

Raju Tukaram Dakhore vs The State Of Maharashtra Through Its ... on 11 March, 2025

Author: Nitin W.Sambre

Bench: Nitin W. Sambre

2025:BHC-NAG:2608-DB

911-wp 101

1/6

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.1017 OF 2024

Raju Tukaram Dakhore, Aged about 45 years,
Occup. Agriculture R/o Mungala,

Petition

Tq.Malegaon, Dist. Washim (Presently in
Central Jail, Nagpur)

-Versus-

1. State of Maharashtra,
Through its Secretary, Department of Home
Mantralaya, Mumbai-
2. Collector and District Magistrate, Washim.
3. Superintendent of Police Washim.

Resp

Mr.R.S.Kurekar, counsel for the Petitioner.
Mr. H.D.Marathe, APP for respondent Nos. 1 to 3.

CORAM : NITIN W. SAMBRE AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 11/03/2025

ORAL JUDGMENT (Per: Nitin W.Sambre, J.)

- 1) Heard.
- 2) Rule. Rule made returnable forthwith. The Criminal Writ

Petition is heard finally with the consent of the learned counsel appearing for the parties.

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3) The challenge is to the detention order dated November 12, 2024 confirmed by the State Government on November 22, 2024 whereby, it is directed that the petitioner in exercise of the powers under the Provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Person Engaged in Black Marketing of Essential Commodities Act, 1981, ('MPDA Act' for short) is ordered to be detained for a period of one year. The petitioner was committed to the detention vide order dated November 12, 2024.

4) The facts, which are necessary for deciding the writ petition are as under:-

5) It is the case of the respondents that there are in all five offences pending investigation or pending before the Court, which are mostly punishable under Section 65(E) of the Maharashtra Prohibition Act, 1949. One of the offence is Crime No. 478 of 2024 is punishable under Section 118(1), 351(2), 351(3) and Section 352 of the Bhartiya Nyaya Sanhita, 2023.

6) Since the identity of the petitioner is that of bootlegging and the Chemical Reports speaks of the liquor which was seized from the custody of the petitioner, sample of which was found to be dangerous to health, he was ordered to be detained being a bootlegger within a Kavita 911-wp 1017-24.odt meaning of Section 2(b) of the MPDA Act.

7) Amongst other, the grounds raised so canvassed by the learned counsel appearing for the petitioner are that all the three offences, which are relied on being Crime Nos. 314 of 2024 and 396 of 2024 are the one punishable under Section 65(E) of the Maharashtra Prohibition Act, 1949. It is claimed that there is absence of the Chemical Analyzer's report in Crime No. 314 of 2024. It is further urged that in all the three offences including Crime No. 478 of 2024, which is causing bodily injury, the petitioner is released under Section 41-A of the Code of Criminal Procedure. That being so, the detention cannot be said to be sustained. It is urged that not only the detention order suffers from non application of mind, but the recording of the reasoning viz existence of material to term the petitioner as a bootlegger is contrary to the record. According to the learned counsel appearing for the petitioner, even the in-camera statements speaks of only disturbance of law and order and not that of the public order.

8) As against above, learned Assistant Government Pleader Mr. S.S. Doifode, would urge that the detention having regard to the criminal history can be said to be sustainable even on an isolated criminal incident. According to him, Crime No. 396 of 2024 punishable under Section 65 (E) of the Maharashtra Prohibition Act, 1949 speaks Kavita 911-wp 1017-24.odt of the alcohol being found in the liquid seized from the petitioner, is harmful for the human consumption. There is sufficient material to

record subjective satisfaction. Apart from above, he would claim that offence being Crime No. 478 of 2024, which is under investigation at the time of passing of the order impugned was committed at a public place which has resulted into disturbance of public order. Learned Assistant Government Pleader would urge that based on the incident referred to in the offence No.478 of 2024 and in-camera statement of witness-B recorded, as there is an element of disturbance of public order.

9) We have considered the submissions.

10) At the outset, we are required to be sensitive to the fact that in all the three offences, which are relied in the detention order, action of

notice being issued to the petitioner under Section 41-A of the Code of Criminal Procedure, is borne out of the record and is not a disputed question of fact.

11) In such an eventuality, once, the investigating agency has satisfied that the custody of the petitioner, in the said offence, was not required, we fail to understand the cause for the detaining authority to record subjective satisfaction of labelling the petitioner as a bootlegger.

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12) Apart from above, even if it is claimed that Crime No. 478 of 2024, is punishable under the provisions of Bhartiya Nyaya Sanhita, 2023 has a connection with that of the offence punishable under Prohibition Act, still the said offence cannot be said to have led to the disturbance of the public order. The aforesaid findings can be substantiated from the contents of the First Information Report and other material available on the record. The investigation paper speaks of alleged attack on an individual by the petitioner, wherein there is an absence of element of disturbance of public order.

13) Even the in-camera statements in isolation cannot be relied on for the purpose of recording subjective satisfaction as this Court is of the view that the second in-camera statement is related to the Crime No.478 of 2024 in regard to which in the foregoing paras we have already recorded the findings of absence of disturbance of public order.

14) As regards the Crime No.314 of 2024 as reflected in the in- camera statement of Witness -A is concerned, it has to be noted that the said statement is in relation to an offence for which there is absence of Chemical Analyzer's Report and as such, it is difficult to infer that the subject matter viz. the alleged liquor seized in the said crime can be said to be not only containing alcohol, but also harmful to the human consumption. As such, there is an element of failure on the part of the Kavita 911-wp 1017-24.odt respondents in recording the subjective satisfaction in the matter of ordering detention.

15) As such, the order impugned cannot be said to be sustainable .

16) That being so, the writ petition stands allowed.

17) We hereby quash and set aside the impugned order dated November 12, 2024 with a direction to release the petitioner forthwith.

18) Rule is made absolute in above terms.

(MRS.VRUSHALI V. JOSHI, J)

(NITIN W. S

Signed by: Kavita P Tayade
Designation: PA To Honourable Judge
Date: 17/03/2025 11:04:30 Kavita