



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1314 OF 2025

1. Swapnil @ Bablu S/o Tukaram Kamble,
Age : 28 Years, Occ. Labour,
R/o. Sulibhanjan, Tq. Khultabad,
District Chh. Sambhajanagar **..PETITIONER**

V E R S U S

1. The State of Maharashtra,
Through The Additional Secretary (Home),
Home Department (Special),
2nd Floor, Mantralay, Mumbai-32.
2. The District Magistrate,
Chh. Sambhajanagar
3. The Superintendent of Police,
Chh. Sambhajanagar
4. Sub- Divisional Officer,
Sub Division, Kannad
Dist. Chh. Sambhajanagar
5. The Police Inspector,
Khultabad Police Station,
Dist. Chh. Sambhajanagar **..RESPONDENTS**

....
Advocate for the Petitioner : Mr. Avinash R. Borulkar
(Appointed)
A.P.P. for Respondent Nos. 1 to 5 : Mr. V. M. Jaware
.....

**CORAM : SANDIPKUMAR C. MORE AND
ABASAHEB D. SHINDE, JJ.**

RESERVED ON : MARCH 06, 2026

PRONOUNCED ON: APRIL 06, 2026

FINAL ORDER (PER SANDIPKUMAR C. MORE, J) :-

1. Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the petitioner and learned A.P.P. at the stage of admission.

2. The petitioner who is a bootlegger, has challenged the order of detention dated 05.08.2025 passed by respondent No.2/The District Magistrate, Chh. Sambhajinagar in exercise of powers 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 (hereinafter referred to as "MPDA Act") as well as the approval order of the State Government dated 14.08.2025 and the confirmation order dated 09.10.2025, by invoking the power of this Court under Article 226 of the Constitution of India.

3. The learned counsel for the petitioner submits that, the following offences are registered against the petitioner and one preventive action is also taken against the petitioner.

Sr. No.	Police Station	C.R. No. & Under Section	Date of Registration	Present status
1.	Khultabad	273/2020 u/s 65(c) of the Maharashtra Prohibition Act, 1949	25.08.2020	Pending trial

2.	Khultabad	317/2020, u/s 65(c) of Maharashtra Prohibition Act, 1949	02.10.2020	Pending trial
3.	Khultabad	175/2021 u/s 188 of IPC, 65(e) of the Maharashtra Prohibition Act, 1949	19.05.2021	Pending trial
4.	Khultabad	144/2023 u/s 65(e) Maharashtra Prohibition Act, 1949	14.04.2023	Pending trial
5.	Khultabad	197/2025 u/s 65(f) Maharashtra Prohibition Act, 1949	19.05.2025	Pending trial
6.	Khultabad	230/2025 u/s 65(f) Maharashtra Prohibition Act, 1949	04.06.2025	Pending trial

Preventive Action

Sr. No.	Police Station	Chapter Case No. & U/s.	Present status
01.	Khultabad	O. No. 3519/2023 u/s 93 of the Maharashtra Prohibition Act, 1949 dt. 21.09.2023	Final bond of Rs. 10,000/- was taken

However, the detaining authority has considered mainly last two offences viz. C.R. No. 197 of 2025 & C.R. No. 230 of 2025 both under Section 65(F) of the Maharashtra Prohibition Act, 1949 registered with Khultabad Police Station, District Chhatrapati Sambhajnagar on 19.05.2025 and 04.06.2025 respectively. According to the learned counsel for the petitioner, though the petitioner is shown to be involved in selling illicit country-liquor, but the investigating officer did not

consider the fact that there was no poisonous material found in the liquor. Moreover, the statements of secrete witnesses indicate that those statements are stereotype in nature and there was no disturbance to the public order and at the most could reflect a breach of personal security.

4. Per contra, the learned A.P.P. strongly opposed the submissions made on behalf of the petitioner by filing affidavit-in-reply of respondent No.2. According to him, the petitioner is definitely a “Dangerous Person” within the meaning of Section 2(b-1) of the M.P.D.A. Act. He submitted that the detention order under challenge, is not merely based on two offences and the statements of the secret witnesses, but the criminal history of the petitioner has also been taken into consideration, for passing the same. According to him, despite filing of similar cases against the petitioner, the petitioner continued his business of production of country made liquor. Such activities, not only disturb the public order, but also adversely affect the health of public at large. Moreover, people are hesitant of lodging complaints against the petitioner due to terror created by him in the area. Thus, he prayed for dismissal of the petition. He placed reliance on following judgments :-

- (i) ***Nagpur Bench of this Court in the case of Badal Manoj Sahare Vs. State of Maharashtra and Others [AIR Online 2023 BOM 2044]***
- (ii) ***Hon'ble Apex Court in the case of Kanuji S. Zala Vs. State of Gujarat and others [(1999) 4 Supreme Court Cases 514]***
- (iii) ***Principal Seat of this Court in the case of Gobibai V. Ghanavat Vs. State of Maharashtra and others [2003(2) Mh.L.J.]***
- (iv) ***Ramesh Balu Chavan Vs. Commissioner of Police and others 2017 [Scc OnLine Bom 10133]***

5. On going through the impugned order of detention, it can be seen that there are as many as six crimes registered against the petitioner during the period from 25.08.2020 to 04.06.2025. Moreover, a prohibitory action in the form of Chapter Case O. No. 3510 of 2023 had already filed wherein final bond of Rs.10,000/- was obtained from him. However, after going through the impugned order of detention, the Detaining Authority appears to have considered last two crimes, but there is no material to show that the authority had arrived at the subjective satisfaction, regarding the dangerous nature of the petitioner towards public at large.

6. Admittedly, in the case of ***Badal Manoj Sahare Vs. State of Maharashtra (supra)*** this Court at Nagpur Bench held the detention order of the petitioner therein proper, but in

that case very high percentage of ethyl alcohol i.e. more than 42% was found in the illicit liquor seized. In the instant cases, the percentage of ethyl alcohol is not more than 20% V/V. Moreover, no poisonous material was found in it. As such, the aforesaid case is not helpful in the instant case. So far as observation of Hon'ble Apex Court in the case of **Kanuji S. Zala Vs. State of Gujarat and others (supra)**, that activity of the selling of liquor of the petitioner therein was held harmful to the public at large, but thereafter much water has flown and as per the current view, the bootleggers activity is not termed as threat to public order, since the current law is sufficient to curb such activities of bootleggers.

7. In the judgment of Hon'ble Apex Court in **District Collector, Ananthapur Vs. Laxmanna, [reported in 2005 Mh.L.J. OnLine (Cri.) Supreme Court 49]** it is observed as follows:

“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 the 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.”*

8. Thus, in the light of the aforesaid observation, it is for the Detaining Authority to determine as to whether the act of preparing illicit country liquor is dangerous to the public health, on the basis of Chemical Analyzer's report. In the instant case, in C.R. No. 197 of 2025, the illicit country made liquor is having 18% V/V ethyl alcohol, whereas in C.R. No. 230 of 2025, there is 20% ethyl alcohol is found. It is to be noted that no poisonous substance is found in the aforesaid illicit liquor. As such, it cannot be said that the said liquor was injurious to the public at large.

9. Under such circumstances, it appears that the petitioner, at the most, must have created law and order situation by indulging into business of producing country made liquor, but certainly not a disturbance to the public order, as no poisonous material was found in the C.A. report. Under such circumstances, the impugned order appears to be passed without adequate supportive material and without proper subjective satisfaction. Thus, the impugned order and its confirmation cannot sustain. In the result, we pass the following order.

ORDER

- (i) The Writ Petition stands allowed.

- (ii) The detention order dated 05.08.2025 passed by respondent No.2 The District Magistrate Ch. Sambhajinagar, under Section 3 of the M.P.D.A. Act, 1981 as well as the approval order of the State Government dt. 14.08.2025 and the confirmation order dt. 15.10.2025 vide its order No. MPDA-0825/CR-435/SPL.3B are hereby quashed and set aside.
- (iii) Petitioner- Swapnil @ Bablu Tukaram Kamble shall be released forthwith, if no required in any other offence.
- (iv) Rule is made absolute in aforesaid terms.

(ABASAHEB D. SHINDE)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE

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