

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

CRIMINAL WRIT PETITION NO.386 OF 2022

PETITIONER : Vilas S/o Bhaurao Surjuse,
Aged about 41 years, Occ :
Agriculturist, R/o Khed, Tq. Morshi,
District : Amravati.

..VERSUS..

RESPONDENTS : 1. Additional Chief Secretary,
Govt. of Maharashtra, Home
Department, Mantralaya, Mumbai-440
032.
2. Collector and District Magistrate,
Amravati, District-Amravati.
3. Sub Divisional Police Officer,
Amravati Sub Division, Amravati, Tq.
& District – Amravati.
4. The Police Inspector,
Police Station-Morshi.
Tq. Morshi & District – Amravati.

Shri A. J. Mirza, Advocate for the Petitioner.
Shri S. S. Doifode, Addl. P. P. for the Respondents.

CORAM : **MANISH PITALE AND**
VALMIKI SA MENEZES, JJ.

DATE : **30th AUGUST, 2022.**

ORAL JUDGMENT : **(PER : MANISH PITALE, J.)**

1. **Rule.** Rule made returnable forthwith. The criminal writ petition is heard finally with consent of the learned counsel appearing for the parties.

2. By this petition, the petitioner has challenged detention order dated 02.03.2022, passed by the respondent no.2/Collector and District Magistrate, Amravati, as also orders dated 11.03.2022 and 20.04.2022, passed by the respondent no.1 confirming the detention order.

3. Shri Mirza, learned counsel appearing for the petitioner submitted that the respondent no.2/Detaining Authority relied upon two offences registered on 14.12.2021 and 16.02.2022, against the petitioner, both for offences under Section 65(e) of the Maharashtra Prohibition Act 1949 (for short, "the Maharashtra Prohibition Act"), which pertains to selling or buying or possessing of any intoxicant, other than opium or hemp. It was submitted that in both these offences, admittedly the concerned Police Officer did not deem it appropriate to arrest the petitioner and notice under Section 41-(a)(1) of the Criminal Procedure Code, 1981 (Cr.P.C.) was issued to him. It was further submitted that the in-camera

statements of two witnesses dated 18.02.2022, are also of general nature and that such material could not be said to be enough for reaching subjective satisfaction on the part of respondent no.2/Detaining Authority for issuing detention order against the petitioner under Section 3 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 (for short, “the MPDA Act”).

4. It was further submitted that the offences registered against the petitioner, upon which, the Detaining Authority placed reliance, could not be said to be of such nature that public order was disturbed due to the presence of the petitioner in the society at large and that therefore, the impugned detention order and the orders passed by the respondent no.1 confirming the same, ought to be set aside. The learned counsel for the petitioner relied upon judgment of this Court in the case of Hanif Karim Luluwale .vs. State of Maharashtra and others (Criminal Writ Petition No.75 of 2022, decided on 28.06.2022.)

5. On the other hand, Shri S. S. Doifode, learned Additional Public Prosecutor appearing for the respondents invited attention of this Court to the contents of the detention order, as also the contents of the two in-camera statements dated 18.02.2022, upon which the Detaining Authority had placed reliance. It was submitted that the petitioner has been indulging in the aforesaid offence under the provisions of the Maharashtra Prohibition Act, repeatedly and due to such nefarious activities, there was disturbance of public order, warranting issuance of such detention order. It was submitted that the Detaining Authority had specifically expressed subjective satisfaction about the petitioner being a bootlegger as defined in Section 2 (b) of the MPDA Act. It was submitted that there was live link between the offences upon which reliance was placed, as also the in-camera statements, thereby justifying issuance of the detention order.

6. We have perused the material on record in the backdrop of the submissions made by the learned counsel appearing for the rival parties. The Detaining Authority has placed reliance on two offences registered on 14.12.2021 and

16.02.2022, bearing Crime Nos.791 of 2021 and 87 of 2022 respectively, both for offence under Section 65(e) of the Maharashtra Prohibition Act. The detention order itself records that notices were issued to the petitioner under Section 41(a) (1) of the Cr.P.C. by the Police Officer and that he did not deem it fit to arrest the petitioner in the context of the said offences.

7. We have also perused the contents of the in-camera statements dated 18.02.2022, upon which, reliance has been placed by the Detaining Authority. We find that the in-camera statements are of general nature, indicating altercation between the witnesses and the petitioner about his riding motor cycle and a vehicle in a dangerous manner, while allegedly transporting illicit liquor. It is on the basis of such material that the Detaining Authority has concluded that the petitioner is a bootlegger under the provisions of the MPDA Act, justifying issuance of the detention order.

8. It settled law that there is clear distinction between “law and order” and “public order”. It has been laid down in a series of judgments of the Hon’ble Supreme Court and this

Court that the two concepts are distinct and if the activities of the detenu can be taken care of by ordinary law, the extraordinary power of issuing detention order ought not to be exercised. There has to be sufficient material to indicate that the presence of the detenu in the society at large would lead to public disorder, in the light of the material available before the Detaining Authority.

9. The Division Bench of this Court, considering similar set of facts, in the case of Hanif Karim Luluwale .vs. State of Maharashtra and others (supra), held as follows :

“6. This is for the reason that for these very crimes, the Investigating Officer did not think it fit to arrest the petitioner. Arrest for these crimes, which are cognizable, was possible for the Investigating Officer by recording his requisites satisfaction under Section 41-(1)(ii)(a) of the Cr.P.C. which lays down that Police Officer may without an order of Magistrate and without a warrant, arrest any person if he is satisfied that such arrest is necessary, for the reason inter-alia, of preventing such person from committing any further offence. Such being the nature of the power of the Investigating Officer, which power Investigating Officer has not exercised in the present case, it cannot be said that registration

of four bootlegging crimes against the petitioner provided any reasonable material for detaining authority to arrive at his requisite satisfaction.

11. *The impugned order, it is further seen, also does not explain as to how bootlegging activity per se and by itself would adversely affect public order. Any bootlegging activity in which involved is manufacture of illicit liquor can be presumed to be adversely affecting public health. But, there is no presumption in fact or law that every incidence of disturbance of public health would necessarily result in disturbance of public order. Covid-19 pandemic is the biggest example of this preposition. During that period of time, public at large was afflicted with Covid-19 infection. It was an en masse phenomenon but, our common experience has shown that it did not lead to disturbance of public order in general. Therefore, the authorities would be required to satisfy themselves as to how disturbance of public health in certain cases would result in also disturbance of public order. Such satisfaction has not been reached in the present case.”*

10. We are of the opinion that the aforesaid position of law laid down in the above quoted judgment applies to the facts of the present case also. We fail to understand how two offences taken into consideration by the Detaining Authority,

even if indicating activity of bootlegging, would be sufficient to reach a conclusion that “public order” would be adversely affected, if the petitioner is permitted to continue to move in the society at large. The material available on record, including the in-camera statements, which appear to be of a very general nature, do not justify invoking the extraordinary power under Section 3 of the MPDA Act, for issuing the detention order. Therefore, we find that there is substance in the contentions raised on behalf of the petitioner and that the present petition deserves to be allowed. We are also of the opinion that the respondent no.1, while confirming the impugned detention order did not apply its mind to the aforesaid facts and confirmed the detention order in a mechanical manner. Therefore, the impugned orders passed by the respondent no.1, also deserve to be set aside.

11. In view of the above, the Criminal Writ Petition No.386 of 2022 is allowed in terms of prayer Clauses (a) and (b), which read as follows:

“(a) Quash and set aside the impugned orders dated 20.04.2022 (Annexure-VI) & 11.03.2022 passed by the

Respondent No.1 (Annexure-V) and also impugned order in CaseNo.D.O.No.AK/MAG/Desk-27/P.S.MORSHI/D.O./Ws. 167/2022 dated 2/3/2022 (Annexure-II), passed by the Respondent No.2 in the interests of justice;

(b) direct the respondents to release the petitioner/detenu forthwith; during the pendency of the instant writ petition.”

12. Consequently, the respondents are directed to release the petitioner from detention forthwith, unless required in any other case. Rule is made absolute in above terms.

(VALMIKI SA MENEZES, J.)

(MANISH PITALE, J.)

TAMBE