

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

CRIMINAL WRIT PETITION NO.114/2021

Parag S/o Narsingh Hitange,
aged 23 Yrs., Occ. Labour,
R/o Murtizapur, Dist. Akola.

..Petitioner.

..Vs..

1. The State of Maharashtra,
through Superintendent of
Police, Akola.
2. Divisional Commissioner,
Amravati Division, Amravati.

..Respondents.

Shri R.M. Daga, Advocate for the petitioner.
Shri N.R. Patil, Additional Public Prosecutor for the respondents.

CORAM :- SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.
DATED :- 9.2.2021

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent.

2. The impugned order has been challenged on three distinct grounds. Shri Daga, learned counsel for the petitioner submits that all the offences which have been considered as going against the petitioner were actually those which arose from Maharashtra

Prohibition Act and these offences could not be said to be of such nature as would cause or likely to cause any danger or alarm to the public or giving rise to a reasonable suspicion that unlawful design is entertained by the gang. He further submits that except for one or two offences committed by group of persons, other offences are mostly committed individually. Therefore, according to him, power under Section 55 of the Maharashtra Police Act could not have been invoked in the present case. His further objection is about the consideration of additional material which was not brought to the notice of the petitioner regarding any denial of opportunity of showing cause against that material, to the petitioner.

3. So far as, third objection is concerned, learned Additional Public Prosecutor submits that it is a matter of record. As regards other two submissions, it is his submission that there was no prohibition in Section 55 regarding non-consideration of commission of any offence under the provisions of Maharashtra Prohibition Act, especially when they are committed consistently over a long period of time. This is also not the case in respect of which all the offences have been considered while passing the final order or where offences have been committed individually and there were a few offences which were committed by at least two persons.

4. Section 55 of the Maharashtra Police Act (“Police Act” for short) does not indicate anything about the material which would be relevant for reaching a subjective satisfaction by the Authority as regards the activity or encampment of the body of persons to be causing danger or alarm or raising a reasonable suspicion on entertain of unlawful design by a group or body of persons, unlike Section 56(1)(b). While Section 56(1)(b) of the Police Act indicates the offences to be relevant by limiting them to those which involve force or violence or any other offence punishable under Chapter 12, 16 and 17 of the Indian Penal Code, Section 55 of the Police Act does not prescribe any such limitation. It only states that the movement or encampment of any gang or persons, as we have just stated, should be such as to cause or as would be calculated to cause danger or alarm or reasonable suspicion that unlawful designs are entertained by such gang or body or by members thereof. So, for the purpose of Section 55 of the Police Act, causing of danger or alarm or creation of suspicion about unlawful designs is important and not any material, irrespective of it having in connection with commission of a particular offence which is sufficient to arrive at a satisfaction about danger or alarm or unlawful design. Therefore, even when a subjective satisfaction is reached by an Authority by considering the offence punishable not only under the Indian Penal Code but also the

provisions of some other Acts such as Maharashtra Prohibition Act and Maharashtra Gambling Act, such material could not be considered as being beyond the scope and pale of Section 55 of the Police Act. The argument made in this behalf is, therefore, rejected.

5. Shri Daga, learned counsel for the petitioner has relied upon the case of *Vijay Lalso Jadhav V/s. State of Maharashtra and Ors.* reported in **2014 ALL MR (Cri) 1277** in support of his argument that what is contemplated under Section 55 of the Police Act is activity of a gang and not of an individual. There is no dispute about the proposition of law that the criminal activity which is required under Section 55 must have been undertaken either by a gang or a body of persons or any member thereof and it is not that such activities have been carried out by any individual accused person. We have already seen in the present case that the criminal activity considered by the Authority is not only of one individual and, therefore, such consideration cannot be said to be illegal. Therefore, we are of the view that the case of *Vijay Lalso Jadhav* (supra), on facts, would render no assistance to the petitioner here.

6. Shri Daga, learned counsel for the petitioner, has also relied upon the judgment of this Court in the case of *Ajay Prabhakar*

Pahune V/s. State of Maharashtra & Anr. reported in **2018 ALL MR (Cri) 5241** to support his argument that Maharashtra Prohibition Act offences are irrelevant for the purpose of Section 55. In fact, we have already rejected this argument and upon perusal of the judgment delivered in *Ajay Prabhakar Pahune* (supra) we are even more convinced that the view taken by us is correct. The reason being that *Ajay Prabhakar Pahune* (supra) is a case where power under Section 56 of the Police Act and not the one under Section 55, was invoked. We have already dwelt upon the distinction between the powers under Section 55 and one under Section 56 of the Police Act and, therefore, suffice it to say it here that case of *Ajay Prabhakar Pahune* (supra) would be of no assistance here.

7. The last submission of learned counsel for the petitioner related to consideration of additional material by the Authority in respect of which no opportunity of hearing was granted to the petitioner, we must say that there is great substance in the same. The record of the proceedings and also the show cause notice as well as the impugned orders do show that the additional material about which no idea either was given to the petitioner, has been considered in the present case for passing adverse orders against the petitioner. While the show cause notice referred to only 6 crimes, what has been

considered while passing the impugned orders is the material comprising 9 crimes registered against the petitioner. Three crimes, namely, Crime No.273/2017, Police Station Murtijapur City, Crime No.122/2019, Police Station Murtijapur City and Crime No.114/2020, Police Station Murtijapur City were never mentioned in the show cause notice but have been considered as constituting relevant material for reaching subjective satisfaction by the Authority and this has been done without giving any opportunity of hearing to the petitioner in respect of these offences. This is not permissible in law as it violates the principal of natural justice and this fact goes against the principle of rule of law. Therefore, on this count alone we are of the view that the impugned orders cannot be sustained in the eye of law and they deserve to be quashed and set aside. Now, the question would arise as to whether the matter can be remanded back to the Authority for its fresh consideration from the stage of hearing or not. Ordinarily, we would have certainly explored this option had it been the case that the material which is available in the present case is fresh and is not vitiated by vice of staleness. Unfortunately, we find that if this matter is to be considered afresh, it would have to be done on the basis of such material which is quite old, with the first offence having been registered in the year 2015 and the last of the offences having been registered on 8th July, 2020 (Crime No.157/2020, Police Station

Murtijapur City), registered about 4 and ½ months before passing of the first impugned order dated 30.11.2020. Now, if this case is to be considered afresh, the antiquity of the material available for consideration would increase and it only lead to the conclusion of absence of any live link between the material to be considered and subjective satisfaction to be reached as regards the causing danger or alarm or suspicion regarding entertainment of unlawful designs. Therefore, the purpose that is sought to be achieved by any externment order to be passed under Section 55 of the Police Act would not be served. In the circumstances, we are inclined to allow this petition to the extent of the petitioner and it is allowed accordingly. The impugned orders in so far as they concern and relate to the petitioner are hereby quashed and set aside.

JUDGE

JUDGE

Tambaskar.