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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3804 OF 2023

Saraswati Santosh Rathod .. Petitioner

Versus

Commissioner of Police Pune City and .. Respondents
Ors

...

Ms. Jayshree Tripathi for the petitioner.

Mr. J.P. Yagnik, APP for the State.

**CORAM: BHARATI DANGRE &
MANJUSA DESHPANDE, JJ.**

DATED : 20th JUNE, 2024

JUDGEMENT:-

1 The present Writ Petition is filed by the petitioner, praying for quashing and setting aside of the detention order dated 1/09/2023, passed by the Commissioner of Police, Pune City, in exercise of the powers conferred under sub-section (2) of Section 3 of the The Maharashtra Prevention Of Dangerous Activities Of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons And Video Pirates Act, 1981, thereby detaining the petitioner from the date of service of the order passed upon her, with a view to prevent her from acting in any manner prejudicial to the maintenance of public order.

On 5/12/2023, 'Rule' was issued in the Petition and the respondents were directed to file their affidavit-in-reply indicating that the Petition shall be heard finally on the returnable date.

In furtherance of the order, the detaining authority has

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filed its affidavit-in-reply and by consent of Ms. Jayshree Tripathi, appearing for the petitioner and the learned APP, appearing for the State, we have taken up the Petition for final hearing.

2 Pursuant to the order of detention being passed by the detaining authority, on the very same date, an order was passed committing the petitioner/detenu in Kolhapur Central Prison subject to the condition stipulated therein.

Along with, in compliance of Section 8 of the Act of 1981, the detenu was communicated the grounds on which the detention order has been passed by the detaining authority, which reflected that the past criminal record of the detenu was indicative of his involvement in the offences registered under the Bombay Prohibition Act, 1949, involving producing and selling illicit country-made liquor, which activity has impact of endangering human life and it also ruined poor families. Clarifying that the offences of the past were not considered while formulating the detention order, despite the copies of the FIR's being enclosed to demonstrate, that he was habitual in committing such offences, which are hazardous to human life and detrimental to the Society.

3 The grounds on detention clearly set out as below:-

*“While you and your accomplices are engaged in bootlegging activities, you also have terrorized and threatened people, not to help your victims. You have made yourself a virtual terror on account of your below-mentioned bootlegging activities. You have been habitually committing offences under the Bombay Prohibition Act, 1949 and rules and orders made there under and thus you are a ‘**Bootlegger**’ as defined in Section 2(b) of the said Act and your bootlegging activities are dangerous to health & life of people and prejudicial to the maintenance of public order.”*

Two offences registered with State Excise Department,

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Pune in the year 2021, under Section 65 (e) of the Maharashtra Prohibition Act and one offence registered with Loni Kalbhor police station, Pune city on 30/03/2023, which were subjudice, were referred in the grounds of detention to reflect her habit of committing bootlegging offences.

In addition, the preventive action initiating under Section 93 of the Maharashtra Prohibition Act, in form of Chapter case No. 1120/2021, also find mention in the grounds of detention, with a specific observation that it had no deterrent effect upon the detenu, who continued to engage herself in bootlegging offences, adversely affecting the maintenance of public order in the jurisdiction of Loni Kalbhor police station, Pune city.

4 The offence, which was taken into consideration for classifying the detenu and her bootlegging activities under Section 2(b) of the Act of 1981, is C.R. No. 117/2023, registered under Section 65 (b)(e)(f) of the Maharashtra Prohibition Act, on 24/04/2023, where the detenu was arrested.

By referring to her involvement in the said offence, which was projected as serious in nature and suggestive of her tendency and inclinations to perpetuate the bootlegging activities, and the activities being dangerous to health and life of people and being prejudicial to the maintenance of public order as defined in Section 2(a)(2) of the Act of 1981, the detaining authority took into account the said crime.

The particulars of the offence were also set out in the grounds of detention, which categorically referred to the incident dated 24/04/2023, when the Secondary Inspector of Flying Squad 2, on receipt of confidential information visited Rathod wasti, Haveli, Pune,

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were the detenu was alleged to have indulged herself in producing illicit liquor. On raiding the spot, the detenu was found taking out the liquor furnace, and attempted to flee, but was caught hold of and she admitted that she was the owner of the liquor furnace and the material lying there for producing the liquor belonged to her.

During the search muddemal including raw chemical of Rs. 40,000/-, 13 plastic cans with country-made liquor of Rs. 9400/-, 1 bhatti barrel with chemical of Rs. 3600/- were seized, from which two samples were drawn, labeled and sealed in presence of panch witnesses and the remaining illicit material was destroyed.

This resulted in filing of a complaint and she was remanded to magisterial custody till 6/05/2023, however, on 24/04/2023, she was released on bail. Relying upon the report of the analysis, revealing that the seized samples contain 24 % Ethyl Alcohol, the charge sheet was submitted before the competent Court, which is pending for trial.

In addition, the detaining authority has relied upon the two in-camera statements of Witness 'A' and 'B', pursuant to a confidential inquiry conducted into the bootlegging activities of the detenu along with her associates, which disclosed that she had created a reign of terror in the minds of residents in the jurisdiction of Loni Kalbhor police station and because of her attitude, nobody dared to complain against her openly, but on taking the residents of area into confidence and on giving the assurance that their name would not be disclosed and they would not be summoned to give evidence in any Court of law, two persons came forward to record their statements.

The grounds of detention referred to the two in-camera

statements and based on the bootlegging record of the detenu and the in-camera statements of the witnesses recorded by the Senior Police Inspector, the detaining authority arrived at a conclusion that the bootlegging activities of the detenu are dangerous to health and life of people and in order to curb the activities, preventive action was warranted.

It was also specifically mentioned that a proposal under Section 93 of the Bombay Prohibition Act, 1949, was sent against the detenu by the Inspector, State Excise Department to the Sub Divisional Magistrate, Haveli, and on 23/06/2023, she had executed a bond of Rs. 10,000/- with one surety for good behaviour for a period of three years, but while the bond was in force, she had indulged in an offence of producing and selling illicit country-made liquor in the jurisdiction of Loni Kalbhor police station and it was noted that normal laws of the land are insufficient to curb her bootlegging activities, which are posing danger to the health and life of the people and hence prejudicial to maintenance of public order and as she was released on bail from time to time which encouraged her participation in the bootlegging activities, the detaining authority expressed satisfaction about the activities causing and calculated to cause widespread danger to the life and health of people at large, as many people were addicted to drinking illicit country-made liquor and this caused a huge loss to their health and rendered them paupers and ruined their families, socially and financially.

Recording that the detenu have earned ill-gotten money out of the illegal business of manufacturing country-made liquor, which is hazardous to the society, satisfaction was expressed that on

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releasing on bail, the detenu again reverted back to the similar activities and in view of her desperate tendencies and inclinations reflected in the offences referred to in the order of detention as well as the incidents recorded in the in-camera statements, it was necessary to prevent her from acting in a prejudicial manner in future.

The grounds of detention also conveyed that the detenu has a right to make representation to the State Government against the detention order and within period of 3 weeks, the State Government shall make reference to the Advisory Board constituted under Section 9 of the Act so as to enable it to make report, whether there is sufficient cause for her detention and she was entitled to be heard in person by the Advisory Board in due course, if the board considered it essential.

5 On receipt of grounds of detention, the detenu preferred a representation to Additional Chief Secretary, Home Department and the State Government approved the order passed by the detaining authority on 12/09/2023, whereas the Advisory Board, upon reference furnished its opinion to the State Government on 25/10/2023, and on consideration of the report and the proceedings of the Advisory Board, confirmed the order on 31/10/2023.

6 We have heard Ms. Tripathi for the detenu, who amongst the various grounds, has specifically assailed the order of detention on the following ground:-

“The petitioner says and submits that the detaining authority has taken into consideration single solitary C.R.s i.e. C.R. No.117/023, u/Sec 65 (b), (e)(f) of Maharashtra Prohibition Act 1949, wherein the authorities have obtained a Result of Analysis. The petitioner says and submits that the said C.A. Result obtained does not disclose the opinion of the chemical analyzer stating about the nature and quality

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of the contraband to the effect that consumption of such contraband is injurious to human health. The said C.A. Result only gives the percentage of Ethyl alcohol in water it is stated as "Sample contains 24 % v/v/ ethyl alcohol in water" Such a C.A. Result without expressing any opinion of the Chemical Analyzer cannot be relied on for passing the detention order. The order of detention is illegal and bad in law for non-furnishing any opinion whatsoever, hence it is not understood as to on what "material/opinion" the detaining authority has considered to arrive at this subjective satisfaction. The satisfaction of the detaining authority vitiates. The order of detention is therefore illegal and bad in law liable to be quashed and set aside."

7 Since the petitioner is detained by the impugned order, since her activities were found to be prejudicial to the maintenance of public order and the ground for detention specifically refer to her engagement in bootlegging activity along with her associates, which had terrorized and threatened the people in the locality, she is accused of creating virtual terror on account of her bootlegging activity, set out in the grounds communicated to the detenu.

The ground specifically worded as under:-

"You have been habitually committing offences under the Bombay Prohibition Act, 1949 and Rules and Orders made thereafter and thus you are 'Bootlegger' as defined in section 2(b) of the Act and her bootlegging activities are dangerous to health and life of people and prejudicial to the maintenance of public order. The detaining authority thereafter, enlisted the list of offences and preventive action taken against the detenu indicative of the criminal history, and on its perusal, it is evident, that the offences are registered against the detenu under Section 65(b) (e) (f) of the Maharashtra Prohibition Act, in which she came to be arrested in the year 2021 as well as in 2023. The State Excise Department, Pune also initiated the prohibitive action under Section 93 of the Act of 1949 on 17/07/2023, but subsequently the case came to be withdrawn."

The detaining authority specifically communicated to the petitioner that despite the preventive actions being initiated, she continued to indulge in bootlegging offences, which adversely affected

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the maintenance of public order in the jurisdiction of Loni Kalbhor Police Station.

Taking note of the involvement of the detenu in C.R. 117 of 2023 invoking Section 65 (b) (e) (f) of the Bombay Prohibition Act, 1949, and of the seriousness of the accusations, suggestive of her tendencies and inclinations to perpetuate the bootlegging activities, since these activities, were found to be dangerous to health and life of people and prejudicial to maintenance of public order, by relying upon the C.R. No. 117 of 2023 and two in-camera statements, the detaining authority derived the subjective satisfaction of she being detained as 'Bootlegger'.

8 As far as C.R. No. 117 of 2023 is concerned, it was specifically recorded that confidential information was received by the Inspector of Flying Squad 2, that within Shindavane village area, Kaleshivar, Haveli, Pune, that the petitioner was producing illicit liquor and therefore the complainant and the panch witnesses proceeded to the place, to notice that the petitioner was operating the liquor furnace, and she attempted to flee, but was caught by women staff. She confirmed that she was the owner of liquor furnace and also of the material, on the spot used for the purpose of production of liquor. During the search muddemal including raw chemical of Rs.40,000/-, plastic cans with country-made liquor worth Rs. 9,400/-, and one bhatti barrel with chemical was seized.

From the seized substance, two glass bottles of 180 ml and raw chemical was collected as samples, it was sealed and labeled on the spot in the presence of the panch witnesses and the remaining

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illicit material was destroyed.

The chemical examination of the seized substance was obtained and it was disclosed that it contained 24% Ethyl Alcohol.

9 On completion of investigation, the charge-sheet was filed in the competent court and the case is pending for trial.

In the two in-camera statements, the witnesses informed that they are acquainted with her, as criminals, and various labour force visit her place for drinking liquor. When the complaints were made about the liquor business, and the trouble caused to the families, she threatened the witnesses in abusive language and is alleged to have said that if anybody comes in her way or lodge a complaint against the illicit liquor business, she would eliminate them.

The detaining authority based upon the aforesaid recorded as under:-

“8. From the above facts, I am subjectively satisfied that you are a ‘Bootlegger’ as defined in Section 2(b) of the said Act. Thus, it is clearly evident that you have been regularly indulging in the production & sale of country-made liquor. Your activities are causing and calculated to cause widespread danger to the life and health of the people in the jurisdiction of Loni kalbhori Police Station, Pune. Many persons have been addicted to drinking illicit country-made liquor sold by you. This has not only caused untold loss of their health but has also rendered them paupers and ruined their families. The families, in which the earning members have been addicted, have naturally caused untold suffering to their families, financially, socially and otherwise. This indicates that your illegal business of illicit country-made liquor is hazardous to society. You have earned large ill-gotten money. You have created a reign of terror in the minds of common people who are afraid of you and they are not coming forward to give information against you.”

9. I have carefully gone through the material placed before me and I am subjectively satisfied that you are acting in a manner dangerous to health & life of people and prejudicial to the maintenance of public order. Presently, you are released on bail by the concerned Hon’ble

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Court, Pune in the offence registered at (1) State Excise Department, C.R. no. 117/2023, u/s 65 (b)(e)(f) of the Bombay Prohibition Act, 1949. I am satisfied that after availing bail facility, you have again reverted back to similar activities which are dangerous to health & life of people and prejudicial to the maintenance of public order. In view of your desperate tendencies and inclinations reflected in the offences committed by you as stated above as well as the incidents recorded in the 'in-camera' statements, and thus normal laws are not sufficient to curb your bootlegging activities. So, it is necessary to detain you under the said Act to prevent you from acting in such prejudicial manner in future."

10 The Act of 1981 has defined the term bootlegger as under:-

2(b) "bootlegger" means a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provisions of the Bombay Prohibition Act, 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacles or any other materials whatsoever in furtherance or support of the doing any of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such thing;"

The act has ascribed specific meaning to the term bootlegger, as a person who distills, manufactures, exports, imports, transports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of the Bombay Prohibition Act, and the rules and orders made thereunder.

The grounds of detention would reveal that the detenu had in the past faced accusations under Section 65(b) (e), (f) of the Maharashtra Prohibition Act, and even the subject C.R. i.e. 117 of 2023, which is taken into consideration by the detaining authority, show an ascending trend in her activities, which are dangerous to life and health of the people, and has resulted in invoking the provisions of

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Maharashtra Prohibition Act.

The samples seized from the spot were sent for analysis and the chemical examination report received specifically revealed that the seized samples contain 24% of Ethyl Alcohol.

It is a proposition based on adequate research conducted and the Professor and the Head of Department had highlighted the effects of use of Methanol i.e. industrial alcohol, the substance used in preparation of liquor and it is this substance, which is largely used in country-made liquor, so as to increase its effectivity and consumption of this substance has adverse effect of hallucination, severe headache, swelling on kidney, bleeding in the head, loss of eye sight etc. In any case, it is not permissible for any person in the State of Maharashtra to manufacture any liquor without obtaining necessary license and this is what exactly the petitioner, detenu engaged herself in and the product that came to existence contain Ethyl Alcohol in the percentage of 24%.

The contention of Ms. Tripathi, the petitioner is, the report of the chemical analyzer do not state that the nature and quality of the liquor is injurious to human health, but only state that the percentage of Ethyl Alcohol found in the said substance is 24%. Since it is clearly highlighted that the substance that was manufactured by the detenu was in contravention of the Bombay Prohibition Act, 1949 as the offence is registered against the detenu by invoking Section 65 (b) (e) (f) of the Maharashtra Prohibition Act, she is rightly classified as a 'bootlegger' as she was found to have engaged herself in manufacturing and selling/distributing the liquor without necessary permissions being obtained under the Bombay Prohibition Act, 1949. In our considered opinion, it is not necessary to be shown that the

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harmful effect of the substance ought to have been the necessary criteria for reaching a subjective satisfaction, that the detenu was engaged in bootlegging activities and these activities were prejudicial to maintenance of public order.

11 The reliance of Ms. Tripathi on the decision of Apex Court in case of *District Collector Anantpur, and anr vs. V. Laxmanna (2005) 3 SCC 663*, is not of any assistance to her, as the facts of the case would reveal that the detention order arose out of Andhra Pradesh Prevention of Dangerous Activities of Boot-Leggars, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders, and Land- Grabbers Act, 1986 and the contention advanced was it is only the manufacture, transport, and sell of arrack, which is dangerous to public health and which alone would become an act prejudicial to the maintenance of public order attracting provisions of detention act. It was therefore, contended that the detaining authority has to be satisfied on material placed before it, that the alleged manufacture, transport or sell of arrack was unfit for the human consumption, as the material based on which the detaining authority has formed the opinion was that arrack was sold by the detenu, is dangerous to public health and this must form a ground for detention so as to enable the detenu to make an effective representation.

The argument was opposed by the State by submitting that the supply of such material is not necessary because in the State of Andhra Pradesh, sale of arrack itself is prohibited and therefore, it is sufficient if the detaining authority is satisfied that detenu is indulged in manufacturing, transporting, and sale of arrack and there is no need

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to come to a conclusion that Arrack is dangerous to public health and in the facts of the case, when the detaining authority did not have any report of the Chemical Analyzer or otherwise reflecting that the arrack dealt by the detenu is dangerous to public health and attract the provisions of the Act.

It is in this background, the Hon'ble Apex Court made the following observation:-

“7 We do not think that this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is including 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 it 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 of such material should also be given to the detenu to afford him an opportunity to make an effective representation.”

12 In another decision relied by Ms. Tripathi in case of **Jyot @ Jude Wilson Patel vs. R.H. Mendonca Commissioner of Police and ors**, where the Chemical Analyzer's report showed presence of Ethyl Alcohol in percentage 16% and 17%, and the detention order was passed on the ground that the detenu is a bootlegger, the facts would reveal that the grounds of detention disclosed that on a secret information received, when they reached the spot they found and accosted two persons, who were carrying two black tyre tubes containing some liquid substances in them and when they opened the mouth of the tyre tubes, it smelled of country liquor, of which the

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samples were drawn from each of the tyre tubes containing 40 liters each, in clean bottles, sealed and labelled in presence of panchas and the samples were sent for analysis.

The Chemical Examiner certified that each of the samples Nos. (1) and (2) contained 17 % of Ethyl Alcohol.

It is in this background, the Division Bench noted that the alleged activities of the petitioner detenu did not attract either of the limb provided in Explanation or Section 3 (1) of the Act in the context of Chemical Analyzer's Report and the activities of the detenu could hardly be said to have prejudicially affected the public order in any manner whatsoever.

13 However, in the present case, it is evidently seen that in the subject C.R., the complainant along with the panch witnesses staff and Officer approached the site, where the information was received that illicit liquor is being manufactured and when the raid was conducted, the detenu was found to be taking it out, from the liquor furnace. It is thus evident that she was engaged in manufacturing of liquor and she confirmed that she is the owner of liquor furnace and also of the material used for producing the liquor. From the spot, raw chemical worth Rs. 40,000/- and 13 plastic cans with country-made liquor and one barrel of chemical was recovered, which was ultimately going into manufacturing of liquor. Thus, in C.R. No. 117 of 2023, the offence under Section 65 (b) (e) and (f) was invoked.

14 The Division Bench of this Court in case of ***Kashinath Motiram Chavan Vs Commissioner of Police Solapur (AIR ONLINE 2021 BOM 2395)*** speaking through Justice N.J. Jamadar, in a similar

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situation, relied upon an earlier decision of Division Bench in **Ramesh Balu Chavan vs. The Commissioner of Police and Ors. (2017) 2 AIR Bom R(cri) 448** and reproduced the observations to the following effect :-

“14 Thereafter, Mr. Tripathi raised ground (b). In ground (b), it is stated that the Detaining Authority has relied on three C.Rs. registered under Section 65(e) of the Bombay Prohibition Act, 1949. C.A. reports have been received in two cases i.e C.R. No. 245/16 and 257/2016. However, the C.A. reports do not disclose the expert's opinion nor that the consumption of the seized contraband is injurious to health. The C.A. reports simply mention the percentage of Ethyl alcohol in water. As such, it cannot be said that the public order is disturbed since there is no danger to the public health.

15 Admittedly, the order of detention, grounds of detention along with accompanying documents were served on the detenu. Report from the Department of Forensic Medicine and Toxicology has also been furnished to the detenu. This report clearly states that regular consumption of Ethyl alcohol and Methyl alcohol causes ill effect over human body or heavy consumption can lead to death depending upon the condition and age of the person. Mr. Tripathi tried to contend that this report shows that only if a person consumes Ethyl alcohol as well as Methyl alcohol together, it would cause ill effect on human body or heavy consumption thereof can lead to death depending upon the condition and age of the person. We are afraid that we cannot read the report in the way as contended by Mr. Tripathi. This report according to us shows that if Ethyl Alcohol 'or' Methyl Alcohol are consumed by a person, it can cause ill effect on the human body or heavy consumption of any one of the two types of alcohol can lead to death depending upon the condition and age of the person. The C.A. reports relating to C.R. No. 245/2016 and 276/2016 clearly show that the sample contained Ethyl alcohol which is not a medicinal/antiseptic/toilet preparation nor a flavouring material. In addition, the report of Department of Forensic Medicine and Toxicology clearly shows that the regular consumption of Ethyl alcohol will cause ill effect on the human body or even one time heavy consumption of the same can lead to death depending upon the condition and age of a person. A person can be detained as a bootlegger if any of his activities are such that they directly or indirectly cause or are calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof, or a grave or widespread danger to life or public health.”

15 When the scheme of the Act of 1981, is carefully perused,

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“acting in any manner prejudicial to the maintenance of public order” is specifically defined in Section 2(a) and in case of a bootlegger, it is set out in clause (ii) as under:-

“(ii) in the case of bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order”

In addition, the explanation appended to Section 2 also deserve a reproduction which reads thus:-

“Explanation- For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely, inter alia if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health [or disturbance in public safety and tranquility or disturbs the day to day life of the community by black-marketing in the essential commodities which is resulting in the artificial scarcity in the supply of such commodities and rises in the prices of essential commodities which ultimately causes inflation] [or disturbs the life of the community by producing and distributing pirated copies of music or film products, thereby resulting in a loss of confidence in administrations]

16 From the perspective of a bootlegger, his/her activity is prejudicial to the maintenance of public order, when he/she is engaged or is making preparation for engaging, in any of his activities of bootlegger, which affects adversely the maintenance of public order. The explanation further clarifies as to where the public order shall be deemed to be affected adversely and it is clarified that if any of the activities of the person referred to in the above clause directly or indirectly, is causing or calculated to cause any harm danger or alarm

or a feeling of insecurity amongst the public or any section thereof, or danger to the life of public health or disturbs the public safety and tranquility or the day-to-day life of the community by black marketing of essential commodities, resulting in scarcity in supply of such commodities is also said to have affected the public order.

The distinction between “public order and law and order is of quintessence as the provisions of the Act are attracted if the act of the detenu is prejudicially to the maintenance of public order.

17 A succinct distinction has been noted in case of ***Superintendent, Central Prison Vs. Dr. Ram Manohar Lohiya (1960) 2 SCR 821*** the Supreme Court has interpreted the words “in the interest of public order” in Article 19(2) of the Constitution and noted the fine distinction between ‘public order’ and ‘law and order’. In paragraph no.11, the Apex Court observed as under :-

“11. But in India under Article 19(2) this wide concept of "public or-der" is split up under different heads. It enables the imposition of reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of the security of the State, friendly relations with foreign States, public order, decency or moral-ity, or in relation to contempt of court, defamation or incitement to an offence. All the grounds mentioned therein can be brought under the general head "public order" in its most comprehensive sense. But the juxtaposition of the different grounds indicates that, though sometimes they tend to overlap, they must be ordinarily intended to exclude each other. "Public order" is therefore something which is demarcated from the others. In that limited sense, particularly in view of the history of the amendment, it can be postulated that "public order" is synonymous with public peace, safety and tranquillity.

The said decision further pronounced upon the term ‘public order’, by recording that it is synonymous with public safety and tranquility; it is the absence of disorder involving breach of local

significance in contradistinction to national upheavals such as revolution, civil strife, war, affecting the security of the State.

18 While exercising the power under Section 3 of the Act as regards the Bootlegger, the detaining authority must not only be satisfied that the person is a bootlegger within the meaning of Section 2 (b), but also that the activities of the bootlegger affect adversely or likely to affect adversely the maintenance of public order.

The detenu has been found to have been engaged in the activity of dealing in liquor in contravention to the provisions of Maharashtra Prohibition Act, but all the offences of the past are not taken into consideration by detaining authority and only the offence registered by the State Excise Department, Pune under Section 65 (b) (e) and (f) under the Maharashtra Prohibition Act, has been taken into account.

When we carefully perused the statement of the witnesses, witness no.(A) and (B), who are well acquainted with the detenu and also her activity of carrying out illicit business of liquor in the area, and also that she is visited by criminals, labours for the consumption of the distilled liquor, by her. Both the witnesses have categorically stated that if anyone complained about her liquor business, she threatened and thrashed out the said person, and therefore, no one was coming forward to lodge a complaint against her openly.

Witness (B) refer to an incident of 28/06/2023, when he was present at his house, and he saw some drunken persons creating chaos, which was a regular feature on account of illicit liquor business conducted by the detenu and therefore, when the witness approached

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the liquor business spot, where she along with her accomplice was present, and when confronted with the trouble caused because of the liquor business, the witness was abused and slapped by her accomplice, and not only this, the detenu brandished a sickle at his neck and threatened him so that all other persons present are deterred and she made it clear that, if anybody raises a grievance about her liquor business, she would eliminate them. This caused a feeling of fear and people ran helter skelter.

19 From the aforesaid material available with the Detaining Authority in form of the in-camera statement of witness (A) and (B), the Detaining Authority has formed an opinion that, it is not only the manufacturing of liquor without the necessary permissions under the Bombay Prohibition Act, but the activity of manufacturing the liquor and the 'law and order' situation created on account of people consuming the liquor is what has to be found prejudicial to the maintenance of public order.

The detenu was forwarded with a report from the professor and head of the Pharmacology Department and this report has highlighted the ill-effects of consumption of Ethyl Alcohol and Methyl Alcohol on human body, and since we have noted that the chemical analysis of the seized material reflected presence of 24% of Ethyl Alcohol, definitely it's repeated consumption would have ill-effects which has been specifically highlighted in the report, which was supplied to the detenu. The argument, that it is a general report and does not specify with the quantity seized, do not deserve any consideration, as the ill-effects of consumption of Ethyl Alcohol are well known and it need not be established, particularly as to what

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would be the impact of consumption of this particular substance, which contain Ethyl Alcohol.

20 In the present case, since we are satisfied that the Detaining Authority has rightly formed an opinion about the activities of the detenu, being prejudicial to the maintenance of public order and was subjectively satisfied that she is a bootlegger and have been regularly indulging in production and sale of country-made liquor, her activities resulting in causing and calculated to cause widespread danger to life and health of people in jurisdiction of Loni Kalbhor Police Station, as many persons have been addicted to drinking illicit country-made liquor sold by her. A Society in which the earning members of the families are addicted, naturally suffer financially, socially and otherwise and such business of manufacturing illicit country-made liquor and supply it to the people at large and making them addicted, definitely prejudicially, affects the maintenance of public order. Not only this, the act of the detenu as per the statement of witness (A) and (B) that she created a reign of terror in the minds of common people and in light of the aforesaid circumstances, we are of the firm view that the impugned order of detention asked by the Commissioner of Police, Pune do not warrant any interference by upholding the Writ Petition and the same is, dismissed.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)

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