



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

CRIMINAL WRIT PETITION NO. 368 OF 2025

Ajendrakumar @ Ajay s/o. Sukhdev Koche,
Aged – 42 Years, Occ. : Labour,
R/o. Devsarra, Tahsil – Tumsar,
Dist. Bhandara, Maharashtra – 441904,
Presently detained at
Bhandara District Prison,
Tah. & Distt. Bhandara (M.S.)

... **PETITIONER**

...**VERSUS**...

1. State of Maharashtra,
Through its Secretary,
Home Department (Special),
Mantralaya, Mumbai (M.S.).
2. District Magistrate/Collector, Bhandara,
District – Bhandara, Maharashtra.
3. Superintendent,
Bhandara District Prison,
District – Bhandara, Maharashtra.
4. Superintendent of Police,
District – Bhandara, Maharashtra.
5. Sub-Divisional Police Officer,
Tahsil- Tumsar, District Bhandara (M.S.),
6. Assistant Police Inspector,
Police Station – Sihora,
Tahsil – Tumsar, District Bhandara (M.S.).

... **RESPONDENTS**

Mr. H. P. Lingayat, Advocate for Petitioner.
Mr. I. J. Damle, A.P.P. for Respondents/State.

CORAM : ANIL S. KILOR AND MRS. VRUSHALI V. JOSHI, JJ.
JUDGMENT RESERVED ON : 30.06.2025
JUDGMENT PRONOUNCED ON : 09.07.2025

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. By way of this writ petition, the legality and propriety of order of detention dated 09.12.2024 passed by respondent No.2-District Magistrate, Bhandara against the petitioner under Section 3(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, (hereinafter referred to as “MPDAAct”) is impugned.

3. The respondent/detaining authority has arrived at subjective satisfaction to hold the petitioner as ‘Bootlegger’ on the foundation of particulars of the offences stated hereinbelow:-

(i) Crime No.253/2023 dated 16.11.2023 registered for the offence punishable under Sections 65(f), (b), (c), (d), (e) of the Maharashtra Prohibition Act, 1949.

(ii) Crime No.81/2024 dated 17.03.2024 registered for the offence punishable under Section 65(f), (e) of the Maharashtra Prohibition Act, 1949.

(iii) Crime No.188/2024 dated 14.08.2024 registered for the offence punishable under Section 85(1)(a) of the Maharashtra Prohibition Act, 1949.

(iv) Crime No.200/2024 dated 31.08.2024 registered for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949.

(v) Crime No.230/2024 dated 27.09.2024 for the offence punishable under Section 65(f), (e) of the Maharashtra Prohibition Act, 1949.

4. Detenu's business of selling illicit liquor is proposed to disturb peace and order of the nearby village, therefore, complaints of the following indictable crimes were lodged at the police station.

5. Learned counsel for the petitioner Mr. Lingayat submits that, impugned order dated 09.12.2024 is arbitrary, illegal, belated on its face and passed without application of mind as the material pitted against the petitioner is too scanty and stale for warranting such drastic action under the MPDA Act. He further submitted that, the impugned order under challenge is passed by respondent No.2 without taking into consideration that the prior proposal seeking externment of petitioner-detenu under Section 56(1)(bb) of the Maharashtra Police Act, 1951 on the same set of allegation and documents was not approved by the authority.

6. It is the contention of the learned Counsel on behalf of the petitioner/detenu that, the order passed by the respondent No.2 is *prima*

facie illegal as there are no specific findings recorded by the respondent No.2 in the order by which his detention can be justified. The detaining authority has considered the Chemical Analyzers Report of the Forensic Science Laboratory alongwith query opinion of District Civil Surgeon of District General Hospital, Bhandara, who opined that, there is no significant effect of 0 to 50 Mg% of ethyl alcohol on human health. Therefore, on this count also the said impugned order is liable to be quashed and set aside.

7. Learned A.P.P. Mr. Damle, vehemently opposed the arguments made by the petitioner placing reliance upon the affidavit-in-reply. He stated that the in-camera statements of witnesses 'A' and 'B' have been recorded by Police Inspector and verified by respondent No. 5, who is a Gazetted Officer and after finding out the truthfulness of these secret complaints satisfied himself that no person is coming forward to move complaint due to fear of detenu. The detaining authority after being subjectively satisfied, furnished copies of the said statements to the detenu except names and particulars of identification of the witnesses which are kept secret, in public interest for which the detaining authority have privilege.

8. Learned A.P.P further supplied emphasis on the argument that the detaining authority wrongly relied on the statements of witnesses "A" & "B" which do not show any incident of having affected the public order by the detune. It is submitted that the statements of confidential witnesses

along with all documents were supplied to the detenu. The witnesses "A" and "B" deposed against the activities of the detenu committed against them. The Senior Police Officer has verified their statements and the same were carefully perused by the detaining authority. From this, it is seen that, he has become notorious criminal with no fear of law and it is highly probable that he could commit offences again and again.

9. Heard both the learned Counsel for the parties.

10. The grounds raised by the petitioner are about consideration of extraneous material while passing the detention order and there is no verification of the confidential statements.

11. We have gone through the order passed by the detaining authority. Though five offences are committed by the petitioner during the period of 2023 to 2024, one offence i.e. Crime No.230/2024 registered for the offence punishable under Section 65(f)(e) of the Maharashtra Prohibition Act, 1949 is considered for passing the detention order along with two statements of confidential witnesses. The petitioner is labelled as a bootlegger. While passing the detention order, the Authority has considered the C.A. Report of the earlier offences i.e. in Crime No.200/2024 and 230/2024.

12. The learned Counsel for the petitioner has relied on the judgment of the Hon'ble Apex Court in the case of *Nenavath Bujji etc. Vs.*

State of Telangana and Ors. reported in **2024 SCC OnLine SC 367** wherein it is held as under :

“37. In the case of Ameena Begum v. State of Telangana and Others (2023) 9 SCC 587, a two-Judge Bench of this Court was confronted with almost an identical situation with which we are dealing with. In Ameena Begum (supra) this Court while considering whether there was proper application of mind to all the relevant circumstances or whether consideration of extraneous factors had vitiated the order of detention, observed thus:

“.....53. Although the Commissioner sought to project that he ordered detention based on the said 5 (five) FIRs, indication of the past offences allegedly committed by the detenu in the detention order having influenced his thought process is clear. With the quashing of the order of detention dated 4-3-2021 by the High Court and such direction having attained finality, it defies logic why the Commissioner embarked on an elaborate narration of past offences, which are not relevant to the grounds of the present order of detention. This is exactly what this Court in Khaja Bilal Ahmed [Khaja Bilal Ahmed v. State of Telangana, (2020) 13 SCC 632 : (2020) 4 SCC (Cri) 629] deprecated. Also, as noted above, this Court in Shibban Lal Saksena [Shibban Lal Saksena v. State of U.P., (1953) 2 SCC 617 : AIR 1954 SC 179] held that such an order would be a bad order, the reason being that it could not be said in what manner and to what extent the valid and invalid grounds operated on the mind of the authority concerned and contributed to his subjective satisfaction forming the basis of the order.”

38.If the pending cases were not considered for passing the order of detention, it defies logic as to why they were referred to in the first place in the order of detention. The purpose of the Telangana Offenders Act, 1986 is to prevent any person from acting in a manner prejudicial to the maintenance of public order. For this purpose, Section 3 prescribes that the detaining authority must be satisfied that the person to be detained is likely to indulge in illegal activities in the future

and act in a manner prejudicial to the maintenance of public order. The satisfaction to be arrived at by the detaining authority must not be based on irrelevant or invalid grounds. It must be arrived at on the basis of relevant material; material which is not stale and has a live link with the satisfaction of the detaining authority. The order of detention may refer to the previous criminal antecedents only if they have a direct nexus or link with the immediate need to detain an individual. If the previous criminal activities of the appellant could indicate his tendency or inclination to act in a manner prejudicial to the maintenance of public order, then it may have a bearing on the subjective satisfaction of the detaining authority. However, in the absence of a clear indication of a causal connection, a mere reference to the pending criminal cases cannot account for the requirements of Section 3. It is not open to the detaining authority to simply refer to stale incidents and hold them as the basis of an order of detention. Such stale material will have no bearing on the probability of the detenu engaging in prejudicial activities in the future.”

13. It appears that the C. A. Report of the earlier offence is considered which amounts to consideration of extraneous material. As per the above said discussion it vitiates the order.

14. On perusal of the statements, it appears that the statements are identical, which are mentioned in the order. But on going through the original statements, it appears that different incidents are mentioned by both the witnesses. Though the statement of witness ‘A’ is recorded on 12.09.2024, the incidents of 23.08.2023 and 07.09.2024 are mentioned. On perusal of the original statements, it appears that it is not verified by anyone. Sub-Divisional Police Officer has signed it stating as ‘verified’. The Authority has also seen it, but has not taken any pain to see whether it is

verified by any other person. Therefore, though the statements are considered, it is of no use. As the extraneous material is considered and the statements are not even verified and mechanically seen by the Authority, a casual approach of the Authority is proved while passing the detention order. It is the question of liberty of a person. The Authority has considered the extraneous material viz. the C.A. Report in earlier offences and without verifying the statements, has passed the detention order. As such, the same is required to be quashed and set aside.

15. 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 09.12.2024 passed by the respondent No.2 and the order of confirmation dated 19.12.2024 passed by the respondent No.1.
- 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.)