

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3586 OF 2021

Rakesh Gurunath Rathod

..Petitioner

Versus

The Commissioner of Police, Solapur & Anr.

..Respondents

Mr. Zaid Qureshi for Petitioner.

Mr. J. P. Yagnik, Assistant Public Prosecutor for the Respondents.

CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.

DATE : 17 DECEMBER 2021

Oral Order : (*Per Nitin Jamdar, J.*)

. This Petition is filed challenging the order of detention dated 26 July 2021 passed by the Commissioner of Police, Solapur placing the Petitioner under detention 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. (The Act).

2. The Commissioner of Police passed an order under Section 3(2) of the Act categorizing the Petitioner as Bootlegger in the area specified therein of Solapur. It was stated that the Petitioner

was engaged in committing offences of transporting and selling of country made liquor in contravention of the Maharashtra Prohibition Act, 1949 and he was a Bootlegger as defined under Section 2(b) of the Act of 1981. It was also stated that the Petitioner along with his associates carry weapons and terrorse the people of the area so that none comes forward to give complaint of their activities. The grounds of detention were communicated to the Petitioner.

3. In the grounds for detention, reference is made to 71 cases pending against the Petitioner from 1 December 2015 to 28 May 2021 filed under Section 65(e) and 81 of the Maharashtra Prohibition Act read with Section 290 of the Indian Penal Code. It is stated that to prevent the Petitioner from committing criminal activities, on 18 March 2019 and on 28 August 2020 a Bond of Rs.7,000/- was taken from the Petitioner under Section 93 of the Maharashtra Prohibition Act, 1949. Also on 15 October 2019 the Petitioner was banned in city under Section 144 of the Code of Criminal Procedure, from 19 October 2019 to 25 October 2019. A reference thereafter is also made to 15 cases registered against the Petitioner from 28 March 2021 to 30 May 2021 under Section 65(e) and 81 of the Act of 1949 and In Camera statements of the witnesses were recorded.

4. It was stated that the Petitioner was mixing 7% V/V of Ethyl alcohol in water as per the report of the Regional Forensic

Science Laboratory, Pune. The details of the recent 15 offences were stated.

5. In the In Camera statement of the witness 'A', the witness stated that on one morning of the second week of June 2021, a person holding black colour motor tube smelling country liquor on the motorcycle knocked down an elderly woman. He helped the elderly woman and told the Petitioner that they should stop the activities of illicit liquor, whereupon the Petitioner and his associates came towards the witness and threatened him. The Petitioner was carrying a knife and the other carrying an iron pipe, they threatened the witness not to inform the police. When people gathered, the Petitioner and his associates rushed towards them, some of the Petitioner's associates pelted stones, causing panic in the people present and they ran away. The statement of witness 'B' is that, he has a shop where he is in the business of selling fruits. On one afternoon of the fourth week of June 2021, some people came out from the den of the Petitioner and started vomiting because they had consumed liquor. It caused serious disturbance and he could not carry out his business activities. At that time, this witness confronted the Petitioner stating that their activities is causing nuisance to people. Thereupon the Petitioner and his associates threatened him and also threatened the people who were gathered there brandishing iron pipe in their hand, because of which people ran away in terror. The offences and the statements formed subjective satisfaction of the detaining

authority to pass an order of detention holding that the Petitioner is Bootlegger within the meaning of Section 2(3) of the Act. Challenging the detention order, the Petitioner is before us.

6. We have heard Mr. Zaid Qureshi, the learned counsel for the Petitioner and Mr. Yagnik, the learned Assistant Public Prosecutor for the Respondents.

7. The learned counsel for the Petitioner advanced three submissions. Firstly he submitted that the order of detention does not stipulate any time period and, therefore, same is bad in law. The view was taken by the Division bench of this Court (Aurangabad Bench) in Judgment and Order dated 26 March 2019 in Criminal Writ Petition No. 155 of 219 that, for want of specifying the period in the detention order the same is bad in law. The learned APP has placed before us the order passed by the Hon'ble Supreme Court in the case of *State of Maharashtra & Ors. Versus Balu S/o. Waman Patole*¹, wherein this decision of the Division Bench is set aside by the Supreme Court. The Supreme Court has observed that Section 13 of the Act specifies a maximum period of detention which has to be read along with Section 3 of the Act. It was observed that the detention order cannot be held to be bad in law because it does not specify a period, as the maximum period under Section 13 will apply. Thus, this contention of the learned counsel for the Petitioner cannot be

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accepted and is rejected.

8. Second contention raised by the learned counsel for the Petitioner is that the Petitioner is illiterate and he did not know English or Marathi. The learned counsel for the Petitioner states that the Petitioner has not filed any representation. There is no merit in this contention. The grounds of detention were given to the Petitioner. It is stated in the order that they were explained to the Petitioner. As regards the contention that the Petitioner does not understand Marathi, the learned APP has drawn our attention to the ground 'f' in the Petition where the Petitioner has stated that he knew only Marathi. The Reply affidavit is filed, wherein it is stated that the Petitioner has took his education in Marathi at Solapur and he can talk, write, read and can understand Marathi and the contents of the English grounds have been explained to him in Marathi. Nothing is placed before us in the Petition as to why this assertion should not be accepted. The Petitioner is resident of Maharashtra, and in fact, in the Petition the Petitioner himself says that he knew Marathi. The oral argument of the learned counsel for the Petitioner is contrary to record.

9. The third contention that is raised is that the offences taken into against the Petitioner to form a subjective satisfaction are stereo type in nature and in all offences narrated the same situation, that is, some persons informed that they have purchased country

made liquor from the Petitioner. The learned counsel for the Petitioner submits that, based on such offences, which on the face of it are concocted, subjective satisfaction could not have been formed. There is no merit in this contention either. The activity attributed in these offences is not complicated. The Petitioner is mixing Ethyl alcohol with water and selling it. Purchasers of this country made liquor from the Petitioner all states so. In all the offences registered the Petitioner is an accused. Section 2(b) of the Act that is definition of 'Bootlegger' is wide enough to cover this activity of the Petitioner. Since the activity of the Petitioner is repetitive, the narration of the incidents would also be repetitive. Thus, it cannot be straight away presumed that all the offences are concocted only to pass the detention order.

10. The detaining authority has taken into consideration 15 offences, two in-camera statements and report of the Forensic Science Laboratory. It cannot be said that subjective satisfaction based on this material is bad in law so that to set aside the order of detention. The three contentions advanced are without merit. No other argument was advanced. Thus, there is no merit in the Petition.

11. The Writ Petition is dismissed. Rule discharged.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)