(*Reportable*)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 16 OF 2021

Chandrakala w/o Ramlal Jadhav,
Age : 39 years, Occupation : Agri,
R/o Khadak Talav, Wadarwadi,
Tq. & Dist. Jalna.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
   Through its Section Officer,
   Home Department (Special),
   Mantralaya, Mumbai-32.

2. The District Collector,
   Jalna, Tq. & Dist. Jalna.

3. The Superintendent of Jail,
   Aurangabad Central Jail,
   Aurangabad.

...RESPONDENTS

...

Shri P.P. More, Advocate for the petitioner.
Shri R.V. Dasalkar, APP for the respondents/ State.

...

CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.

Reserved on :- 06th April, 2021.

Pronounced on :- 26th April, 2021.

JUDGMENT (Per Ravindra V. Ghuge, J.):-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By this petition, the petitioner has challenged the order dated 07.12.2020 passed by respondent No.2, vide which, she has been detained 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 (for short, hereinafter referred to as "the MPDA Act, 1981").

3. The petitioner has put forth prayer clauses B and C as under :-

> *"B) By issuing writ of certiorari or any other appropriate order or direction in the nature of writ, kindly quash and set aside and/or revoke the impugned order dated 07.12.2020 passed by the respondent No.2 and consequently the respondent No.3 may kindly be directed to release the petitioner."*
>
> *"C) By allowing this Criminal Writ Petition, may kindly be released the petitioner on bail in pursuance of the above mentioned order dated 07.12.2020 passed by the respondent No.2."*

4. The petitioner submits that the impugned order has been passed on an assumption which is not sustainable. Respondent No.2/ District Collector, Jalna initiated the proceedings under Section 3(1) and 3(2) of the MPDA Act, 1981. It is contended in the petition that the

petitioner was sent behind bars and was granted the liberty to make a representation against the order of detention under Article 22(5) of the Constitution of India, before the Advisory Board.

5. The learned advocate for the petitioner makes a statement, on instructions, that the petitioner does not desire to make such representation and prays that this Court may consider this petition.

6. The petitioner contends that the impugned order is rendered illegal on the following grounds:-

(a) The petitioner is a law abiding and peace loving citizen of India, who has been falsely implicated.

(b) No specific period for detention has been set out in the impugned order.

(c) The impugned order was not passed within the time limit provided by the statute and hence, unsustainable in law.

(d) The statute provides that the preventive detention should not be for more than six months and respondent No.2 has not mentioned the period for which the impugned order would be operable.

(e) Several bogus crimes have been registered against the petitioner, only on the ground of suspicion.

(f) The petitioner is not a person whose presence in the society would be dangerous to the respectable members of the society.

(g) The activities of the petitioner cannot be held to be capable of

disturbing public peace.

(h) In camera statements of anonymous complainants would not form sufficient material to justify the preventive detention of the petitioner.

(i) Respondent No.2 should be satisfied by the grounds available to conclude that the petitioner deserves to be detained as a preventive measure and such detention must be based on the subjective satisfaction of the concerned authority.

(j) After the decision to detain the petitioner is arrived at, respondent No.2 has to make a report to the Advisory Board within seven days and only on the confirmation of the Board, the impugned order can be implemented.

(k) False offences are registered against the petitioner under political pressure.

(l) Personal liberty of the petitioner cannot be taken away, which is guaranteed by Article 21 of the Constitution of India.

(m) The petitioner is willing to file an affidavit that she shall never again indulge in manufacturing illicit liquor and the detention be restricted to the time already spent by the petitioner behind bars.

7. The learned prosecutor, while strenuously opposing this petition, relies upon the affidavit in reply filed by the District Magistrate,

Jalna. It is stated in the said reply as under :-

(a) Since the detention has been effected in view of Section 5A of the MPDA Act, 1981, this petition deserves to be dismissed.

(b) The sufficiency or insufficiency of the grounds for preventive detention, cannot be subject matter of judicial scrutiny under Article 226 of the Constitution of India.

(c) The subjective satisfaction of the detaining authority as regards the acts of the detenu being prejudicial to the interest of the society and public order, is sufficient to justify the impugned order.

(d) The petitioner is a bootlegger. She has indulged in manufacturing and selling illicit liquor, which is commonly known as “Hatbhatti”, in thickly populated areas at Kadim, Jalna, comprising of poverty stricken people.

(e) The petitioner protected her illicit liquor business by abusing and threatening the objecting residents.

(f) Her drunken customers used to litter the streets by their various acts including vomiting on the streets and creating an unhygienic atmosphere in Kadim, Jalna area.

(g) As a result of her illicit liquor business, the peace loving residents, students and especially women and girls in the said locality, used to always live under constant fear and terror. Many a times, they used to be abused, insulted and would be object of teasing which is very

insulting.

(h) The Inspector from the Police Station, Kadim, Jalna, has resorted to Section 39 of the Maharashtra Prohibition Act and preventive actions were taken. However, the petitioner did not mend her ways.

(i) The following offences have been registered and actions have been initiated against the petitioner :-

Sr.No.	Police Station	C.R. No. & under Section	Present status of the case
1	Kadim Jalna	299/2018 u/s 65(a) (e) of Maharashtra Prohibition Act	Pending trial
2	Kadim Jalna	365/2018 u/s 65(a) (e) (f) of Maharashtra Prohibition Act	Pending trial
3	Kadim Jalna	83/2019 u/s 65(a)(e)(f) of Maharashtra Prohibition Act	Pending trial
4	Kadim Jalna	108/2019 u/s 65(a)(e)(f) of Maharashtra Prohibition Act	Pending trial
5	Kadim Jalna	120/2019 u/s 65(a)(e)(f) of Maharashtra Prohibition Act	Pending trial
6	Kadim Jalna	129/2019 u/s 65(a)(e)(f) of Maharashtra Prohibition Act	Pending trial
7	Kadim Jalna	197/2019 u/s 328, 188, 269, 270 of IPC, 65(a)(e)(f) of Maharashtra Prohibition Act	Under police investigation
8	Kadim Jalna	359/2020 u/s 328 of IPC, 65(a) (e) of Maharashtra Prohibition Act	Under police investigation

Preventive action

Sr.No.	Police Station	Chapter Case No. & Section	Disposal1
1	Kadim Jalna	14/2018 u/s 93 of Maharashtra Prohibition Act	Final Bond
2	Kadim Jalna	24/2019 u/s 93 of Maharashtra Prohibition Act	Final Bond

(j) Despite the above action, the petitioner was not deterred and the police failed to curb her illegal activities.

(k) The Inspector of Police of the said police station, conducted a confidential enquiry which discloses that the localites do not dare to register complaints against the petitioner since she has terrorized them with the aid of goons. On the assurance of anonymity, some of the localites who have suffered the atrocious acts of the petitioner, have recorded their statements in camera. The statements of two persons, namely, A and B, are part of the record.

(l) On the basis of the reports and such statements, the Police Inspector submitted his report to the detaining authority, respondent No.2 herein, for initiating action under Section 3(1) of the MPDA Act, 1981. This action was initiated through the Sub Divisional Police Officer (SDPO), Jalna and the Superintendent of Police, Jalna. The SDPO verified the witnesses A and B, in view of their statements earlier recorded and submitted a report to respondent No.2.

(m) Respondent No.2, having carefully perused the entire record, was convinced that the petitioner needs to be detained and upon his subjective satisfaction, has passed the impugned order of preventive detention.

(n) Respondent No.2 served the impugned order on the petitioner on the same day that it was passed. The information of her preventive

detention was given to her nearest relative, namely, Akash Madhukar Gaikwad on the same day.

(o) Relevant document/ papers containing the grounds for detention were served on the petitioner on the next day i.e. 08.12.2020.

(p) The impugned order was approved by the State Government on 10.12.2020.

(q) Contrary to the contention of denial of the petitioner, the Advisory Board constituted under the MPDA Act, 1981, had heard the petitioner on 08.01.2021. It formulated it's opinion and confirmed the detention order, vide it's order dated 21.01.2021.

8. Having considered the strenuous submissions of the counsel for the respective sides, we have gone through the record. We have also perused the report of the Assistant Director, Office of the Deputy Director, Regional Forensic Science Laboratory at Aurangabad, dated 15.05.2019. The said report is self explanatory indicating that the seized material contains 10% V/V of ethyl alcohol in sample No.1 and 04% V/V of ethyl alcohol in sample No.2. Such materials are used for distillation of intoxicating liquor. We have also perused the confidential report (part-1) of the Advisory Board bearing Reference No.69 of 2020 dated 08.01.2021. Being a short, but a decisive report, we deem it appropriate to reproduce the same hereunder :-

"This is a reference for advice whether or not there is sufficient cause for detention of above named detenu under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons and Video Pirates Act, 1994 (MAH.LV of 1994) (for short, "the said Act").

2. *The above named detenu has been detained on the ground that since 2018 she has been continuously engaging herself in the commission of violent activities which has created terror in the minds of residents residing in the area of operation and has disturbed the even tempo of their life as well as public order. It is further stated that prosecutions under ordinary law and preventive action have not affected criminal activities of detenu which have continued unabated and therefore in order to prevent detenu from continuing her criminal activities she was detained under section 3 of the Act.*

3. *Recent criminal activity of detenu relied upon in support of the Detention Order consist of (1) C.R. No.299/2018 registered at Kadim Police Station, Jalna, under section 65(A)(E) of Maharashtra Prohibition Act, on the basis of complaint filed by Shri Ganesh Duryodhan Jadhav. (2) C.R. No.365/2018 registered at Kadim Police Station, Jalna, under section 65(A)(E)(F) of Maharashtra Prohibition Act, on the basis of complaint filed by Shri Kailas Madhukar Cheke. (3) C.R. No.83/2019 registered at Kadim Police Station, Jalna, under Section 65(A)(E) (F) of Maharashtra Prohibition Act, on the basis of complaint filed by PSI Smt.Pallavi Bhausaheb Jadhav. (4) C.R. No.108/2019 registered at Kadim Police Station, Jalna, under section 65(A)(E)(F) of Maharashtra Prohibition Act, on the basis of complaint filed by PHC Mariyo Banot Squot. (5) C.R. No.120/2019 registered at Kadim Police Station, Jalna, under Section 65(A)(E)(F) of Maharashtra Prohibition Act, on the basis of complaint filed by Shri Shrikumar Mohan Adep. (6) C.R. No.129/2019 registered at Kadim Police Station, Jalna, under section 65(A)(E)(F) of Maharashtra Prohibition Act, on the basis of complaint filed by PN Shri Manoj Sahebrao Hiwale. (7) C.R. No.197/2020 registered at Kadim Police Station, Jalna, under sections 328, 188, 269, 270 of IPC, sec. 51(b) of Disaster Management Act, 2005, Epidemic Disease Act, 1897, sec. 65(A)(E)(F) of*

Maharashtra Prohibition Act, on the basis of complaint filed by PN Shri Manoj Sahebrao Hiwale. (8) C.R. No.359/2020 registered at Kadim Police Station, Jalna, under section 65(A)(E)(F) of Maharashtra Prohibition Act, on the basis of complaint filed by PC Shri Ravi Bhimrao Mehetre.

4. *In view of history of the detenu and the continuous criminal activities of detenu, confidential enquiry was made regarding the terror and fear in the minds of people and during the enquiry two witnesses came forward to give in-camera statements on strict understanding that they will not be called to give evidence in any court of law or before any authority. Their statements show that in the recent past the detenu and his associates had threatened witness-A and abused him in a filthy language. The detenu and his associates had assaulted witness-A and threatened him not to complain against the detenu to the police. The detenu had threatened witness-B by pointing a knife and had also assaulted him. The detenu forcibly removed Rs.500 from the pocket of witness-B. Perusal of the statements indicates that during all incidents public order was disturbed and because of threat of retaliation given by the detenu the witnesses did not dare to approach the police.*

5. *The detenu is produced before us through Video Conferencing and we have heard the detenu. We have also heard the concerned Police Officer. We have carefully perused the record and in our opinion, there is sufficient material for further detention of the detenu."*

Place : Mumbai
Date : 15/01/2021

-sd-
[JUSTICE xxx]
Chairman, Advisory Board
-sd-
[JUSTICE xxx (Retd)]
Member, Advisory Board
-sd-
[JUSTICE xxx (Retd)
Member, Advisory Board."

9. In rebuttal, the learned advocate for the petitioner canvassed

that as the petitioner is a lady about 40 years of age, this Court may take a lenient view. She is willing to tender an affidavit declaring that she would never indulge in any such acts in future. As she has been under preventive detention since 07.12.2020, the period spent by her behind bars may be considered as being an appropriate period of detention. She would not prefer to approach the District Magistrate, Jalna vide a representation or the Additional Chief Secretary, Home Department (Special), State of Maharashtra, as she is pursuing her remedy in this petition.

10. We have gone through the order dated 21.01.2021, issued in the name of the Governor of Maharashtra under Section 12(1) of the MPDA Act, 1981, vide which, the Government of Maharashtra confirmed the decision of the District Magistrate in exercise of his powers conferred by Section 3 of the MPDA Act, 1981 and directed the detention of the petitioner for a period of one year from the date of detention.

11. Sections 3, 8, 10 and 11 of the MPDA Act, 1981 read as under :-

> *"3. Power to make orders detaining certain persons.*
> *(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.*
> *(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may by order in writing, direct,*

that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section :

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed six months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding six months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

"8. Grounds of order of detention to be disclosed to persons affected by the order.

(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose."

"10. Reference to Advisory Board.

In every case where a detention order has been made under this Act, the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in the case where the order has been made by an officer, also the report by such

officer under sub-section (3) of section 3."

"11. Procedure of Advisory Boards.

(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State Government or from the person concerned, and if, in any particular case, the Advisory Board considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the State Government, within seven weeks from the date of detention of the person concerned.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) The proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

(5) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board."

12. In ***Kanuji S. Zala vs. The State of Gujarat, AIR 1999 SC 2269***, the Honourable Apex Court has held in paragraphs 4, 5 and 6 as under :-

"4. *In our opinion there is no substance in this contention. In none of the three cases relied upon by the learned counsel the point whether public order can be said to have been disturbed on the ground that the activity of the detinue was harmful to the public health arose for consideration. It appears that in those three cases, the detaining authority had not recorded such satisfaction. Moreover, in those cases the detaining authorities had*

referred to some incidents of beating but there was no material to show that as a result thereof even tempo of public life was disturbed. In this case, the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health. The detaining authority has also stated that the statements of witnesses clearly show that as a result of violence resorted to by the petitioner even tempo of the public life was disturbed in those localities for some time. The material on record clearly shows that members of the public of those localities had to run away from there or to go inside their houses and close their doors.

5. *What is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. It is also well settled that whether the material was sufficient or not is not for the courts to decide by applying an objective test as it is a matter of subjective satisfaction of the detaining authority. The observation made by this Court in Om Prakash Vs. Commissioner of Police & Ors. - 1988 Supp. (2) SCC 576 that "as in Piyush Mehta Case, the materials available on record in the present case are not sufficient and adequate for holding that the alleged prejudicial activities of the detenu have either affected adversely or likely to affect adversely the maintenance of public order within the meaning of Section 4(3) of the Act and as such, the order is liable to be quashed" are to be understood in the context of the facts of that case.*

6. *As already stated earlier, in this case the detaining authority has specifically mentioned in the grounds that the activity of the detenue was likely to cause harm to the public health and that by itself is sufficient to amount to affecting adversely the public order as defined by the Act. The detaining authority has also stated that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed on some occasions. In view of the material on record it cannot be said that the*

> *satisfaction of the District Magistrate, in this behalf was not reasonable or genuine."*
>
> (Emphasis supplied)

13. We find from the record that the present petitioner had executed an undertaking on 05.09.2018 before the SDPO, Jalna, which is a good conduct undertaking. She had assured that she would never indulge in any such acts which she has been alleged to have committed. Yet, there has been no change in the behaviour of the petitioner and she has continued to indulge in such acts repeatedly thereafter.

DELAY

14. On the ground of delay, we find that the statement of witness A was recorded on 02.09.2020 and the statement of witness B was recorded on 03.09.2020. The order of preventive detention has been passed on 07.12.2020. In the matter of ***Magar Pansingh Pimple vs. State of Maharashtra, 2006 ALL MR (Cri) 491***, the learned Division Bench of this Court, by placing reliance upon reported judgments, has concluded in paragraph 6 as under :-

> *"6. Reliance was also placed on the observations of another Division Bench at Nagpur, in the matter of (Sanjay Balaram Kirale v. State of Maharashtra), 2002 Bom.C.R. (Cri.) (N.B.)399 : 2001 All.M.R. (Cri.) 1616. This is mainly relied upon for the purpose of submitting that, there is delay in passing the detention order. So far as present matter is concerned, we may state that, in-*

camera statements are recorded on 13th and 14th February, 2005. The events narrated by witnesses A, B and C are of first week of January, 2005 and second week of December, 2004.

In the matter before Nagpur Bench, the detention order was passed on 30-11-2000. The date of recording the statements is not available in the reported judgment, but in-camera statements of witnesses A and B narrated the incidents of June and August 2000 respectively. Thus, the order happened to be passed after more than five months and three months since the incidents referred to in the two in-camera statements. Even the judgments of the Honble Supreme Court referred to and relied upon by the Division Bench at Nagpur, do not lay down ratio that, delay in passing the order should be fatal. In fact, in the matter of (Hemalata Kantilal Shah v. State of Maharashtra)3, 1982(2) Bom.C.R. 218 : A.I.R. 1982 S.C. 8, referred in paragraph 7 of the judgment relied upon, the Honble Supreme Court has held that delay ipso facto in passing the order after the incident is not fatal to the detention of a person for, in certain cases, delay may be unavoidable or reasonable. What is required by law, is that the delay must be specifically explained by the Detaining Authority.

In the matter of (Hasan Khan Ibne Haider Khan v. R.H. Mendonca), 2000(5) Bom.C.R. (S.C.)814 : 2000 All.M.R. (Cri.) 1070 (S.C.) : A.I.R. 2000 S.C. 1146, the Honble Supreme Court held that there was no undue delay in passing the order of detention as the inquiry into the incident was completed in February and the order was passed in April after going through two stages.

In the matter before the Nagpur Bench, delay was much more than in the matter of Hasan Khan (supra). On the contrary, in the matter before us, the time gap between recording of statements and passing of order by the Detaining Authority is comparatively less and, in fact, does not oblige the State to explain the delay. As already pointed out hereinabove, in-camera statements are recorded on 13th and 14th February, 2005 and the Detaining Authority has passed the order on 24-2-2005 and after having gone through the stage of report from the Advisory Board and consideration of representation of the petitioner detenue, the same is confirmed by the

State on 25-4-2005. Our time gaps are more like those in the matter of Hasan Khan (supra) referred to, by Nagpur Bench in paragraph 10 of its judgment, and we will be justified in saying that the State is not obliged to explain the delay. Even considering the observations in the matter of Smt. Hemlata (supra) referred in paragraph 7 of the judgment of Nagpur Bench, the incidents referred to, in in-camera statements in that matter, were more than 3 months and 5 months old. In the matter at hands, when the statements are recorded on 13th and 14th February, 2005, the incidents were one or two months old. We are, therefore, of considered view that in this matter, the delay is neither unreasonable nor inordinate and there appears no necessity to explain the same. Delay is not of such a magnitude that the same can vitiate the detention order itself.

We have on our own, referred to the judgment of the Honble the Apex Court, in the matter of (Pradip Paturkar v. S. Ramamurthi), A.I.R. 1994 S.C. 656. In this matter, the Supreme Court was pleased to quash the detention order, by taking into consideration unexplained delay. The detention order was passed on the basis of some criminal cases against the detenue, and also the statements of the witnesses. The detention order was passed after five months and eight days from the date of registration of last offence, and more than 4 months from the submission of the proposal. When the time gaps in the matter before us are compared with the time gaps in the reported matter, it is evident that the time gaps in the matter at hands, cannot be termed as delay. The things appears to have moved within reasonable time required in practical life. The last two offences registered against present petitioner, are of the incidents dated 26-11-2004 and 30-12-2004. The last offence registered is within less than two months from the order passed by the Detaining Authority on 24-2-2005. The same is within ten days from the proposal by the Crime Branch, which recorded the statements on 13th and 14th February, 2005.

Viewed as above, we do not think that there is any unreasonable or unexplained delay which is required to be explained in the matter at hands. Consequently, we are unable to accept the submission of learned Advocate

Shri Gorhe that, the order deserves to be quashed on account of delay.

We are fortified in taking such a view, in the light of decision in the matter of (Priyanka Fulore v. State of Maharashtra), 2002(9) S.C.C. 714. In this matter, the material was collected against the detenue, in the month of July, 2000 and proposal for detention was initiated in August, 2000. The order of detention was passed in October, 2000. It was argued that the delay having not been properly explained by the respondent-State, the same should be accepted as ground for quashing the order of detention. The High Court upheld the detention order, by observing that the delay in the case was neither inordinate, nor unexplained. The Supreme Court confirmed the decision of the High Court, by again rejecting the same contention."

(Emphasis supplied)

PERIOD OF DETENTION

15. The learned counsel for the petitioner has strenuously contended that the impugned order of detention does not mention the exact period of detention. As recorded herein above, we have found that the order of confirmation dated 21.01.2021, passed by the Government of Maharashtra, indicates that the period of detention is for one year from the date of detention. Nevertheless, in ***Magar Pansingh Pimple (supra),*** this Court has held in paragraph 7 as under :-

"7. By relying upon a decision of a Division Bench at Nagpur of this High Court, in the matter of (Samsher Ali v. State of Maharashtra), 2004(1) Bom.C.R.(Cri.) (N.B.)124 : 2004 Cri.L.J. 207, it was submitted on behalf of the petitioner that, since the order of detention passed by the Detaining Authority on 24-2-2005 does not mention the period of detention, the same is vitiated and is,

therefore required to be quashed and set aside.

In this matter, the Division Bench at Nagpur has allowed the petition of the detenue, by relying upon the decision of the Supreme Court in the matter of (Commissioner of Police & another v. Gurbux A. Bhiryani), 1988(Supp.) S.C.C. 568. Eventually, as rightly pointed out by the learned A.P.P., the case relied upon by Nagpur Bench is overruled by the Supreme Court, while deciding the matter of (T. Devaki v. Govt. of Tamil Nadu), 1990 Cri.L.J. 1140, by its observations in paragraphs 10 and 11 of the said judgment, which read as follows :

"The Act nowhere requires the Detaining Authority to specify the period for which the detenue is required to be detained. The expression "the State Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order" occurring in sub-section (2) of section 3 relates to the period for which the order of delegation issued by the State Government is to remain in force and it has no relevance to the period of detention."

".....The observations made by the Supreme Court in Gurbux Biryani's case, 1988(Supp.) S.C.C. 568, that the scheme of the Maharashtra Act was different from the provisions contained in other similar Acts and that section 3 of the Act contemplated initial period of detention for three months at a time are not correct. The scheme as contained in other Acts providing for the detention of person without trial, is similar. Neither under the Preventive Detention Act, 1950 nor under the Maintenance of Internal Security Act or COFEPOSA Act or National Security Act is the Detaining Authority required to specify the period of detention while making the order of detention against a person. In the absence of any period being specified in the order the detenue is required to be under detention for the maximum period prescribed under the Act, but it is always open to the State Government to modify or revoke the order even before the completion of the maximum period of detention. An order of detention is not rendered illegal on account of the Detaining Authoritys failure to specify period of detention in the

order." (emphasis added)

In view of the decision of the Supreme Court in the matter of T. Devaki (supra), the contention raised by the learned Counsel for the Petitioner does not survive. Following the view in the matter of T. Devaki, in A.I.R. 1992 S.C. 979, (Harpreet Kaur Harvinder Singh Bedi v. State of Maharashtra & another)10, the Supreme Court held : -

"It cannot, therefore, be said that, the order of detention in the instant case was vitiated because it was for a period of more than three months."

(Emphasis supplied)

MATERIAL SEIZED

16. We have perused the report of the Forensic Laboratory, as recorded above. The material that was seized and referred for analysis to the Laboratory indicates that it was not a medicinal/ antiseptic/ toilet preparation or was also not a flavouring material. The said material was held to be useful for distillation of intoxicating liquor. In this context, it was held in ***Magar Pansingh Pimple (supra)*** in paragraph 8 as under :-

"*8. Copies of the reports of the Chemical Analyst in both the matters, which are registered against the petitioner on 26-11-2004 and 30-12-2004, are available at paperbook pages 107 and 108, respectively. In both the matters, analyst has reported the percentage of ethyl alcohol V. by V. and the reports conclude, by saying that, the material can be used for distillation of intoxicated liquor and that it is not medicinal/antiseptic/toilet preparation, nor a flavouring material. Advocates Shri Gorhe, by placing reliance on the observations of Division Bench of this High Court at Bombay, in the matter of (Chandrakant alias Bala v. Satish Sahany), 1996(2) Bom.Cri.C. 15, urged that, since the sample of the matter sent to Analyser has not been found to be harmful to cause*

danger to life and public health, this cannot be a valid ground for detention, as held in unreported judgment of the in the case of (Pandu Shetti v. Commissioner of Police), in Cri.W.P. No. 940 of 1988, Date of Decision : 6-10-1988.

The argument is unsustainable for two reasons. Firstly, the report of the Analyser is not relied upon, for demonstrating that the preparation, which was found with the petitioner at the time of raids on 26-11-2004 and 30-12-2004, was dangerous to public health. The reports are relied upon to show that, the State has made out a prima facie case against the petitioner, regarding manufacturing of intoxicant material in breach of the provisions of the Bombay Prohibition Act. As pointed out by learned Counsel for the petitioner, by relying upon the observations of another Division Bench of , in the matter of (Ramesh Ghanekar v. R.D. Tyagi), 1986(2) Bom.C.R. 537 : 1986 Cri.L.J. 1421, in order to justify the order of detention under section 3 of the MPDA Act, the Detaining Authority is required to satisfy itself of two ingredients, (i) the petitioner is bootlegger within the meaning of Clause (b) of section 2 of the Act, and (ii) he is acting in any manner prejudicial to the maintenance of public order. The reliance on the reports of the Chemical Analyser is mainly for the purpose of demonstrating that the Petitioner is a bootlegger. We may state here itself that, there was enough material before the Detaining Authority to arrive at such a conclusion. As can be seen from paragraph 5 of the reply filed by Shri R.N. Wagh, the then Commissioner of Police, Aurangabad, there were three offences registered against the petitioner under the provisions of Bombay Prohibitions Act, 1949, more particularly under sections 66(1)(b) and 65(f) of the said Act, by Cantonment Police Station, Aurangabad. Section 65(f) is pertaining to use or keeping in possession any material still, utensils, or apparatus for the purpose of manufacturing any intoxicant. Section 66(1)(b) is pertaining to consumption, use, possession or transport of any intoxicant. It appears that, the proceedings under section 93 are taken up against the petitioner in the years 2001 and 2003. These are the proceedings requiring the petitioner to show cause why he should not be ordered to execute a bond with sureties

for his good behaviour for such period not exceeding three years. These are the preventive actions, if not preventive detention. During pendency of these proceedings initiated by M.I.D.C., Waluj, Police Station, the petitioner seems to have shifted his activities in the territorial jurisdiction of the said Police Station, as can be inferred from the fact that latest two offences under the same provisions of Bombay Prohibitions Act, 1949, are registered against the petitioner by M.I.D.C., Waluj, Police Station, on the basis of raids effected on 26-11-2004 and 30-11-2004. The magnitude of the contraband recovered during the two raids may be stated in brief. In the raid dated 26-11-2004, the petitioner is allegedly found to be in possession of 11 earthern pots, each containing litres of wash (total quantity about 440 litres). There was a running still, and 35 litres of ready liquor, collected in a plastic container was also seized. In the second raid dated 30-12-2004, six drums, each containing about 150 litres of wash (total quantity about 900 litres), along with material of still, which then was not active, was recovered. The report of the Analyser lends support to the prosecution case that, the material allegedly found in possession of the Petitioner, was useful for production of intoxicating liquor, since the sample shows quite a high percentage of alcohol contents.

On this counts, learned A.P.P. has also placed reliance upon the wording of section 2(a)(ii) of the M.P.D.A. Act, which reads as follows;

"2. In this Act, unless the context otherwise requires,-

(a) "acting in any manner prejudicial to the maintenance of public order" means -

i).....

ii) in the case of bootlegger, when he is engaged, or he is making preparation for engaging, in his activities as bootlegger, which affect adversely or are likely to affect adversely the maintenance of public order.;"

As rightly submitted by learned A.P.P. even the apprehension of the activities affecting adversely the maintenance of public order, is sufficient for the Detaining Authority to order preventive detention of the

petitioner. In view of liberal wording in Clause (ii) of section 2(a), it can be debated, whether the proof that intoxicant material found with the petitioner is dangerous to health of public, is really necessary. After all, the petitioner is not selling his illicit liquor with ISI mark. It is unauthorised and illegal production having no control over its quality, having no checks that it is not injurious for human consumption. The courts cannot give deaf ears to the frequency of reports regarding mass fatalities, as a result of consumption of illicit liquor. The observations of a Division Bench of this High Court, recorded in the year 1988 and followed in the year 1996, therefore, may not be applicable to the fact-situation, after lapse of 17 years."

17. The Intent and Object of introducing the MPDA Act, 1981 which received assent of the President of India on 21.09.1981 and published in the Maharashtra Government Gazette, Part IV, Extraordinary, on 23.09.1981, is as under :-

"An Act to provide for preventive detention of Slumlords, Bootleggers, Drug-offenders and Dangerous persons for preventing their dangerous activities prejudicial to the maintenance of public orders.

Whereas public order was adversely affected every now and then by the dangerous activities of certain person, who are known as Slumlords, Bootleggers and Drug-offenders;

And whereas, both Houses of the State Legislature were not in session;

And whereas, having regard to the resources and influence of the person by whom, the large scale on which, and the manner in which, the dangerous activities were being clandestinely organized and carried on in violation of law by them, as Slumlords, Bootleggers or drug-offenders in the State of Maharashtra, and particularly in its urban areas, the Government of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate

> *action to have a special law in this State to provide for preventive detention of these three classes of person and for matters connected therewith and, therefore, promulgated the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-Offenders Ordinance, 1981, on the 11th June 1981;*
>
> *And Whereas it is expedient to replace the said Ordinance by an Act State Legislature; it is hereby enacted in Thirty Second Year of the Republic of India as follows:-"*

18. In ***Jaspalsingh Jagatsingh Vig vs. J.F. Rebeiro, 1985 Mh.L.J. 927***, the learned Single Judge held that this Act was enacted with the intention of maintaining public order which was adversely affected on account of dangerous activities of a person. It is obvious that the purpose of the Act was to curb and prevent the dangerous activities being indulged into by a particular person which prejudicially affected the people at large. The learned Single Judge of this Court concluded that the detaining authority ought to feel that the detenu's activities, already in existence prior to the initiation of the proceedings for preventive detention, should have resulted in adversely affecting the maintenance of public order which realization could synchronize only at that point of time. It becomes manifest that even for the purpose of attracting the provisions under the Act, it is necessary for the detaining authority to show that these activities have a nexus with the maintenance of public order and which is being adversely affected by reason of the said activities. Merely that a person is dealing in illicit liquor, would not be sufficient to place his case within the

clutches of Section 3 of the Act, which can only be done if such activities would entail into causing any danger to the maintenance of public order.

IN-CAMERA STATEMENTS

19. The record reveals that the in camera statements of the two witnesses A and B and other material collected during the process of enquiry, was supplied to the petitioner after due verification by the superior police officer i.e. SDPO. The said officer has conducted verification of the two witnesses. Though this aspect has not been raised by the petitioner, we are considering the same in view of the law laid down in ***Smt.Shubhangi Tukaram Sawant vs. Shri R.H. Mendonca and others, 2001 ALL MR (Cri) 68***. As such, we do not find that Article 22(5) of the Constitution of India has been violated.

20. In ***Jaspalsingh (supra)***, this Court dealt with similar features as are found by us in the case in hand. In the reported judgment, one of the witnesses whose statement was recorded in camera, was suspected to be a police informer and the associates of the detenu therein had attacked him for the reason that he was informing the police about their bootlegging activities. The learned Single Judge, therefore, concluded in ***Jaspalsingh (supra)*** that the so called threats should have a direct nexus with the bootlegging activities and such act of threat or assault should be directed against such persons, who were adversely affecting the illicit

business of liquor, so as to calculatively cause fear or generate a feeling of insecurity to the people from the society.

21. In the case in hand, witness A was accosted by the petitioner and her two accomplices who whipped out a knife and abused him. They stated that the said witness was informing the police about their illicit liquor activities and they then slapped the said witness. The petitioner had threatened the witness with murder if he approached the police. In the backdrop of such similar features, the learned Single Judge in ***Jaspalsingh (supra)***, had concluded that *"that is how the circuit even on facts becomes complete as per the allegations unfolded in the grounds. Consequently, it is not permissible to consider the so called acts of threat or assault de-hors or independently of the main object which revolves around bootlegging activity which forms a pivot for the entire activities*".

22. In our view, therefore, the statements of the two witnesses, who have shown the courage, albeit on the condition of anonymity, would indicate that the act of the petitioner in threatening and assaulting the suspected informants, was clearly to promote the illicit liquor business and deter such witnesses from making statements before the police.

SUBJECTIVE SATISFACTION

23. In ***Vinod Vithal Rane vs. R.H. Mendonca, 2001 (2) Mh.L.J. 437***, this Court concluded that in matters of preventive detention,

subjective satisfaction recorded by the detaining authority cannot be lightly interfered with by the Court. The Court cannot sit over the subjective satisfaction recorded by the detaining authority. Such subjective satisfaction, once recorded by the detaining authority, by virtue of Section 5-A of the MPDA Act, 1981, cannot be lightly interfered with. Section 5-A postulates that the order shall not be deemed to be invalid or inoperative, even assuming that the subjective satisfaction recorded by the detaining authority is that, the normal law of the land is inadequate or ineffective which is a ground for detention, and such order shall not be deemed to be invalid or inoperative merely because of specified infirmity in one or some of the grounds.

24. It was further held in ***Vinod Vithal Rane (supra)*** that the MPDA Act, 1981 is a special enactment intended to deal with a special situation and specified persons in a special manner. Once a person qualifies the definition of a specified person under the MPDA Act, 1981, then, inevitably in a larger public interest, the said person will have to be dealt with in accordance with the provisions of the MPDA Act, 1981 and in no other manner, provided the detaining authority records it's satisfaction regarding the necessity to detain that person to prevent him from indulging in any activity which would tend to prejudicially affect the maintenance of public order. Once a person fulfills the requirement of the definition of a specified person under the MPDA Act, 1981, it is not open

to the detaining authority to exercise the authority arbitrarily to select one or other course even while dealing with the same or exactly similar situation. Non mentioning of action taken under the Criminal Procedure Code or the Bombay Police Act in the grounds of detention, ipso facto, would not render the detention order bad or illegal. Once a person fulfills the requirement of the definition of a specified person, it would presuppose that the normal law of the land has become ineffective or inadequate qua that person and that there is no other option but to take recourse to the powers under the MPDA Act, 1981. Such is the view of the Honourable Apex Court in the matter of ***Borjahan Gorey vs. the State of West Bengal, (1972) 2 SCC 550***.

CONCLUSION

25. On the basis of the material before us, we are convinced that respondent No.2, as well as the State, having genuine subjective satisfaction, have rightly come to the conclusion that, not only has the petitioner indulged in bootlegging activities by resorting to manufacturing and selling illicit liquor, she was terrorizing the witnesses so as to deter them from making any statement to the police. Upon suspecting that one of the in-camera witnesses was providing information to the police regarding the bootlegging activities of the petitioner, she herself had intimidated and threatened the witness with murder for making any

statement before the police.

26. This Court has held, in ***Ramesh Balu Chavan vs. The Commissioner of Police and another, 2017 ALL MR (Cri) 3683***, that once the detaining authority has arrived at the subjective satisfaction and when illicit liquor containing ethyl alcohol or methyl alcohol causes ill effects over a human body or regular consumption would lead to death, no ground can be said to have been made out for quashing the detention order. It also reflects from the said case that several poverty stricken people or persons with meager sustainability had become borrowers for purchasing such liquor upon being addicted and there are instances when goons, behaving as recovery agents for a "Hathbhatti Thekedar", used force for recovery of due amounts. The detenu, in that case, used to hold a knife for recovering dues and as noted by this Court, the wife of a drunkard husband had handed over her gold *mangalsutra* and ear rings to the detenu.

27. Insofar as the request of the petitioner to take a lenient view in this matter, we find that the said request could have been considered, if the petitioner did not have a record of crimes/ offences registered against her. However, the record reveals, as noted in the earlier part of this judgment, that the petitioner had executed a good conduct bond which was flouted thereafter. Scant respect was shown by the petitioner to the said bond executed by her. Considering this conduct, even if the petitioner

now tenders an undertaking to this Court, we are circumspect that the said undertaking would have no meaning. Hence, the request for leniency is turned down.

28. In view of the above, we do not find that the petitioner has made out any ground for quashing the impugned detention order. This Criminal Writ Petition is, therefore, dismissed. Rule is discharged.

(B. U. DEBADWAR, J.) (RAVINDRA V. GHUGE, J.)

Per B.U. Debadwar, J. :-

29. I have gone through the above judgment delivered by my esteemed brother and I am in complete agreement with the same. I wish to add to the said judgment.

30. In case at hand, the District Magistrate, Jalna, a competent authority under section 3 of the MPDA Act, has passed the order of detention on 07.12.2020, detained the writ petitioner/detenu to the Central Prison, Harsul on the same day and served the copy of grounds of detention on her and informed her relatives about her detention. The District Magistrate, Jalna, then on the very day forwarded the detention order and grounds of detention to the State Government, upon which the State Government applied its mind and confirmed the same on 10.12.2020. It is pertinent to note that the writ petitioner/detenu could

have made representation in respect of her detention to the State Government, on or before 10.12.2020, but in vain, though an opportunity was given to her. The State Government had referred the matter of detention of the writ petitioner to the Advisory Board on 11.12.2020. Vide letter dated 21.12.2020, the writ petitioner/detenu was informed in writing about the date of hearing through video-conferencing fixed on 8th January, 2021, at 3.00 p.m. On that day, the Advisory Board heard the writ petitioner/detenu through video-conferencing and passed it's order on 15.01.2021 and communicated it's opinion to the State Government on the very day. Upon receiving the report of Advisory Board, on 21.01.2021 respondent No.1 – State of Maharashtra passed the order directing that the detention of the writ petitioner/detenu be continued for a period of one year from the date of detention.

31. From the aforesaid particulars, we find that in case at hand all the mandatory compliances under various provisions of the MPDA Act, discussed above, have been complied with within stipulated time. Therefore, we have no hesitation to hold that the impugned detention order is technically perfect in all respect. On this backdrop, now we turn to the aspect of the correctness and legality of the detention order.

32. On close scrutiny of the record, we find that the writ petitioner/detenu deals with manufacturing and selling of illicit liquor within the area of Saraswati colony, Nutun Vasahat, Old Jalna, where she

resides. As many as 8 prohibition cases had been registered against her during the period of 15.10.2018 to 29.07.2020. All these cases are for possessing the materials, still utensils for the purpose of manufacturing any intoxicant with the help of such material, possesses and sale of intoxicant and transport of intoxicant. Out of these eight prohibition cases, first six cases were pending in the Court and remaining two were under investigation. In addition to eight prohibition cases, referred above, two more cases under section 93 of the Maharashtra Prohibition Act were pending before the District Magistrate, Jalna for taking preventive action against the writ petitioner.

33. On the basis of material on record, the District Magistrate, Jalna has also observed in his report that inspite of taking preventive action under section 93, no change took place in the attitude and conduct of the writ petitioner/detenu. She has continued her illegal activities as to previous. Since, the illicit liquor manufactured by the writ petitioner/detenu is spurious, there is every danger to the person, who consumes the same. Many age old and young persons of the locality addicted to such spurious illegal liquor, as the writ petitioner/detenu has spread her illegal business in the locality in large scale and made available the same at cheaper rate. So addicted young person after consuming the spurious liquor disturb the peace and tranquility and cause the disturbances in daily routine of the locality.

34. C.A. report in respect of Crime No.120/2019 makes it clear that the substance, which was seized from the writ petitioner/detenu, was containing ethyl alcohol and it can be used for the distillation of intoxicating liquor. It is pertinent to note that in the entire Writ Petition nowhere the petitioner/detenu says that the substance alleged to have been seized time and again from her in eight prohibition cases, mentioned in the report, was not illicit liquor, but it was the substance, which was not harmful for consumption of human being.

35. In view of the above, I concur with the judgment of my esteemed brother in dismissing this Writ Petition.

kps (B. U. DEBADWAR, J.)