

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 1078 OF 2022

Shri Sanjay Ramu @ Rama Pawar,
Age: 39 years, Residing at Mulegaon,
Laman Tanda, Solapur
(presently in Yerwada Jail)

... Petitioner.

V/s.

1. The State of Maharashtra (Through
Commissioner of Police, Solapur),
2. Superintendent of Yerwada Central Prison.
3. The Advisory Board. ... Respondents.

Mr. Deepak Thakare a/w. Gopal Narayan Parab for the Petitioner
Ms M.H. Mhatre, APP for the Respondent – State.

***CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.***

DATE: 19 July 2022.

JUDGMENT: (Per Nitin Jamdar, J.)

By this Petition, the Petitioner is seeking a writ of habeas corpus challenging the order of detention dated 3 January 2022 issued by the Respondent No.1 – Commissioner of Police, Solapur.

The order of detention is passed under 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 (MPDA Act). Since the Petitioner is detained pursuant to the detention order, the Petitioner is praying that he be set forth at liberty.

2. The grounds of detention were supplied to the Petitioner. The grounds state that the Petitioner has a criminal record and he is a known bootlegger in various areas within the jurisdiction of M.I.D.C. Police Station, Solapur. He is engaged in offences of transporting, supplying and selling country-made liquor in contravention of the Maharashtra Prohibition Act, 1949. The Petitioner owns and established many dens selling country-made liquor. The associates of the Petitioner carrying weapons such as knife, sura, gupti and lathis visits every day; they negligently drive vehicles carrying the liquor. Also due to the supply, transportation and selling of the country-made liquor in this manner, stench has been created in the area, jeopardizing the health of the residents. The Petitioner and his associates assault people who oppose the illegal business and, thus, they are afraid to inform the police of his activities. For the sake of easy money, the Petitioner is carrying out the business of selling country-made liquor; his activities have spread fear and terror, and no one is coming forward to inform the police.

The police have taken action against the Petitioner many times, but the Petitioner has continued his illegal business. It was then stated that the Petitioner recently committed twelve offences under the Maharashtra Prohibition Act ranging from 7 May 2021 to 18 August 2021. The offences are under Section 65(e) and 81 of the Act of 1949. Around 333 litres of country-made liquor was collected during the investigation. Chemical Analysis reports show that it contained Ethyl alcohol in water, and the Department of Forensic Medicine and Toxicology has opined that Ethyl alcohol is injurious to the human body. These cases were taken into consideration by the Detaining Authority.

3. Two In-Camera statements of the Witnesses 'A' and 'B' were recorded. Witness 'A' stated that he is residing in the locality and knows the Petitioner and his associates. The Witness saw three speedy motorcycles and one of them knocked down a child in front of his shop. The child had received the injury on his hand. The motorcycles were carrying rubber tubes containing liquor which spread on the road. When the Witness accosted the Petitioner, the Petitioner tried to assault him with the sura, but he missed the strike. However, the Petitioner's associates started beating the Witness with lathis. Seeing this, people from the neighbourhood ran away and closed their shops. The Petitioner threatened the Witness stating that if he obstructs any more, the Petitioner would burn his shop along with him. He forcibly removed Rs.2,000/- from the Witness's

shirt pocket. Witness 'B', whose statement was recorded, stated that on 4 November 2021, when he was transporting passengers in his auto rickshaw, came across the Petitioner along with his five-six associates on the motorcycles. The Petitioner demanded that the Witness should take his country liquor in the rickshaw and when he refused, he started beating the Witness. The Petitioner took a knife from his pocket and threatened the gathered crowd who ran away in far. The Petitioner's associates also pelted stones. The Petitioner threatened the Witness not to report the matter to the police; otherwise, he would set fire to the rickshaw.

4. The proposal dated 6 December 2021, along with the accompanying papers, was submitted as per the usual practice, first to the A.C.P. Div-01; he went through all the papers and gave his endorsement on 7 December 2021. It is stated that the papers were thereafter forwarded to the Deputy Commissioner of Police (Zone). The Deputy Commissioner of Police (Zone) went through all the papers and put endorsement thereon on 8 December 2021. Thereafter, all the papers were forwarded to the Deputy Commissioner of Police (Crime). He gave his endorsement after Scrutiny on 9 December 2021. Thereafter, papers were forwarded to Senior Police Inspector (Crime) on 10 December 2021, who endorsed the same on 15 December 2021 and placed the proposal before A.C.P. (Crime), who endorsed it on 17 December 2021 and

placed the proposal before A.C.P. (Crime) who endorsed on it on 17 December 2021 and placed before D.C.P. (Crime), Solapur who in turn endorsed it on 21 December 2021. There were four holidays from 6 December 2021 to 21 December 2021 being, Saturday and Sunday. Thereafter, all the papers were put up before the then Detaining Authority. The order of detention was issued based on twelve incidents and two In-Camera statements of Witnesses A and B recorded on 30 November 2021 and 2 December 2021. The Detaining Authority relied on these twelve cases and two In-Camera statements of Witnesses 'A' and 'B', and formed the subjective satisfaction that the Petitioner was a Bootlegger within the meaning of Section 2(b) of the MPDA Act, his activities were prejudicial and to maintain public order it is necessary to detain him under the MPDA Act to prevent him from acting in such prejudicial manner in future. Accordingly, the Detaining Authority passed the order of detention. The Representation made by the Petitioner was rejected. The detention order is impugned in this Writ Petition.

5. Reply affidavits are filed by the Commissioner of Police, Solapur, Deputy Secretary, Government of Maharashtra and Superintendent of Yerwada Central Prison, Pune.

6. We have heard Mr Deepak Thakare, learned Counsel for the Petitioner and Ms. M.H. Mhatre, APP for the State.

7. Mr.Thakare, the learned counsel for the Petitioner raised three contentions. Firstly, there is a delay in sending the samples. It is submitted that the contraband was collected in the samples, and the samples were sent to the Forensic Laboratory for chemical analysis, and the samples reached very late, and this also shows the casual attitude of the authority and non-application of mind. Secondly, there is no live link and proximity to the incidents and the order of detention. It was also contended that the last In-Camera statement was recorded, and there is a delay of one month from the In-Camera statement recorded, and the order of detention and this delay shows that the detention was unnecessary. Thirdly, in all the cases referred, the Petitioner has been granted bail, and the State would have moved for cancellation of the bail, and the same effect would have been achieved by cancelling the bail and resorting to the power of detention which is an extreme power was not necessary. Activities of the Petitioner were such that they could have been controlled under the ordinary law, and it was not necessary to pass the order of detention.

8. Ms.Mhatre, learned APP has relied upon the reply affidavit filed by the Detaining Authority - the Commissioner. It is stated in the reply that approximately 333 litres of the country made liquor was collected during the investigation. The Chemical Analysis report shows that the "Sample contains Ethyl Alcohol in water". In the said contraband, the "sample contains minimum 09% to

maximum 15% V/V of Ethyl Alcohol in water". The department of Forensic Medicine and Toxicology, Dr V.M. Government Medical College, Solapur opines that "the said Ethyl Alcohol is injurious to human body". The learned APP stated that since the activities of the detenu could not be curbed under the ordinary law of the land, and after considering the incidents from various angles since, the then Detaining Authority was satisfied that it was absolutely necessary to issue the order of detention, hence, the same was issued. It was contended that after looking at the involvement of the detenu, the then Detaining Authority was satisfied that after the Petitioner as a free person, was immersing likely to revert to similar activities prejudicial to the maintenance of public order and hence it was necessary to detain him under the MPDA Act.

9. We have considered these submissions. There is no merit in the contentions of delay, proximity and live link as regards the detention order. As held by the Division Bench in the case of *Nagnarayan Sarya Singh v/s. A.N. Roy and Ors.*¹ the delay will have to be computed from the date when the last material came to be known to the sponsoring authority. The In-Camera statements were recorded on 2 December 2021. The proposal was submitted by the sponsoring authority on 6 December 2021, and the order of detention was issued on 3 January 2021 within a period of four weeks. In these facts, we do not find any delay as contended to quash

¹ (2006) All MR (Cri.) 2147

the detention order on the ground.

10. Regarding the delay in sending the sample, the argument is on the merits of the prosecution case. The Hon'ble Supreme Court in the case of *Haradhan Saha and Anr. v/s. The State of West Bengal and Ors.*² has observed that the power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It is not a parallel proceeding. It does not overlap with the prosecution, even if it relies on certain facts for which prosecution may be launched or may have been launched. Therefore, this contention on the merits of the prosecution case of the Petitioner also cannot be accepted.

11. The next argument is that the In-Camera statements are recorded only to fill the gap relating to the delay in issuing the order of detention. There is no challenge before us to the verification of the In-Camera statements. The In-Camera statements have been properly recorded and verified, and the proper ranking authority has verified them. There is no reason why these In-Camera statements be removed from consideration and why they should not form material for subjective satisfaction of the Detaining Authority. The argument is only a phrase employed without demonstrating how the argument arises in the facts of the case.

² (1974) AIR 2154, (1975) SCR (1) 778

12. The next contention of the Petitioner is that the Petitioner was granted bail in all twelve cases, and the State should have applied for cancellation of bail and not resort to the power of detention. We have not been shown any decision laying down this absolute proposition that if a person is on bail and the State does not move for cancellation, the power of detention cannot be exercised. It was then contended that the offences in respect of the Petitioner could have been dealt with under the ordinary laws, and there was no need to resort to the power of detention. In support of this contention, Mr.Thakare relied upon the decisions of *Mallada K Sri Ram v/s. The State of Telangana and Ors.*³, *Munagala Yadamma v/s. State of A.P. and Ors.*⁴, *Rekha v/s. State of Tamil Nadu and Anr.*⁵, *Banka Sneha Sheela v/s. The State of Telangana and Ors.*⁶

13. In the case of *Mallada K Sri Ram*, the Hon'ble Supreme Court considered an appeal from the judgment of the Division Bench of the High Court of Telangana dismissing the writ petition seeking a writ of habeas corpus. In this case, the Supreme Court found the detention order was based on stale material and demonstrated non-application of mind. The Supreme Court found that based on this stale material, the apprehension that the acts were likely to be repeated in future was not sufficient material. It was

3 (2022) LiveLaw (SC) 358

4 (2012) 2 SCC 386

5 (2011) 5 SCC 244

6 (2021) 9 SCC 415

noted that there was no live link between the past cases to pass a detention order nearly five months after the bail. In the case of *Munagala Yadamma*, the Supreme Court considered the matter arising from the order of detention passed under the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986. In this case, a reference was made to the decision of three Judges Bench of the Supreme Court in the case of *Rekha v. State of Tamil Nadu* and a finding was recorded that the offences complained against the applicant therein were of the nature which can be dealt with under an ordinary law of the land. Since the decision in *Munagala Yadamma* followed the decision in *Rekha*, the decision of the three Judges Bench of the Supreme Court in the case of *Rekha* will have to be noted. In the case of *Rekha*, the order of detention was passed on the ground that the detenu therein was selling expired drugs after tampering with the labels. The detention order referred to past similar instances; however, as regards the past instances, the Detaining Authority did not give any details and, therefore, the Supreme Court found that the statement was mere *ipse dixit* and, thus, there was no material justifying apprehension of repeated offences as the detention order was based only on one instance. The Supreme Court, in the case of *Banka Sneha Sheela*, dealt with the challenge to the detention order under the Telangana Prevention of Dangerous Activities Act with an allegation against the detenu that

the detenu introduced himself as an advocate and insisted upon the complainant to invest money with lucrative returns and when the money was demanded back by the Complainant, the detenu threatened him. The detention order was based on these instances of cheating. The Supreme Court noted that the order of detention was passed nine months after the last material before the Detaining Authority and concluded that the activities of the Petitioner did not affect the public order.

14. In none of the above-cited decisions, any absolute proposition of law, as sought to be contended by the Petitioner, is laid down that activity of bootlegging cannot affect the public order and for these activities only the action under the ordinary law must be taken. Under Section 2 (b) of the Act of 1981, a Bootlegger *inter alia* 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 Bombay Prohibition Act, 1949 and the rules and orders made thereunder. Section 2(b) lays down that a Bootlegger is acting in any manner prejudicial to the maintenance of public order when he 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. Thus it will have to be examined whether the facts of the case justify the subjective satisfaction of the Detaining Authority that the prejudicial activities were affecting the

public order and cannot be contained under ordinary law.

15. In the case at hand, the Detaining Authority was aware that the detenu was on bail but in view of the tendencies and inclinations reflected in the offences committed by the detenue, the Detaining Authority was subjectively satisfied that if the Petitioner was free, he was likely to revert to similar activities prejudicial to the maintenance of public order in future. The material before the Detaining Authority showed that the past punitive action was taken against the detenu; however, it was not sufficient to stop the activities of the Petitioner. Hence, to prevent the detenu from acting in similar prejudicial activities in future, it was necessary to preventively detain him. The Petitioner committed 28 offences from 11 February 2012 to 27 September 2019 under the Maharashtra Prohibition Act, 1949. Though the detention order was not based on the offences, it highlighted previous criminal history. From the past prejudicial activities of a person, a reasonable forecast about his future activities can be made. Petitioner recently committed twelve offences under the Maharashtra Prohibition Act ranging from 7 May 2021 to 18 August 2021. For the present criminal activities of the Petitioner, preventive action was taken against the Petitioner thrice under Section 93 of the Maharashtra Prohibition Act, and a bond has been taken. Apart from these twelve crimes registered, two In-Camera statements of the witnesses were recorded. These facts demonstrate

that the activities of the Petitioner could not be controlled under the ordinary law. No decision comparable to these facts and circumstances is shown. If, in these facts and circumstances, when the action taken against the detenu under the ordinary law of the land was found to be inadequate and ineffective in preventing the criminal activities of the detenu, resort to issuing the order of detention against the Petitioner cannot be faulted with.

16. To conclude, there is no merit in the challenge raised by the Petitioner to the order of detention. Writ Petition is dismissed. Rule discharged.

N.R. BORKAR, J.

NITIN JAMDAR, J.