

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

Criminal Writ Petition No.804 of 2021

Nilesh Charandas Gaikwad,
Aged about 42 years,
Occ- Labour,
R/o Mubarakpur,
Tah. Babhulgaon, Dist. Yavatmal,
At present District Prison, Yavatmal.

... Petitioner

Versus

1. State of Maharashtra,
through its Secretary,
Home Department (Special),
Mantralaya, Mumbai.
2. The Collector, Yavatmal,
Dist. Yavatmal.

... Respondents

Shri M.N. Ali, Advocate for Petitioner.

Shri M.J. Khan, Additional Public Prosecutor for Respondents.

CORAM : SUNIL B. SHUKRE & G.A. SANAP, JJ.

DATE : 27th JUNE, 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

1. Heard. By consent, the matter is taken up for final hearing.
2. The order dated 9-9-2021 passed by the respondent No.2-Collector, Yavatmal, whereby the petitioner is preventively detained, is confirmed by the respondent No.1- State by the order dated 14-10-2021 by following due procedure, is under challenge in this petition.

3. We have gone through the impugned order and we find substance in the argument of the learned counsel for the petitioner that the order has been made without there being any material available on record on the basis of which a satisfaction about continuous activities of the petitioner prejudicial to the public order could have been reached by the authorities.

4. The crimes which have been taken into consideration for reaching a conclusion for continuous activities of the petitioner prejudicial to the public order are Crime No.192 of 2021 registered under Sections 65(c)(d) and (f) and 83 of the Maharashtra Prohibition Act, 1949 and Crime No.250 of 2021 registered under Section 65(c) and (d) of the said Act at Police Station Babhulgaon. In both these crimes, the Chemical Analyzer's report is awaited and if that is so, as rightly submitted by the learned counsel for the petitioner, no conclusion about *prima facie* involvement of the petitioner in these crimes could be arrived at, and if that is so, no further conclusion regarding involvement of the petitioner in prejudicial activities could be arrived at. This is also the view taken by the Supreme Court in the case of *District Collector Ananthapur and another v. V. Laxmanna*, reported in 2005 ALL MR (Cri) 1800 (S.C.).

5. Shri Khan, learned Additional Public Prosecutor for the respondents, submits that there are other grounds as well, which have formed the basis for reaching a requisite satisfaction by the authorities and these grounds are to be seen in the adverse material made available on record by the confidential witnesses. In his opinion, this material is sufficient for upholding the impugned order. He relies upon the observations made by the Division Bench of this Court in Para 12 of its judgment in the case of *Ramesh Balu Chavan v. The Commissioner of Police and Ors.*, reported in *2017 ALL MR (Ci) 3683*. In the said Para, the Division Bench has held that even if one or two grounds go away, the other grounds forming the basis for the order of detention remain there and the same are required to be considered separately by the Court while evaluating the legality and correctness of the preventive detention order or otherwise. The Division Bench has also held that as per Section 5A 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, the grounds of detention are deemed to have been made separately.

6. There is no dispute about the severability of the grounds of detention and that would mean that each of the grounds of detention is examined and evaluated for its correctness or otherwise separately

and that too, within the well-settled parameters of law.

7. So, now let us examine the gist of the statements of the confidential witnesses appearing in the impugned order. Witness-A is a person who does not speak of any bootlegging activities of the person who was accosted by him, while that person was found to be passing urine in drunken state. This material considered by the Detaining Authority has no relevance to the satisfaction which is arrived at. In other words, the irrelevant material in the nature of statement of Witness-A appears to have been considered by the Detaining Authority, which is not permissible in law and, therefore, this statement would be of no consequence for passing of impugned order.

8. As regards the statement of Witness-B, we find that it does refer to the bootleggers activity or the activity of manufacturing illicit liquor on a certain date and it also refers to the threats issued by the person indulging in that questionable activity. But, again, this statement does not refer to any series of questionable acts of that person.

9. Besides, the Detaining Authority is required to record a satisfaction that the activity of manufacturing illicit liquor is causing

great prejudice to the maintenance of public order. The activity of bootlegging may be prejudicial to the maintenance of public health, but it is also required to be found by the authority that such activity is prejudicial to the maintenance of public order. There is a huge difference in public health and maintenance of public order. It is not necessary that any danger to public health would always lead to unrest and breach of peace among the members of public. We are, therefore, of the view that even if the statement of Witness-B is accepted as it is, it would lead to a conclusion which is not beyond that of disturbance of public health and, therefore, we are of the further view that there is no requisite satisfaction arrived at by the Detaining Authority. In this view of the matter, we find that the impugned order cannot be sustained in the eye of law.

10. In the result, the petition is allowed and the impugned order dated 9-9-2021 passed by the respondent No.2- Collector, Yavatmal, is hereby quashed and set aside.

11. Rule is made absolute in above terms. No costs.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

Lanjewar

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Signing Date:27.06.2022
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