



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

CRIMINAL WRIT PETITION NO. 287 OF 2025

Mrs. Mina Sanjay Pawar,
Age – 44 years, Occ. Housewife
(Wife of Detenu),
Dongar Khandala, Dist. : Buldhana,
Maharashtra 443001.

... **PETITIONER**

...**VERSUS**...

1. The District Magistrate, Buldhana.
2. The State of Maharashtra,
Through Addl. Chief Secretary to
Government of Maharashtra, Mantralaya,
Home Department, Mantralaya, Mumbai.
3. The Superintendent,
Buldhana District Jail, Buldhana.

... **RESPONDENTS**

Mrs. Jayshree Tripathi, Advocate h/f. Mr. R. R. Vyas, Advocate for the Petitioner.
Mr. I. J. Damle, A.P.P. for Respondents/State.

CORAM : ANIL S. KILOR AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 24.06.2025
JUDGMENT PRONOUNCED ON : 30.06.2025

JUDGMENT (PER : MRS. VRUSHALI V. JOSHI, J.):-

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned Counsel appearing for the parties.
2. This writ petition filed by the wife of detenu, Mrs. Mina Sanjay Pawar, challenges the legal and constitutional validity of the order of detention dated 23.01.2025, passed by the District Magistrate, Buldhana, against him, 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, (for short, “the MPDA Act”). The order of detention was further confirmed by respondent No.2 on 25.02.2025 under Section 12(1) of the MPDA Act thereby committing the detenu for a period of twelve months of detention, preventing him from indulging in the activities of bootlegging.

3. The detaining authority has taken up two recent offences registered against the petitioner under Section 65(e) of the Maharashtra Prohibition Act, 1949 for passing the detention order as mentioned hereinbelow along with confidential statements of secret witnesses “A” and “B”. In the compilation of documents served to the detenu, if the documents pertaining to a couple of crimes are perused, C.A. Reports of them are found missing or unavailable. It is stated as ‘documents of investigation’ in Crime No.971/2024 and Crime No.765/2024. Toxicology Report which is general in nature is however, annexed.

(a) Crime No.971/2024, dated 30.10.2024, under Section 65(e) of the Maharashtra Prohibition Act, 1949 filed at Police Station, Buldhana City.

(b) Crime No.765/2024, dated 04.09.2024, under Section 65(e) of the Maharashtra Prohibition Act, 1949 registered at Police Station, Buldhana City.

4. Learned Counsel for the petitioner Ms Tripathi, submitted that, non-supply of in-camera statements has deprived the detenu of making any effective representation. It was further submitted that detenu Sanjay Shamrao Pawar was arrested and released on notice under Section 35(3) of the Bharitya Nagarik Suraksha Sanhita, 2023 (B.N.S.S) on the same day of arrest. The learned Counsel further submitted that neither the copy of C.A. Report from any expert certifying that the seized liquor is injurious to human health is placed before the detaining authority nor furnished to the detenu. The said material ought to have been placed before the authority for him to arrive at the subjective satisfaction before passing the said impugned order.

5. The learned Counsel for the petitioner has placed reliance on the judgment of the Hon'ble Apex Court in the matter of *Arjun s/o. Ratan Gaikwad Vs. The State of Maharashtra and Ors.* [SLP (Crl.) No.12516/2024], particularly in para 16, it is held that “*In the present case, all the six cases are with regard to selling of illicit liquor. Though six cases are registered, the Excise Authority did not find it necessary to arrest the appellant even on a single occasion. It would have been a different matter, had the appellant been arrested, thereafter released on bail and then again the appellant continued with his activities. However, that is not the case here.*” Therefore, the petitioner submits that the said observation is squarely applicable to the case at hand.

6. We have considered the submissions made by the learned Counsel for the petitioner and the learned A.P.P. for the respondents. Perused the detention order dated 23.01.2025.

7. On perusal of the order, it appears that seven offences committed since 2023 punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949 are considered. Nowhere it is mentioned that the last two offences are to be considered for passing the detention order. But the learned Counsel for the petitioner has stated that the two offences vide Crime Nos.765/2024 and 971/2024 are considered for passing the detention order. The criminal history of the petitioner having involvement in earlier offences is considered. There are series of offences registered under the Maharashtra Prohibition Act, 1949 against the petitioner. If we consider that the last two offences which are committed during the period of six months, the reports of Forensic Science Laboratory in said offences are not made available to the detaining authority and as such, it has to be inferred that before passing the detention order, the detaining authority has not conscious of the fact of absence of C.A. Report. The learned A.P.P. has also stated that the C.A. Reports were not available while passing the detention order. In absence of the C.A. Report in relation to the petitioner's involvement in said offences of bootlegging, the petitioner cannot be lawfully detained. Even if, we consider about the earlier offences, no C.A. Report is available in any of the offence.

8. 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."

9. As per the guidelines of the Hon'ble Apex Court in *District Collector, Ananthapur (supra)*, it has to be held that the offences which are punishable under the provisions of the Maharashtra Prohibition Act, 1949, could be effectively dealt with under the said Act and as such, would not attract detention under the provisions of the MPDA Act. An act of committing the alleged offences involving the offences punishable under the Maharashtra Prohibition Act cannot be said to be detrimental to the maintenance of 'public order'.

10. The C.A. Report for bringing home the guilt of the accused is necessary for proving the offence under the Maharashtra Prohibition Act. In absence of such report, it cannot be presumed or cannot be said to have provided basis for recording the subjective satisfaction so as to infer a strong case against the accused like the petitioner. In absence of the Report of Chemical Analyzer from Forensic Science Laboratory, gravity or seriousness of the prosecution case loses its significance.

11. The another ground on which the petitioner has relied is of not supplying the copies of statements of confidential witnesses. The learned A.P.P. objected for it and on producing the original record has stated that the copy was supplied in the Jail and thumb impression was obtained. On perusal of the documents, it appears that though there is thumb impression, it is not attested. One cannot say that the said thumb impression is of the detenu. Therefore, there is substance in the submission made by the

learned Counsel for the petitioner about non-furnishing of the in-camera statements. The detenu is deprived of making effective representation. Such an act on the part of the detaining authority also violates the right guaranteed to the petitioner under Article 22(5) of the Constitution of India. In our opinion, these two grounds are sufficient to quash and set aside the impugned detention order passed by the detaining authority.

12. For the aforesaid reasons, we pass the following order :

- i] The petition is allowed.
- ii] We hereby quash and set aside the detention order dated 23.01.2025 passed by the respondent No.1 and the order of confirmation dated 25.02.2025 passed by the respondent No.2.
- iii] The petitioner be set at liberty forthwith, if not required in any other crime.

Rule is made absolute in the aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)

(ANIL S. KILOR, J.)