



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

CRIMINAL WRIT PETITION NO.220/2025

Sambhaji Kisan Ugale
Age 50 Yrs., Occu. Labour
R/o Motsawanga, Tq: Mangrulpur
Distt. Washim.

... Petitioner

- Versus -

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

2. The District Magistrate,
Washim. Tah. and Distt.
Washim.

... Respondents

Mr. Kaustubh Rajkumar Bhise, Advocate for the petitioner.
Mr. S.S. Hulke, A.P.P. for respondent Nos.1 and 2.

CORAM: NITIN W. SAMBRE & MRS.VRUSHALI V. JOSHI, JJ.
DATE OF RESERVING THE JUDGMENT: 21.4.2025.
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 petitioner has filed the present petition to challenge the order of preventive detention dated 22.8.2024 issued by respondent No.2 in exercise of powers under Section 3(1) and (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 “M.P.D.A. Act”) which is approved vide order dated 29.8.2024 passed by respondent No.1 under Section 3(3) of the said Act which are impugned in the petition. The petitioner has been placed under preventive detention on the ground that he is a “dangerous person” within the meaning of Section 2(b-1) of the M.P.D.A. Act. The grounds of detention dated 22.8.2024 have been communicated to the petitioner on the date of his detention.

3. The detaining authority has referred to six offences registered against the petitioner. As per the grounds of detention,

the detaining authority has taken into consideration recent two offences viz :-

(i) Crime No.65/2024 registered on 21.3.2024 for the offence punishable under Sections 65(e)(f) of the Maharashtra Prohibition Act, 1949 and

(ii) Crime No.86/2024 dated 5.4.2024 for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949.

4. There appears to be an acknowledgement of the C.A. reports of the crimes taken into consideration for passing the detention order and not the actual reports. However, there is availability of opinion (Toxicology Report) of the Civil Surgeon, District Hospital, Washim, based on the quantity of the alcohol found in the seized samples of liquor during the course of enquiry conducted of the detenu. In both the offences, he was served with notice under Section 41(a)(1) of the Code of Criminal Procedure.

5. In the statement of witness “A” he has stated that as one of the customers of the detenu had consumed alcohol purchased from the petitioner and was urinating on road, the said witness requested the petitioner to stop his illegal business of selling handmade liquor and made him aware of the several problems caused due to the same. The petitioner threatened him to beat to death. In the statement of witness “B” he has stated that on 24.3.2024 at 5.00 P.M. when the witness was coming from Echori to Motsawanga, the petitioner stopped him on his way and accused him of providing information of his bootlegging activities to the police officials and threatened to kill him if tried to do so the next time.

6. Learned Advocate for the petitioner, Mr. Bhise, contended that the reply received by the authorities of Police Station, Asegaon vide letter from the Civil Surgeon, Washim, does not explain the concentration of ethyl alcohol found in the alleged samples and in what manner it is lethal to the human body. He

further submitted that two C.A. reports in the charge-sheet do not satisfy regarding the source or scientific technique which was applied for obtaining the concentration of ethyl alcohol in the samples and thus, the same is not a credential evidence. It is the contention of the learned Advocate for the petitioner that confidential statements of witnesses "A" and "B" recorded by the authorities clearly indicate that there is a personal rivalry which exists between the petitioner and the witnesses. The detaining authority has considered extraneous material i.e. past criminal cases, those are stale offences, *sub judice* before the concerned Courts and thus there is hasty generalization while passing the detention order lacking proximity. The learned Advocate would claim that the petitioner had not been informed of the status of his representation submitted before the Advisory Board until he filed an application dated 29.11.2024 before the Superintendent of Jail, Central Prison, Nagpur as he was later displaced from Central Prison, Washim.

7. Learned A.P.P. Mr. Hulke vehemently opposed the submissions made by the learned Advocate for the petitioner and has relied on the affidavit-in-reply filed on behalf of the respondents. He submitted that the petitioner is a bootlegger and his activities attract the provisions of Section 2(b) of the M.P.D.A. Act. The bootlegging activities of the petitioner are continuous in the locality of Washim and he has no fear in his mind about the said crimes and pending cases against him. Learned A.P.P. further argued that the copy of intimation letter was given to the blood relative of petitioner on next the day of intimating process to detain the petitioner after passing the detention order. All the documents and detention order was supplied to the petitioner on the same day of detention i.e. 22.8.2024 and on 25.8.2024, some documents were supplied before the Superintendent of Jail, Washim and obtained thumb impression of petitioner. Learned A.P.P. has submitted that considering the opinion of the District Civil Surgeon, Washim that the consumption of ethyl alcohol in excess amount is harmful to the human body which causes death

has been discussed in the proposal as well as grounds of detention. The Learned A.P.P. contended that the detaining authority has considered recent two crimes and two in-camera statements and after being subjectively satisfied, passed the order of detention. It is submitted that as the petitioner was heard by the Advisory Board, therefore, there is no question of violation of the rights of the petitioner. The Assistant Police Station Officer has recorded in-camera statements of witnesses "A" and "B" which were verified by the Sub-Divisional Police Officer, Mangrulpir by personally visiting on the spot and also personally interacted with the said witnesses and verified its correctness, truthfulness and genuineness and then was subjectively satisfied. The material of subjective satisfaction is recorded in the grounds of detention specifically in paragraph No.10.

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

9. On perusal of the order passed by the detaining authority it appears that 2 recent offences i.e. Crime Nos.65/2024 and 86/2024 and 2 statements of confidential witnesses are considered for passing the detention order. Both the offences are under Section 65(e)(f) of the Maharashtra Prohibition Act. Crime No.65/2024 was registered on 21.3.2024 and Crime No.86/2024 was registered on 5.4.2024 for the offence punishable under Section 65(e)(f) and Section 65(e) respectively of the Maharashtra Prohibition Act. In both the offences notice under Section 41(a)(1) of the Code of Criminal Procedure was issued. Though it is mentioned in the detention order that the samples for C.A. were collected, in both the offences the C.A. reports are not filed on record or not considered while passing the detention order by the detaining authority. The general statements about the C.A. reports and samples containing ethyl alcohol in water are made. It is also mentioned in the detention order that the opinion of the Civil Surgeon of Government Hospital, Washim was obtained and as per the said opinion “the

consumption of ethyl alcohol in excessive quantity is injurious to the human body and it may cause death” is considered while passing the detention order by the detaining authority.

10. When the C.A. reports are to be considered by the detaining authority while passing the detention order, mere opinion of the Civil Surgeon that too without C.A. report is not helpful and it cannot be said that because of said opinion the health of public at large is in danger.

11. 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."

12. While passing the detention order it is necessary to consider the C.A. reports which are not available and not considered by the detaining authority while passing the detention order. Thus, it cannot be said that registration of bootlegging

crimes against the petitioner provided reasonable material for detaining authority to arrive at the subjective satisfaction. If these 2 offences i.e. Crime No.65/2024 and Crime No.86/2024 registered against the petitioner are excluded which were considered by the detaining authority to arrive at the subjective satisfaction then only 2 in-camera statements of witness "A" and "B" would remain. Now if we take a look at the statements of these witnesses, we would find that the incidents mentioned therein have no live link with the object sought to be achieved by the detention of the petitioner.

13. Both the witnesses have stated that they were knowing the petitioner and his illegal business of the liquor. When the witness went to give understanding to the petitioner, he gave threats. General statements are made by both the witnesses. The subjective satisfaction is not at all arrived by the detaining authority. These statements do not constitute any relevant material for the purpose of passing the detention order against the

present petitioner. Such being the nature of statement of both the witnesses, we do not think that they would have to be considered to be constituting the relevant material for reaching subjective satisfaction by the detaining authority. In absence of C.A. reports the detention order cannot be sustained. The authorities would be required to satisfy themselves as to how public disturbance would result in breach of public order. Such subjective satisfaction has not been reached in the present case. For these reasons, we find that the impugned order is bad in law and requires to be quashed and set aside. Accordingly it is quashed and set aside.

The petition is allowed in terms of prayer clause (2).

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

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)