



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

CRIMINAL WRIT PETITION NO.218 OF 2025

Mukesh @ Vinod s/o Gopinath
Rewatkar, Aged about 38 years,
Occ. Pvt Work, R/o Bagpura, Anji
(Mothi), Tah & Dist. Wardha
(Presently Central Jail Nagpur)

Petitioner

-Versus-

1. State of Maharashtra
Through Government of
Maharashtra, Home
Department (Special), Second Floor,
Main Building, Mantralaya, Madam
Cama Road, Hutatma Rajguru
Chowk, Mumbai – 400032.
2. The District Magistrate,
Wardha, Dist. Wardha.
3. Superintendent of Central Jail
Nagpur

Respondents

Mr. Ashok Kailash Bhangde, counsel with Mr. N.K. Bhangde, counsel
for the Petitioner.
Mr I.J. Damle, A.P.P. for R-1 to 3.

CORAM :NITIN W. SAMBRE AND

MRS. VRUSHALI V. JOSHI, JJ.

DATE :05/05/2025

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, being aggrieved by the order of detention passed by the Respondent No. 2 on 13.11.2024 and confirmation order passed by Respondent No.1 on 02.01.2025, 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 “MPDA Act”), is invoking the extra ordinary jurisdiction of this Court under Article 226 of the Indian Constitution.
- 4) The petitioner has been detained as a ‘Bootlegger’. In order to reach to this conclusion, the detaining authority has placed reliance on two in-camera statements and the following offences --

(i) Crime No. 554/2024, registered at Kharangna Police Station under Section 65(e) of the Maharashtra Prohibition Act, 1949.

(ii) Crime No. 518/2024, registered at Kharangna Police Station under Section 65(e) of the Maharashtra Prohibition Act, 1949.

5) The petitioner has raised several grounds opposing the order of detention

(a) That, the order of detention does not specify the period of detention, whereas, it is now a settled position of law that the order of preventive detention must state its duration. The petitioner has relied on the case of *Lahu Shrirang Gatkhal vs The State of Maharashtra through its Secretary and others*, 2017 ALL M.R. (Cri) 4014 SC.

(b) That, the last prejudicial activity of the detenu taken into account was dated 17.06.2024 and the detention order came to be passed on 13.11.2024, thereby snapping the live link between the last offence committed by the detenu and the date of passing of the order of detention.

(c) That, the narration of the facts against the petitioner in the in-camera statements does not justify that the detenu had the propensity to cause prejudice to the maintenance of public order.

(d) That, no satisfaction has been recorded regarding the unwillingness of the confidential witnesses to give statements against the petitioner, questioning the subjective satisfaction

reached at by the detaining authority.

6) The counsel for the petitioner submits that the in-camera statements of confidential witnesses 'A' and 'B' are general, vague and identical in nature as they are silent about the date and place of the incident. Furthermore, it has been stated that the statements were recorded on 10.10.2024 and 15.10.2024 respectively, although, they came to be verified on 04.11.2024. Moreover, it is submitted that there is no endorsement, remark or confirmation of the Detaining Authority on the in-camera statements, hence, the petitioner submits that the due procedure of law has not been followed. The counsel for the petitioner has relied on the decision of this Court in the case of ***Janardhan Chinataman Bhoyar vs State of Maharashtra, 2009 (1) Bom. C.R. (Cri.)***.

7) The petitioner further submitted that in Crime No. 518/2024, the Chemical Analyzers report has not been placed before the Respondents while passing the order of detention. In order to support this ground, the petitioner has relied on the case of ***Rafiq Sheku Bhagatwale vs District Magistrate, Washi and another, Criminal Writ Petition No. 559/2024***, wherein this Court has placed reliance on para 7 of the judgment of ***Chotu***

s/o Ramjan Naurangabadi vs State of Maharashtra and others, Criminal Writ Petition No. 78/2022 which reads as under :-

“7. Then, although eight crimes have been registered against the petitioner and all of them have been considered as constituting relevant material for reaching subjective satisfaction, we find that at least in three of them, no cognizance could have been taken for want of report of chemical analysis indicating that what was seized from the petitioner was prohibited liquor. CA reports in these crimes are still awaited. So, the offences which ought not to have been considered by the detaining authority have been considered for reaching the subjective satisfaction.

For this reason also the impugned order suffers from the vice of non-consideration of relevant material. We thus find great substance in the petition.”

- 8) The Learned A.P.P appearing on behalf of the Respondent No.2 has filed an affidavit-in-reply, vehemently opposing the admission of this writ petition. The Learned A.P.P submits that the Chemical Analyzers report of Crime No. 518/2024 was considered by the Detaining Authority and the same has been described in para nos. 10.1 and 10.2 of the grounds of detention. It was further submitted by the Respondent that a bare perusal of the witness statements would show that there was disturbance of public order, as, according to the statement of witness ‘A’, it can

be perused that the detenu not only injured some people with sticks but also threatened to kill people. Moreover, according to the statement of witness 'B', the bootlegging activities of the petitioner created disturbance of public order, hence, after considering the criminal antecedents and the witness statements, the Detaining Authority subjectively satisfied itself about the activities of the detenu being prejudicial to the maintenance of public order and detained the petitioner as a bootlegger.

- 9) It was further submitted by the Respondent No.2 that statements of secret witnesses have been endorsed by the detaining authority, furthermore, it is the argument of the Respondent No.2 that the detaining authority has followed the procedure of verification of confidential statements. The Respondent has relied on the case of *Machindra Dyanoba vs The State of Maharashtra and others*, W.P No. 1191/2020, which held as under -

“The verification of statement made by the Sub Divisional Police Officer and appreciated the satisfaction of detaining authority on it that is as the original in-camera statements of witnesses A and B were produced before the Detaining Authority. The Detaining Authority considered those statements. These statements have been

verified by the Sub Divisional Police Officer. The original in-camera statements of witnesses A & B, which were produced before the Detaining Authority were also produced before this Court for perusal and this Court has perused the same. The statements of these two witnesses clearly show that the activities of the petitioner are causing danger to the maintenance of public order, therefore, the detaining authority was right in holding that there was sufficient material before it for recording his subjective satisfaction that the activities of the petitioner have created terror in the minds of the people in the vicinity and has disturbed the peace and tempo of their lives as well as public order. The Detaining Authority was also right in holding that despite taking preventive actions against the detainee, his activities are indicating ascending trend and they are going on unabated. Therefore, there is no merit in the petition. The petition stands dismissed”.

- 10) After considering the arguments of both the parties, we have perused the record. It appears that two offences and two statements are considered for passing of the order of detention. The petitioner is detained as a bootlegger. Crime No.554 of 2024 and 518 of 2024 are registered against the petitioner for the offence punishable under Section 65 (e) of the Maharashtra Prohibition Act. Crime No.518 of 2024 is registered on 28/06/2024. In both the offences, the Chemical Analyzer's reports are available and ethyl alcohol is found in both the samples. In

the order, the list of ten offences, which were committed by the detainee during the period of one year is given and the chemical analyzers reports in all the ten offences are also placed before the authority while passing the detention order. It appears that though the two offences are considered, the extraneous material is placed before the detaining authority. The Chemical Analyzers reports of the earlier offences are placed which is extraneous material and is considered by the detaining authority. The statements on which the detaining authority has relied upon are of general nature. It is stated that during Ganesh immersion procession, the people from the other villages came and consumed liquor and misbehaved with the ladies so also used abusive language seeing the same, the residents of the village tried to explain, however, in response, he started giving threats to the persons of the said village. The incident which is mentioned in the statement does not reflect that it creates disturbance in public at large. Though the Ganesh immersion procession is disturbed but it is not because they consumed liquor and therefore, there was disturbance and the villagers could not enjoy Ganesh immersion procession.

11) In the latest judgment of *Ameena Begum Vs. The State of Maharashtra and ors.*, [SLP (Criminal) No.8510 of 2023] the Hon'ble Apex Court has referred the decision of the Constitutional Bench of the Apex Court in the case of *Ram Manohar Lohia Vs.State of Bihar*, reported in (1966) 1 SCR 709, wherein it is observed as under:

54. *** *Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.* 55. *It will thus appear that just as "public order" in the*

rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State"

- 12) The statement does not contain any incident which disturbs the public order. Witness-B has also given a general statement. On perusal of the statement, it appears that the statement was recorded by the Assistant Sub Inspector. But he has not verified it. Thereafter, SDPO has called the witness in his office and he has verified it and the detaining authority has seen it and he has stated that the SDPO has personally verified in his presence and it is verified on 12.11.2024. The proposal was sent along with the sealed statements of two witnesses on 31.10.2024, according to the order which were verified and sent to Police Station. After verification, it was sent to SDPO but on perusal of the statement it can be observed that the same was not verified before sending to SDPO and the proposal was sent on 04/11/2024. As per the statement of the detaining authority, it

was verified in his presence by SDPO on 12/11/2024 i.e. a day before passing the detention order which creates a doubt about its verification. As extraneous material is considered by the detaining authority, subjective satisfaction about truthfulness of the statements is not there, the detention order passed by the detaining authority is required to be quashed and set aside.

13) Hence, we pass the following order.

The Writ Petition is allowed in terms of its prayer clauses (i) to (v). The petitioner be set at liberty forthwith, if not required in any other crime.

14) Rule is made absolute in above terms.

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