

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

CRIMINAL WRIT PETITION NO. 643 OF 2021

Vasim Khan @ Chuha Jahed Khan,
Aged about 30 years, Occ.: Labour,
R/o : Village Alegaon, Taluka : Patur,
District -Akola (In Jail)PETITIONER

---- **VERSUS** ----

1. The State of Maharashtra,
Through its Additional Secretary,
Home Department (Special),
Mantralaya, Fort, Mumbai – 32.
2. The District Magistrate, Akola.
3. The Chairman,
Advisory Board, C/o. : Desk Officer,
Desk -10, Home Department (Special),
Mantralaya, Mumbai, 400 032.
4. The Superintendent,
Central Prison, Nashik Road, Nashik. RESPONDENTS.

Mr. Prakash Jaiswal, Advocate for the Petitioner.
Mr. S. S. Doifode, A.P.P for the Respondents/State.

**CORAM : V. M. DESHPANDE AND
AMIT BORKAR, JJ.**

DATE : 23.03.2022.

JUDGMENT : [PER: AMIT BORKAR, J.]

1. Heard.
2. The petitioner – detenue takes exception to the order dated 07.06.2021 passed by the respondent No.2 - the District Magistrate, Akola preventively detaining the petitioner in exercise of

power under Section 3(2) 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 as “The MPDA Act, 1981”).

3. Shorn of unnecessary details, the background facts leading to this petition can be stated as under :

A proposal was initiated to detain the detainee under the provisions of Section 3 of the MPDA Act, 1981 as the activities of the detainee rendered him a danger person. It is transpired that the detainee and his associates roamed around in the areas falling within the jurisdiction of Channi Police Station, Akola and habitually committed offences under the Maharashtra Prohibition Act, 1949.

4. Despite preventive action having been initiated against the petitioner under the provisions of the Code of Criminal Procedure, there was no element of deterrence and the petitioner continues to indulge in activities, which is prejudicial to the maintenance of public order. Two fresh offences were registered against the petitioner –

- 1] Crime No.192/2021 at Channi Police Station for the offences punishable under Section 65(k)(d) (f) of the Maharashtra Prohibition Act, 1949 and,
- 2] Crime No.124/2021 also at Channi Police Station, Akola under Section 65(d) of the Maharashtra Prohibition Act, 1949.

5. The Sponsoring Authority recorded statements of two witnesses in camera. The confidential statements revealed that the petitioner was persistently indulging in activities subversive of public order.

6. The respondent No.2 thus, recorded a subjective satisfaction that the petitioner was a dangerous person and in order to prevent him from acting in a manner, which was prejudicial to the maintenance of public order, in future, it was necessary to detain the petitioner. Thus, the impugned order of detention under Section 3(2) of the MPDA Act, 1981 was passed and the grounds of detention were served on the petitioner on 07.06.2021.

7. The petitioner has assailed the impugned order on the premise that there is clear non-application of mind taking away personal liberty of the petitioner in a most casual manner. To

bolster the said submission, multifold grounds are raised in the petition.

8. During the course of the arguments, however, the learned Advocate for the petitioner restricted challenge to grounds Nos. H, I and K namely -

- 1] Failure to supply translation of copy of grounds in the mother-tongue of the petitioner and,
- 2] The subjective satisfaction in relation to Crime No. 192/2021 is based on no material i.e. in absence of C. A. Report to show that the sample sent to R.F.L., Amravati was handmade liquor or anything else.

9. The affidavits in replies have been filed by the respondent Nos. 1 and 2 and contested the claim of the petitioner. It is stated in the reply in relation to the grounds H and I that it is specifically denied that the petitioner was not provided with necessary documents required by law and there is no force in his submission. It is pertinent to note that it is not the case of the respondents that the petitioner was aware of language English or Marathi. In relation to ground K, the respondents have merely stated that there is no merit in the ground that the order is not

passed on the basis of material produced before the Detaining Authority.

10. In the light of aforesaid facts and pleadings, we have heard the learned Advocate for the petitioner and the learned A.P.P. for the considerable length. With the assistance of the learned Advocate appearing for the parties, we have perused the material on record. The challenge to the impugned order on the count of non-furnishing of translated copy of Marathi and English documents. It needs to be noted that it is now well settled principle of law of preventive detention that the safeguards embodied in article 22(5) of the Constitution of India extends not merely to oral explanation of the grounds of detention and the material in support thereof in the language understood by the detainee, but also to supplying their translation in script or language which is understandable to the detainee and failure to do so, would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making representation against the said order. (***See - Hadibandhu Das vs District Magistrate, Cuttack & Anr.*** reported in ***AIR 1969 SC 43***)

11. The reply filed by the respondent -Authority does not state that the petitioner knows either English or Marathi language. The petitioner in his representation to the respondent No.1 dated

29.06.2021 has specifically stated that his mother-tongue is Hindi and for the purpose of effective representation, the translation of documents is necessary.

12. We are, therefore, satisfied that the non-furnishing of copies of documents in the language known to the detainee by the Detaining Authority rendered his continued detention illegal, as it affects his right to make an effective representation against such detention.

13. Additionally, we are satisfied that in relation to Crime No.192/2021 about absence of Chemical Analysis Report to decide whether the seized material was hand made liquor or else, the reply filed by the respondents is vague. There is no material placed on record by the respondents that copy of Chemical Analysis Report was before the Detaining Authority while recording satisfaction in relation to the offence under Section 65(k)(d) and (f) of the Maharashtra Prohibition Act, 1949. Therefore, we are satisfied that there is complete non-application of mind on the part of the Detaining Authority.

14. The conspectus of aforesaid consideration is that the material on record indicates that the subjective satisfaction arrived at by the Detaining Authority suffers from vice of non-supply of

translated copies of documents and non-application of mind. Hence, we pass following order :

- i] The petition is allowed.
- ii] The impugned order of detention dated 07.06.2021 passed by the respondent No.2 under Section 3 of the MPDA Act, 1981 stands quashed and set aside.
- iii] The petitioner be set at liberty forthwith if not required to be detained in any other case.

15. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

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