



2024 INSC 968

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. \_\_\_\_\_ OF 2024**  
**(Arising out of SLP (Crl.) No.12516 of 2024)**

**ARJUN S/O RATAN GAIKWAD** **...APPELLANT(S)**

**VERSUS**

**THE STATE OF MAHARASHTRA  
AND OTHERS** **...RESPONDENT(S)**

**J U D G M E N T**

**B.R. GAVAI, J.**

1. Leave granted.
2. The appeal is taken up for hearing.
3. This appeal challenges the judgment and order dated 20<sup>th</sup> August 2024 passed by the Division Bench of the High Court of Judicature at Bombay, Bench at Aurangabad in Criminal Writ Petition No. 698 of 2024, thereby dismissing the petition filed by the appellant herein.
4. Shorn of details, the facts leading to the present appeal are as under:
  - 4.1 The District Magistrate, Parbhani passed an order

under Section 3(2) of the The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (hereinafter referred to as 'MPDA Act') and thereby detaining the appellant for a period of twelve months, so as to prevent him from indulging in the activities of bootlegging thereby preventing the maintenance of peace.

**4.2** The detaining authority had basically relied on the six cases registered against the appellant by the State Excise Department. The grounds of detention were communicated to the appellant on 5<sup>th</sup> March 2024. The detention order was approved on 14<sup>th</sup> March 2024 by the Home Department and the confirmation order was passed on 8<sup>th</sup> May 2024 by the Government of Maharashtra. Several grounds were raised in the petition including the ground that there was no nexus with the alleged activities of the appellant and the order of the detention, inasmuch as there was a gap of about two and a half months between the proposal for detention being forwarded to the detaining authority and the detention order

being passed. It is also submitted that the authority had acted in a mechanical manner and without there being any material, had passed the detention order. It was submitted that in any case, the alleged activities do not constitute a threat to the public order and they would fall amongst cases which can be dealt with by ordinary law and order machinery.

**5.** We have heard Shri Nachiketa Joshi, learned Senior Counsel appearing for the appellant and Shri Siddharth Dharmadhikari, learned Standing Counsel for the State of Maharashtra.

**6.** Though, arguments have been advanced on various issues and a number of authorities have been cited, we find that the appeal deserves to be allowed on a short ground, inasmuch as none of the activities which form the basis of the detention order can be said to be affecting public order.

**7.** The basis on which the proposal for detention is passed is the following six cases which are registered by the Authority against the appellant:-

<b>Sr. No.</b>	<b>Office with whom offence registered</b>	<b>Crime No., Date and Section</b>	<b>Charge sheet and Date</b>	<b>Remark</b>
1	Sub-Inspector, State Excise, Pathhari	20/2023 dt. 29/1/2023 Maharashtra Prohibition Act Sec. 65(e)	SCC No.211/2023 dt. 25.3.2023	Subjudice
2	Inspector, State Excise, Parbhani	61/2023 dt. 18/3/2023 Maharashtra Prohibition Act Sec. 65(e)	SCC No.335/2023 dt. 23.8.2023	Subjudice
3	Inspector, State Excise, Parbhani	89/2023 dt. 24/4/2023 Maharashtra Prohibition Act Sec. 65(e)	SCC No.338/2023 dt. 23.8.2023	Subjudice
4	Inspector, State Excise, Parbhani	126/2023 dt. 17/05/2023 Maharashtra Prohibition Act Sec. 65(d)(e)	SCC No.358/2023 dt. 04.09.2023	Subjudice
5	Inspector, State Excise, Parbhani	253/2023 dt. 09/09/2023 Maharashtra Prohibition Act Sec. 65(e)(f)	SCC No.419/2023 dt. 20.9.2023	Subjudice
6	Inspector, State Excise, Parbhani	327/2023 dt. 18/10/2023 Maharashtra Prohibition Act Sec. 65(e)(f)		On investigation

**8.** Apart from that the detaining authority has also relied on the statements of two witnesses, who have not been

named.

**9.** Insofar as all the six cases are concerned, they are pertaining to the illicit manufacture of handmade liquor. It is to be noted that these cases are registered during the period between 29<sup>th</sup> January 2023 to 18<sup>th</sup> October 2023. It is to be noted that in none of these cases the authorities found it necessary to arrest the appellant herein.

**10.** Insofar as the reliance on the statement of the two unnamed witnesses are concerned, the statements are identical in toto. What is stated is that the appellant is engaged in production of handcrafted liquor for the last few years. It is stated that due to these activities there have been various problems for the Government machinery. It is stated that due to the fear and terror created by the appellant nobody appears to raise complaint against him. It is further stated that due to these activities of bootlegging the nearby residents have left their houses and shifted elsewhere. The first witness statement further states that on some day in the last month at 07:00 P.M., when the witness was returning from work towards his residence, the appellant met him near the Gram Panchayat Office and quarreled with him and

threatened by saying that if his liquor business was no more, he will not spare him. It is further stated that he had not filed a complaint with the police against the appellant herein due to fear.

**11.** Insofar as another witness is concerned, almost similar statement is recorded and the only difference is that the date mentioned here is somewhere in the month of November, 2023 and the time is 20:30 P.M. Incidentally, both these witnesses happened to meet the appellant at the Gram Panchayat Office.

**12.** The distinction between a public order and law and order has been succinctly discussed by Hidayatullah, J. (as His Lordship then was) in the case of ***Ram Manohar Lohia v. State of Bihar and Another***<sup>1</sup>:

**“54.** ... Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The

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<sup>1</sup> (1966) 1 SCR 709 : 1965 INSC 175

contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are....

**55.** It will thus appear that just as ‘public order’ in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting ‘security of State’, ‘law and order’ also comprehends disorders of less gravity than those affecting ‘public order’. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.”

**13.** It could thus be seen that a Constitution Bench of this Court in unequivocal terms held that every breach of peace does not lead to public disorder. It has been held that when a person can be dealt with in exercise of powers to maintain the law and order, unless the acts of the proposed detainee are the ones which have the tendency of disturbing the public order a resort to preventive detention which is a harsh measure would not be permissible.

**14.** Recently, a Bench of this Court has referred to various judgments of this Court while following the law laid down by

this Court in the case of **Ram Manohar Lohia** (supra), it will be appropriate to reproduce the following paragraph from the judgment of this Court in the case of **Ameena Begum v. State of Telangana and Others**<sup>2</sup>.

“**38.** For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquillity affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, C.J. in *Arun Ghosh v. State of W.B.* [*Arun Ghosh v. State of W.B.*, (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , is this : (SCC p. 100, para 3)

“3. ... Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?”

**39.** In *Arun Ghosh case* [*Arun Ghosh v. State of W.B.*, (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , the petitioning detenu was detained by an order of a District Magistrate since he had been indulging in teasing, harassing and molesting young girls and assaults on individuals of a locality. While holding that the conduct of the petitioning detenu could be reprehensible, it was further held that it (read : the offending act) “does not add up to the situation where it may be said that the community at large was being disturbed or in other words there was a breach of public order or likelihood of a breach of public order. (*Arun Ghosh case* [*Arun Ghosh v. State of W.B.*, (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC p. 101, para 5)”

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<sup>2</sup> (2023) 9 SCC 587

**40.** In the process of quashing the impugned order, the Hidayatullah, C.J. while referring to the decision in *Ram Manohar Lohia* [*Ram Manohar Lohia v. State of Bihar*, 1965 SCC OnLine SC 9 : (1966) 1 SCR 709] also ruled : (*Arun Ghosh case* [*Arun Ghosh v. State of W.B.*, (1970) 1 SCC 98 : 1970 SCC (Cri) 67] , SCC pp. 99-100, para 3)

“3. ... Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. ... It is always a question of degree of the harm and its effect upon the community. ... This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.”

**41.** In *Kuso Sah v. State of Bihar* [*Kuso Sah v. State of Bihar*, (1974) 1 SCC 185 : 1974 SCC (Cri) 84] , Hon'ble Y.V. Chandrachud, J. (as the Chief Justice then was) speaking for the Bench held that : (SCC pp. 186-87, paras 4 & 6)

“4. ... The two concepts have well defined contours, it being well-established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. *Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. ...*

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*6. ... The power to detain a person without the safeguard of a court trial is too drastic to permit a lenient construction and therefore Courts must be astute to ensure that the detaining authority does not transgress the limitations subject to which alone the power can be exercised.”*

(emphasis supplied)

**15.** As to whether a case would amount to threat to the public order or as to whether it would be such which can be dealt with by the ordinary machinery in exercise of its powers of maintaining law and order would depend upon the facts and circumstances of each case. For example, if somebody commits a brutal murder within the four corners of a house, it will not be amounting to a threat to the public order. As against this, if a person in a public space where a number of people are present creates a ruckus by his behaviour and continues with such activities, in a manner to create a terror in the minds of the public at large, it would amount to a threat to public order. Though, in a given case there may not be even a physical attack.

**16.** In the present case, all the six cases are with regard to selling of illicit liquor. Though six cases are registered, the

Excise Authority did not find it necessary to arrest the appellant even on a single occasion. It would have been a different matter, had the appellant been arrested, thereafter released on bail and then again the appellant continued with his activities. However, that is not the case here.

**17.** Insofar as statements of the two unnamed witnesses are concerned, the allegations are as vague as it could be. In any case the statements which were stereotype even if taken on its face value would show that the threat given to the said witnesses is between the appellant and the said witnesses. The statements also do not show that the said witnesses were threatened by the appellant in the presence of the villagers which would create a perception in the mind of the villagers that the appellant herein is a threat to the public order.

**18.** In that view of the matter, we do not find that the subjective satisfaction of the detaining authority that the activities of the appellant were prejudicial to the maintenance of public order is substantiated.

**19.** The appeal deserves to be allowed on this short ground.

**20.** The impugned judgment and order passed by the High

Court dated 20<sup>th</sup> August 2024 so also the order of detention dated 5<sup>th</sup> March 2024 passed by the detaining authority and the order of confirmation dated 8<sup>th</sup> May 2024 are quashed and set aside and the appeal is, accordingly, allowed.

**21.** The appellant is directed to be released forthwith, if his detention is not required in any other case.

**22.** Pending application(s), if any, shall stand disposed of.

.....**J.**  
**(B.R. GAVAI)**

.....**J.**  
**(K. V. VISWANATHAN)**

**NEW DELHI;**  
**DECEMBER 11, 2024.**