

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

951 CRIMINAL WRIT PETITION NO.469 OF 2022

Devidas Lalji Ade
Age: 64 Years, Occu.: Agri.,
R/o. Bhategaon, Tq. Kalamnuri,
Dist. Hingoli .. Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department (Special),
Mantralaya, Mumbai
2. The District Magistrate,
Hingoli, Tq. & Dist. Hingoli
3. The Superintendent,
Parbhani Central Prison,
Parbhani, Dist. Parbhani .. Respondents

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Advocate for Petitioner: Mr. Vikram R Dhorde
APP for Respondents: Mr. M. M. Nerlikar

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**CORAM: SARANG V. KOTWAL &
BHARAT P. DESHPANDE, JJ.**

DATE: 13th JULY, 2022

ORAL JUDGMENT (Per Sarang V. Kotwal, J.):

1. The Petitioner is challenging the
detention order No.2022 DC-1/KAVI-04/2022/01 dated
07.01.2022 issued by Respondent No.2 the District

Magistrate, Hingoli and which is confirmed by the State of Maharashtra.

2. Heard Mr. V. R. Dhorde, learned Counsel for the Petitioner and Mr. M. M. Nerlikar, learned APP for the Respondents.

3. The detention order was issued under Section 3 Sub-Section 1 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 (*hereinafter referred to as MPDA*). The detention order was issued on 07.01.2022 and on the same day the Petitioner was detained. On that day itself the grounds on which the detention order was passed were supplied to the Petitioner.

4. On 14.01.2022, he made a representation to the State Government. It was rejected on 21.01.2022. On 18.01.2022, the Petitioner was informed that the State Government had approved

the detention order passed by Respondent No.2 i.e. the District Magistrate, Hingoli. On 25.01.2022, the Petitioner was informed that his case was referred to Advisory Board and after its Report the detention order was confirmed on 04.03.2022 under Section 12 of the MPDA.

5. Learned Counsel for the Petitioner submitted that the statements of the witnesses recorded during the investigation of the registered offences; were not supplied to the Petitioner. In-camera statements which are referred to in the grounds of detention are vague and general. Lack of basic particulars in those in-camera statements had deprived him of making an effective representation under Article 22(5) of the Constitution of India. The period mentioned in the in-camera statements is of the year 2020 and those statements were recorded in November 2021 and, therefore, those incidents are stale and irrelevant for the purpose of detention. The verification of these in-camera statements is not properly recorded and there is no contemporaneous

record to show that the verifying officer and the detaining authority himself were satisfied about truthfulness about the occurrence of those incidents and about the fear expressed by the witnesses.

6. Learned Counsel for the Petitioner submitted that there is nothing on record to even suggest that the ordinary law of the land was ineffective and, therefore, resorting to this extraordinary measure of issuing detention order was not necessary at all.

7. Learned APP opposed this Petition with reference to the *affidavit-in-reply* filed by Respondent No.2 i.e the District Magistrate, Hingoli. The *affidavit-in-reply* basically reproduces the grounds of the detention order. It is mentioned in Paragraph No.14 of the *affidavit-in-reply* that the statements recorded during investigation are not relevant for passing the order of detention. Therefore, non supplying of such documents has not affected the Petitioner's

right to make the representation. As far as the last registered offence was concerned, the CA Report was awaited when the detention order was passed. However, the Government Medical Officer's opinion was considered by the detaining authority.

8. Learned APP submitted that registration of an offence is not necessary in the cases of bootleggers who are required to be detained because of their activities. It is their activities in general and live link in those activities that requires passing of detention orders and, therefore, if they are not arrested in any particular offence, it does not affect the power of the detaining authority to pass the detention order. He submitted that there is record to show that the in-camera statements were verified by a subordinate officer to the detaining authority. It was relied on by the detaining authority. According to the learned APP, the Petitioner was asked to execute a bond under Section 93 of the Maharashtra Prohibition Act and in spite of that, he had breached the bond. This

shows that the preventive action taken against him in the past was insufficient and, therefore, there was necessity to pass the detention order. According to the learned APP, the activities of the Petitioner are affecting the public order and not only the law and order.

9. We have considered the submissions canvassed by the learned Counsel for the Petitioner and the learned APP.

10. The grounds of detention which are served on the detainee are dated 07.01.2022. In first four paragraphs, the detaining authority has referred to the activities of the detainee in general and in paragraph no.4 in particular the list of previous registered cases and the action taken against him are specifically mentioned. However, in Paragraph No.5, the detaining authority has categorically stated that the preventive action was taken based only on the following consideration -

(I) C.R.No.125/2021, C.R.No.373/2021 and C.R.No.468/2021. All these offences were

registered at Aakhada Balapur Police Station under Section 65(e) of the Maharashtra Prohibition Act, and

(II) In-camera statements of witnesses 'A' and 'B'.

In Paragraph No.5.4 he has recorded the satisfaction that ordinary law of the land was insufficient in curbing the criminal activities of the detinue. In Paragraph No.5.6 he has recorded his satisfaction based on the three registered offences and two in-camera statements mentioned in Paragraph No.5. He was subjectively satisfied that in future also the Petitioner was likely to involve in activities affecting the public order.

11. As far as the in-camera statements are concerned, they are mentioned in Paragraph No.5.5 and 5.6. The witness 'A' has stated that he is a resident of Bhategaon and he knew the Petitioner. He was aware of his activities and that he was in the business of selling illicit liquor. According to him, the Petitioner was in this business since about 15 years and his activities were assuming

dangerous proportion. In the year 2020, during lockdown period, he was bringing the liquor from his farm and was selling it on the main road in the village. When the villagers objected, they were threatened and because of his threats nobody gave any complaint. People in the locality were having apprehension because of the fear.

12. Witness 'B' has also given a similar statement. He has also referred to the activities in the year 2020 and has stated that in the year 2020, the Petitioner was selling liquor on the main road and he had threatened the villagers. As far as these two statements are concerned, they were verified by the Sub-Divisional Officer, Sub-Division, Vasmat, Shri Kamble on 07.12.2021. His endorsement merely mentions "Verified".

13. We have perused the original record. There is no contemporaneous record of verification. A Report is given by the same Police Officer dated 04.01.2022 to the Respondent No.2. In the last paragraph of that Report it was

mentioned that he had asked the Police Station Officer of Aakhada Balapur to produce those witnesses. They were produced and on making inquiry with them, they had answered in consonance with their in-camera statements. But there is no contemporaneous record to show that the Sub-Divisional Police Officer had verified the truthfulness of the allegations made in those statements. The detaining authority has exclusively relied on the verification made by the Sub-Divisional Police Officer. In this context, observations of a Division Bench of this Court in the case of Smt. Vijaya Raju Gupta Vs. Shri R. H. Mendonca and others reported in 2001 ALL MR (Cri) 48, are important. In that Judgment, in paragraph No.6 it is mentioned that, it is very difficult to hold that the detaining authority was in fact subjectively satisfied that the assertions made in camera statements were true on the basis of mere verification without there being something more by way of contemporaneous document or material. The ratio of that Judgment applies to this case.

14. Besides this, the period mentioned in those in camera statements is absolutely vague. No specific date or month is mentioned. It mentioned that in the year 2020 during lockdown phase the witness 'A' and 'B' has experienced such activities. Considering the vagueness of the statements, the Petitioner is definitely deprived of making effective representation in that behalf. It has affected his valuable right. Moreover, the statements were recorded on 22.11.2021 and 24.11.2021. There is considerable delay in recording the statements from alleged occurrence of such incidents and his activities for passing of the detention order in January 2022. Those activities are stale. For all these reasons, the in camera statements could not have been relied on by the detaining authority in passing the detention order.

15. That leaves three registered offences against the Petitioner i.e. C.R.Nos.125/2021, 373/2021 and 468/2021 referred to herein above. Admittedly, in none of these offences the

Petitioner was arrested. He was merely served with a notice under Section 41-A(1) of the Code of Criminal Procedure, 1973 in each offence. That means the notice was given to the Petitioner where his arrest was not required. Thus, in all these registered offences, the investigating agency did not feel it necessary to arrest the Petitioner. In Paragraph No.4 of the grounds there is a reference that the action was initiated under Section 93 of the Maharashtra Prohibition Act for execution of bond on 06.09.2021. The bond was for security. Those proceedings were dropped on 24.11.2021. No action was taken for the alleged breach of the bond.

16. Thus, it is quite clear that action was knowingly not taken by the police authorities under the ordinary law. In this view of the matter, resorting to this extraordinary step of detaining the Petitioner by way of preventive detention order can not be justified. In this context, observations of the Hon'ble Supreme Court in the case of Mallada K Sri Ram Vs. State of

Telangana and others reported in 2022 SCC OnLine SC 424 are important. It is observed in Paragraph No.15 thus -

“ A mere apprehension of a breach of law and order is not sufficient to meet the standard of adversely affecting the “maintenance of public order”. In this case, the apprehension of a disturbance to public order owing to a crime that was reported over seven months prior to the detention order has no basis in fact. The apprehension of an adverse impact to public order is a mere surmise of the detaining authority, especially when there have been no reports of unrest since the detenu was released on bail on 8 January 2021 and detained with effect from 26 June 2021. The nature of the allegations against the detenu are grave. However, the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding. The powers of preventive detention are exceptional and even draconian. Tracing their origin to the colonial era, they have been continued with strict constitutional safeguards against abuse. Article 22 of the Constitution was specifically inserted and extensively debated in the Constituent

Assembly to ensure that the exceptional powers of preventive detention do not devolve into a draconian and arbitrary exercise of state authority. The case at hand is a clear example of non-application of mind to material circumstances having a bearing on the subjective satisfaction of the detaining authority. The two FIRs which were registered against the detenu are capable of being dealt by the ordinary course of criminal law."

17. The same view was followed in another Judgment of the Hon'ble Supreme Court in the case of Shaikh Nazneen Vs. The State of Telangana and others in Criminal Appeal No.908 of 2022 decided on 22.06.2022. *Mallada K. Sri Ram Vs. The State of Telangana and others* was referred to in Paragraph No.18. Apart from that, in Paragraph No.17 it was observed that the State is not without a remedy, as in case the detenu is much a menace to the society as is being alleged, then the prosecution should seek for the cancellation of the bail and / or move an appeal to the Higher Court. But definitely seeking shelter under the preventive

detention law is not the proper remedy under the facts and circumstances of the case.

18. In the present case, the Petitioner was not even arrested in the three registered offences and, therefore, these observations are applicable to the present case. Learned APP submitted that the Petitioner's activities are prejudicial to the maintenance of public order, however, the detaining authority has failed to record a satisfaction as to why ordinary law of the land was ineffective in curbing his activities. Merely stating that ordinary law of the land was not effective to curb his activities is not enough. In the Petitioner's case no steps were taken under normal law to curb his activities and hence it can not be said they were ineffective. Therefore resorting to passing of the detention order was not necessary. It shows non-application of mind on the part of the detaining authority. In this situation, it was not necessary to have resorted to this extraordinary remedy without exercising the powers under the ordinary law.

19. In view of this discussion, the detention order is not sustainable. Therefore, it is not necessary to discuss the other points raised by the learned Counsel for the Petitioner. Hence, the following order-

ORDER

[I] Rule is made absolute in terms of prayer clause "B".

[II] The detention order No.2022 DC-1/KAVI-04/2022/01 dated 07.01.2022 is quashed and set aside.

[III] The Petitioner be released forthwith if not required in any other case.

20. Criminal Writ Petition stands disposed of.

[BHARAT P. DESHPANDE, J.] [SARANG V. KOTWAL, J.]

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