

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION No. 5222 OF 2017

Vilas Ramchandra Hunnare, **..Petitioner.**
age 65 years, Adult, Occupation
business, resident of House No.
449, Shivajinagar, Kankavli,
taluka Kankavli, District
Sindudhurg, and currently in
Ratnagiri Special Prison,
Ratnagiri.

Vs.

- 1) District Magistrate,
Sindhudurg.
- 2) The State of Maharashtra,
through the Section officer to
the Government of Maharashtra
Home Department (Special),
- 3) The Superintendent of **..Respondents.**
Ratnagiri Central Prison,
Ratnagiri.

Mr. Lokesh D. Zade a/with
Rajdeep D. Gude i/by
Khandeparkar & Associates for
the Petitioner.

Ms. M.H. Mhatre, APP for the
State.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

Reserved : 15th FEBRUARY 2018.

Pronounced : 4th April, 2018.

JUDGMENT (Per: Smt. BHARATI, H. DANGRE,J)

1 The petitioner/detenu, has invoked jurisdiction of this Court for quashing and setting aside the impugned order dated 15th November 2017 passed by the Section Officer to the Government of Maharashtra, Home Department (Special) MPDA-1017/CR-260/Spl-3B, thereby approving the order dated 6th October 2017, passed by the District Magistrate, Sindhudurg in D.O. No. DM/Bootlegger/2017. The petitioner has prayed that he be set at liberty on quashing the said order.

2 The petitioner/detenu has been detained by the impugned order of detention dated 6th October 2017, passed by respondent no.1 in exercise of the power conferred by sub-Section (2) of Section 3 of

the *Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates, Sand Smugglers and Persons Engaged in Black-marketing of Essential Commodities Act, 1981* (for short “MPDA Act, 1981”). The grounds of detention supplied to the detenu in pursuance of Section 8 of the MPDA Act, 1981, reveal that the petitioner is a bootlegger and is involved in selling prohibited liquor in the area of Poyekarwadi, Shivaji Nagar, within the jurisdiction of Kankavali Police Station and is engaged in committing offences of selling of liquor in contravention of the provisions of the Maharashtra Prohibition Act, 1949. It is also a ground of detention that the petitioner is involved in selling of the liquor manufactured in the State of Goa, which is not permitted in the State of Maharashtra. The grounds of detention also makes a reference to the activities of detenu by referring to the offences registered against him in the past and also the offences with which he is charged in the year 2017, in order to demonstrate that the petitioner/detenu is habitual bootlegger and has tendency to revert to

similar activities. Reliance is also placed on two in-camera statements in support of the grounds of detention, justifying the detention of the petitioner as a bootlegger under the MPDA Act, 1981.

3 The petitioner has assailed the order of detention on several grounds as raised in the petition. The order of detention is attacked on the ground that the order of detention was passed on 6th October 2017 giving documents mentioning the grounds of detention and the order of detention came to be approved by the Section Officer on 11th October 2017. According to the petitioner, an opportunity of making representation to the Detaining Authorities is lost once the order is approved by the Government of Maharashtra and the grievance of the petitioner is that no sufficient time is provided to the petitioner to make a representation before the District Magistrate resulting in loss of opportunity to him. Another ground on which the impugned order is assailed has been mentioned in ground (b) of the petition, where it is alleged that the detention order did not mention the period of detention, which is mandatory compliance of Section 3

(3) of the MPDA Act, 1981. The ground raised is that the District Magistrate, Sindhudurg presumed that the petitioner is aware of law and he did not take effort to mention the period as given in Section 3 (3) of the MPDA Act, 1981, whereas law requires strict compliance of the provisions while passing the order of detention. It is therefore prayed that non-mention of the period of detention in the order, vitiates the order of detention. Reliance is placed on the judgment of the Apex Court in the case of Commissioner of Police & Anr V. Gurbux Anandram Bhiryani, 1988 SCC (Cri) 914 .

Another ground is raised that if the in-camera statement is read carefully, it can be seen that nowhere in the verification statement of detaining authority mentions that in-camera statements are read over and duly verified by Dy.S.P. The in-camera statement was recorded on 1st September 2017 and it was verified by the Dy.S.P. on 6th September 2017. It can be seen from the remark of the Dy.S.P. that the remark on witness “B” statement is written as witness “A”. The ground is therefore raised that the statements are not duly verified and the procedure prescribed by law is not valid which is in utter violation of

Article 22 (5) of the Constitution of India. It is also a ground in the petition that the offences that are registered against the petitioner and relied and referred to by the detaining authority are only under the provisions of Maharashtra Prohibition Act and not under the IPC and therefore it cannot be said that activities of the petitioner are prejudicial to the maintenance public order. The order is also sought to be clamped on the ground that there is no conviction in the cases registered against the petitioner and the detention order therefore is looked upon as per se punitive in character rather than preventive in nature.

4 We have heard learned counsel Shri Lokesh Zade appearing for the petitioner. He would submit that the material placed on record is not sufficient to justify the detention and he would argue that the activities of the detenu cannot be said to be falling within the parameters of the enactment being prejudicial to the public order and he would submit that the said order of detention is not sustainable.

5 In response to the petition, the District Magistrate, Sindhudurg has filed an affidavit justifying the impugned order. It is stated in the affidavit that the detaining authority has complied with all the procedural requirements under the MPDA Act, 1981 and the grounds of detention were supplied to the Detenu so as to enable him to make a representation to the detaining authority. It is also stated in the affidavit that it is not necessary to mention the period of detention and this position has been made clear by the Hon'ble Apex Court in the subsequent judgment by overruling the judgment in the case of Gurbax Singh.

As regards the ground of detention of in-camera statement is concerned, it is stated that the statement of in-camera witnesses were recorded on 1/9/2017 and 4/9/2017 by the Sponsoring Authority. The affidavit states that the witnesses were produced before the Sub-Divisional Officer (for short "SDPO), Sawantwadi, who, in turn, verified the genuineness before the Sponsoring Authority and the

Authority has verified the fear expressed by them at the hands of the detenu. Relying on the verification done by the SDPO to be true and genuine, the detaining authority issued order of detention. Thus, the ground raised in the petition is denied that there was no verification done by the SDPO. Further, the ground raised in the petition that there are only offences registered against the detenu under Maharashtra Prohibition Act, 1949, since no offence has been registered under the provisions of the IPC, the activities of the detenu cannot be said to be prejudicial to the maintenance of the public order, have been spelt out by referring to the definition of “bootlegger” as defined in Section 2 (b) of the MPDA Act, 1981. The detaining authority, then, sets out that while issuing the order of detention two offences registered against the Detenu under the Bombay Prohibition Act and two statements of in-camera witnesses were taken into consideration, to demonstrate the prejudicial activities of the detenu of being in possession, storage and illegally selling liquor in contravention of the provisions of the Maharashtra Prohibition Act, 1949.

An affidavit is also filed by the Deputy Secretary, Home Department, Government of Maharashtra giving the details about the various stages through which the matter has been processed, resulting into confirmation of the order of detention by the State Government on 15th November 2017. During the course of hearing of the matter, the learned APP, Mrs. Mhatre, had also produced the file from the office of Superintendent of Police, Sindhudurg. The original file was also perused by us during the course of the matter.

The petitioner has been detained by the order of the District Magistrate passed in exercise of the powers conferred under Section 3 of the MPDA Act, 1981 and detaining him on the ground that he is a bootlegger. Perusal of the ground of detention would reveal that the material placed before the Detaining Authority, reflected the antecedents of the petitioner that he is a bootlegger and involved in selling prohibited liquor. While doing so, he also indulged into acts showing exercise of force and has assaulted innocent people to manage his illegal business of liquor. The material placed before the

detaining authority reflect that the detenu is personally running the business of selling of liquor manufactured in State of Goa and the people who consume liquor at the den of the petitioner under the influence of liquor, indulge into act of teasing of woman/girls and creating uproar in the locality and have made the life of the people residing in the locality miserable. The preventive action initiated against the petitioner under Section 93 of the Maharashtra Prohibition Act, in the year 2017 were specifically relied upon by the detaining authority. Two CRs registered under Section 65 (e) of the Maharashtra Prohibition Act, 1949 at Kankavli Police Station of 2016 and 2017 respectively have also been placed before the detaining authority. The grounds of detention reveal that based on the past activities and crimes in which the petitioner had indulged himself, the detaining authority has noted that the petitioner is habitual bootlegger and has tendency to revert to similar activities. Reliance is also placed on C.R. No. 176 of 2017 (Prohibition C.R. No.52/2017) registered under Section 65 (e) of the Maharashtra Prohibition Act, 1949 with Kankavali Police Station, District Sindhudurg and C.R. No. 194 of 2017

registered under the same Act, at the same police station, reflecting continuing activity of the detenu. Both the aforesaid crimes are pending for trial and in both the offences the detenu has been released on bail. The samples collected during investigation in this crimes were forwarded to the Regional Forensic Science Laboratory for chemical analysis and the Assistant Chemical Analyser has opined that the said samples contained ethyl alcohol in water and that it is not a medicinal / antiseptic / toilet preparation, nor a flavouring material. When the said report was sent to the Civil Surgeon, Government Hospital at Sindhudurg Nagari for opinion, the Civil Surgeon had opined that the consumption of 7 to 10% ethyl alcohol badly affects digestive system, brain, heart, liver, kidney, muscle.

The detaining authority has placed reliance on the two in-camera statements which came to be recorded in the backdrop of the factual scenario that the detenu being a bootlegger and weapon desperado, most of the victims residing in the locality are not willing to complain against him due to fear for their life. Whenever people have tried to complain they have been threatened and assaulted and were

pressurized not to make any complaint. Two witnesses, on assurance of police that their names and identity would be kept secret and they would not be called upon to depose in any Court of law or in open Forum expressed their willingness to give their statements and their statements were recorded “In-camera”. Two in-camera statements of witness “A” and “B” were verified by the SDPO, Sawantwadi. The detaining authority personally verified the statements of in-camera witnesses and he was satisfied that the detenu is a habitual bootlegger and he has caused danger to the public and had created terror in the minds of the people of the locality. The grounds of detention set out the gist of statements of the in-camera witnesses given by the witnesses. The witness “A” who is resident of Kankavali has referred to incidents which took place in the third week of July, 2017 at 19:00 hours at Kankavali and has narrated the incident which created fear in the mind of the people residing in the locality and who did not dare to complain of the incident to the police. Witness “B” who is also resident of Kankavali gave the details about the incident which has occurred in the last week of August, 2017, during the celebration of

Ganesh Utsav. This witness had stated that he was abused and assaulted with wooden stick by the detenu and when he sought help nobody came to his rescue. This witness was also threatened of dire consequences, if he approached the police station and therefore he did not approach the police station.

6 Based on the said material, the detaining authority arrived at a conclusion that the detenu was a free person and his tendency and propensity reflected in the offences committed by him recently and as reflected in paragraphs 1, 2, 4 and 5 of the grounds of detention, the detaining authority was satisfied that he was likely to revert to the same activities prejudicial to the maintenance of public order and public health in future and thus he was a habitual bootlegger and it was necessary to detain him so as to prevent him from acting in a manner prejudicial to the maintenance of public order in future.

7 Though the learned counsel for the petitioner would make an attempt to canvass that the detention is not justifiable since the

activities are not “prejudicial to the maintenance of public order”, the said submission is without any merit and substance. Section 2 (b) of the MPDA Act, 1981 defines “bootlegger” as follows:-

Section 2 (b) :-

“Bootlegger” means a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicants in contravention of any provisions of the Maharashtra Prohibition Act (Act No.XXV of 1949) and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly spends 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 abovementioned things by or through any other person, or who abets in any other manner the doing of any such thing.”

8 Thus, the “bootlegger” is a person who indulges into activities in contravention to the provisions of the Maharashtra Prohibition Act and the Rules made thereunder and it is not necessary that he is to be charged with any offences punishable under the IPC. Undisputedly, the offences registered against the detenu are under the

Maharashtra Prohibition Act and not under the provisions of Indian Penal Code, however, by virtue of prevention of Section 2 (b) of the MPDA Act, the petitioner is found to be a bootlegger and the MPDA Act of 1981 provides for preventive detention of such a “bootlegger” for preventing the dangerous activities which are prejudicial to the maintenance of public order. Section 2 (a) of MPDA Act, 1981 defines the term “acting in any manner prejudicial to the maintenance of public order” and in respect of a bootlegger, if a person 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, then, the said person is said to be acting in a manner prejudicial to the maintenance of public order. The activities of the petitioner clearly fall within the ambit and scope of Section 2 (a) (ii) of the Act. In such circumstances, the said ground raised by the petitioner is not sustainable.

9 The next ground on which reliance is placed by the learned counsel for the petitioner, as, set out in ground (d) of the petition is

argued that if the in-camera statements are read carefully, it can be seen that nowhere in the verification statement of the detaining authority, it is mentioned that in-camera statements are read over and duly verified by the Superintendent of Police.

10 With the assistance of the learned APP, we have perused the record of the detaining authority. Perusal of the record reveals that witness "A" who is resident of Kankavali, whose statement was recorded on 1st September 2017 is recorded by the Police Sub-Inspector (PSI), Police Station, Sindhudurg. The said statement is signed by in-camera witness in presence of the Police Sub-Inspector. On 6th September 2017 the SDPO Sawantwadi verified the truthfulness of the statement and below the in-camera statement the verification is endorsed by the SDPO, Sawantwadi. The verification records that the witness was present before the SDPO on 6th September 2017 and on enquiry from him he has admitted that the statement recorded is true. The verification further stated that on further enquiry from the said witness it is confirmed by the SDPO that the incident narrated by the

witness is true and the witness is frightened of the consequences and therefore his identity needs to be kept secret. Thus, the verification of the statement made by in-camera witness has been carried out by the SDPO, Sawantwadi and the truthfulness of the incident has been specifically verified by the SDPO. Not only this the record further reveals that the detaining authority himself has called the in-camera witness in his chamber on 26th September 2017 and the truthfulness of the incident as well as the activities of the detenu have been verified from this witness. The witness has also confided in the detaining authority that the people in the locality are not coming forward to lodge a complaint against the detenu on account of the reign of terror created by him in the locality. Similar is the case in case of in-camera witness no.2 whose statement was recorded on 4th September 2017 by the PSI Kankavali Police Station and the statement is signed by him. The truthfulness of the incident as narrated in the statement has been verified by the SDPO, Sawantwadi on 6th Sept 2017. Even this witness was called by the detaining authority in his chamber and he ascertained the truthfulness of the incident and the veracity of the

statement of this in-camera witnesses on 26th September 2017.

It can thus be seen that the detaining authority has not barely accepted the in-camera statements and the version in those statements. These statements came to be verified by the SDPO and also the truthfulness of the incident and the activities of the detenu were verified from these witnesses by the detaining authority himself. The detaining authority in the grounds of detention has specifically mentioned that the in-camera statements were verified by Shri D.D.Gawas, SDPO, Sawantwadi. He also records a finding that on verification of the in-camera witnesses "A" and "B", he believed that the contents of 'in-camera witnesses' were truthful and relied upon, while passing the detention order. The grounds of detention further mention that he himself has personally verified the version of the in-camera witnesses and he was satisfied that the detenu is habitual bootlegger and had caused danger to the public and created terror in the mind of the people of the locality.

In such circumstances, it cannot be said that the in-camera statements did not undergo scrutiny at the hands of the high ranking

officer than the one recording in-camera statement. Statements were duly verified and no infirmity can be found in the process adopted by the detaining authority in relying upon the statements on its due verification. Therefore, there is no substance in the ground (d) raised by the petitioner.

11 Another ground which the petitioner has raised is stated only to be rejected is non-mention of period of detention in the order by relying upon the judgment of the Hon'ble Apex Court in the case of Commissioner Vs Gurbux (supra). The said judgment delivered is subsequently overruled by the Hon'ble Apex Court in the case of Mrs.T. Devki Vs. Government of Tamil Nadu, wherein the Court observed thus:-

“Once the State Government's power under section 3(1) is delegated to the District Magistrate or the Commissioner of Police, they are authorized to exercise that power on the grounds, specified in Section 3(1) of the Act. Neither sub-section (1) nor sub-section (2) of Section 3 of the Act require the detaining authority to specify the period of detention for which a detenu is to be kept under detention.

Section 3(3) requires that where detention is made by the delegate of the State Government, namely, the District Magistrate or the Commissioner of Police, they should report the fact to the State Government together with the grounds on which the order may have been made and such other particulars as, in their opinion, may have a bearing on the matter. A detention order made by a District Magistrate or Commissioner of Police in exercise of their delegated authority does not remain in force for more than twelve days after the making thereof, unless in the meantime the detention order is approved by the State Government. Section 8 requires the detaining authority to communicate to the detenu, grounds on which, the order is made within five days from the date of detention to enable the detenu to make representation against the order to the State Government. Section 10 requires the State Government to place before the Advisory Board the detention order and the grounds on which such order may have been made along with the representation made by the detenu as well as the report of the officers made under Section 3(3) of the Act within three weeks from the date of detention.

It is thus clear that the view taken in Gurbuz Biryani's case on the interpretation of Section 3 of the Maharashtra Act is incorrect. This Court has while considering the question of the validity of the detention order made under different Acts, consistently taken the view that it is not necessary for the detaining authority or the State Government to specify the period of detention in the order. In the absence of any period being specified in the order the

detenu 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. We are, therefore, of the opinion that the impugned order of detention is not rendered illegal on account of the detaining authority's failure to specify period of detention in the order.”

12 The another ground which the petitioner eventually referred to is that the grounds of detention were served upon him on 6th October 2017 along with the documents supplied to him and the order of detention was approved by the State Government on 11th October 2017. The grievance raised by the petitioner is that he was therefore given a very less time and he could not avail of the opportunity of making representation to the detaining authority himself. The ground of detention in paragraph 8 has clearly mentioned that pending approval of the detention order under section 3(3) of the MPDA Act by the State Government, the detenu can avail of a right to make a representation to the detaining authority i.e. the District Magistrate, Sindhudurg. It is also clearly mentioned that on

approval by the detention order by the Government, right to make representation to the detaining authority will stand automatically extinguished. Looking to the scheme of the enactment, the order of detention passed by the detaining authority under Section 3(3) of the MPDA Act, 1981 is to be approved by the State Government within a period of 12 days after making thereof and in such circumstances since the order was approved by the State Government, the said right to make representation stands extinguished and he had an opportunity of making a representation to the State Government which the petitioner has already availed and makes no grievance about the same.

13 For the aforesaid reasons, there is no merit in the present petition and same deserves to be dismissed. It is accordingly dismissed. Rule is discharged.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J)