

... Petitioner

- Versus -

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-32.

2. The District Magistrate and Collector,
Wardha, District Wardha.

3. The State of Maharashtra through P.S.O.
Kharangna, Distt. Wardha.

... Respondents

Mr. Mahesh V. Rai, Advocate for the petitioner.
Ms. S.S. Jachak, A.P.P. for respondent Nos.1 to 3.

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

DATE OF RESERVING THE JUDGMENT: 8.4.2025.

DATE OF PRONOUNCING THE JUDGMENT: 25.4.2025.

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 petitioner has filed this writ petition seeking to quash and set aside the order of detention dated 7.8.2024 passed by respondent No.2-the District Magistrate and Collector, Wardha under Section 3 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 "M.P.D.A. Act") which was confirmed vide order dated 23.09.2024 by respondent No.1-State of Maharashtra, through its Secretary, Home Department, Mantralaya, Mumbai whereby the petitioner was ordered to be detained for a period of twelve months.

3. It is stated in the proposal that 22 offences were registered against the petitioner from the year 2022 to 2023 and 2 preventive actions were taken against the petitioner and out of aforesaid crimes, 7 offences of last six months of the year 2024 along with other 9 earlier offences committed during the period

of 3 years and two confidential statements were considered for passing the detention order against the petitioner, which are under the provisions of the Maharashtra Prohibition Act, 1949. The reliance is placed by the detaining authority upon the statements of two confidential witnesses alleging that the petitioner had given threats to the people in the vicinity. Statement of witness "A" shows that the dispute arose on the day of *Shiv-Jayanti* thereby making the complaint of the same to Tanta Mukti Kendra. Witness "B" has stated that the customers of the petitioner i.e. persons of Pardhi community were causing disturbance in the locality and one person namely Manohar had vomited and peed in pant and was hospitalized in P.H.C. by people, who was thereafter referred to the hospital at Sewagram.

4. Mr. Rai, learned Advocate for the petitioner, submitted that the Maharashtra Potable Hand-Liquor (Maximum Retail Price Fixation) Rules, 1996 prescribes that the percentage of the content of alcohol should not exceed 42.79% and the

detention order specifically shows that in only one crime i.e. Crime No.283/2022 the ethyl alcohol was 44.07% and in the remaining crimes the said percentage had even not exceeded 30%. It is further submitted that the main ground for challenging the order of detention revolves around the narration of the occurrences in the in-camera statements. It is his further contention that there is no single report which shows the death of any person in the vicinity Anji (Mothi), District Wardha was caused due to consumption of alcohol sold by the petitioner or that a person has been admitted in the hospital, in particular there is no medical document to support this aspect. Hence, he has prayed to allow the writ petition.

5. Ms. Jachak, learned Additional Public Prosecutor appeared for the respondent Nos.1 to 3 and sought to support the impugned orders on the basis of the record placed before the detaining authority.

6. She relied on the judgment of this Court in the case of Gaffur Sheikh V/s. State of Maharashtra reported in 2005(3) Mh.L.J. 463 (Bom) wherein it is held that for taking action of detention against the detenu, the mere fact that the detenu had been acquitted previously will not warrant setting aside the detention order. She further submitted that the contents of the liquor as mentioned in the Crime No.283/2022 itself shows the bootlegging activity of the petitioner which was causing disturbance to public at large and that the detaining authority cannot wait for the death of the person.

7. Learned A.P.P. further submitted that there is no provision under the M.P.D.A. Act to prescribe the period of detention by the respondent No.2. It is submitted that from the letter dated 4.8.2024 of the Desk Officer, Home Department (Special), State of Maharashtra, it is clear that the grounds of detention and all the record and proceedings were submitted to the Secretary, Advisory Board, Mumbai vide letter dated

14.8.2024. Hence it is submitted that the petition is devoid of merits and it be dismissed accordingly.

8. Heard the learned Advocates for the parties and perused the record.

9. After going through the detention order it appears that in para No.10 in all 7 offences are considered for passing the detention order which were committed by the petitioner within 6 months. In first two offences i.e. Crime Nos.404/2024 and 362/2024, the C.A. reports are not available. In other remaining 5 offences the C.A. reports are available and the ethyl alcohol is found in samples collected. While passing the detention order the detaining authority has stated that 7 offences are considered for passing the detention order. Again 9 offences which were committed by the petitioner within 3 years from the date of passing of the detention order are discussed in detail. All the 9 offences are punishable under Section 65(e) of the Maharashtra

Prohibition Act. In said 9 offences C.A. reports are available. The extraneous material i.e. 9 offences committed by the petitioner during the period of 3 years are considered for passing the detention order which is not permissible under the provisions of the M.P.D.A. Act. Though in 5 offences, which are committed by the petitioner during the period of 6 months, the C.A. reports are available, in 2 offences within 6 months, which are considered for passing the detention order against the petitioner the C.A. reports are not available.

10. Learned Advocate for the petitioner has relied on the judgment of this Court in Criminal Writ Petition No.326/2023 (Vijay Palasram Rathod V/s. State of Maharashtra and another) delivered on 13.9.2023 wherein this Court has relied on the observations of the Hon'ble Apex Court in the case of District Collector, Ananthapur V/s. V. Laxmanna reported in **2005 DGLS (SC) 2745** particularly Paragraph Nos.7 and 8, which are 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."

11. From the ratio laid down by the Hon'ble Apex Court in the case of *District Collector, Ananthapur* (supra) it has to be held that the offences which are punishable under the provisions of the Maharashtra Prohibition Act could effectively be dealt with under the said Act i.e. ordinary law. Hence such an act of committing an offence or involving in the offences punishable under the Maharashtra Prohibition Act cannot be said to be detrimental to the maintenance of public order.

12. Apart from above facts, the extraneous material is considered by the detaining authority, though 7 offences are committed by the petitioner during 6 months, 9 offences committed by the petitioner within 3 years are relied upon for passing the detention order which is not permissible as per the provisions of the M.P.D.A. Act. Though in recent 5 offences committed by the petitioner within 6 months the Chemical Analyzer's report is available, the same is not sufficient for passing the detention order. In this background, it has to be held that the

offences which are punishable under the provisions of the Maharashtra Prohibition Act cannot be relied upon for arriving at the subjective satisfaction by the detaining authority. Moreover, the statements which are considered for passing the detention order are of general nature. Therefore, solely based on the said statements the detention order cannot be passed. In view of above, the detention order passed against the petitioner stands vitiated and needs to be quashed and set aside.

13. For the aforesaid reasons, we pass the following order:-

The 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.)