

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

CRIMINAL WRIT PETITION NO. 846 OF 2021

Milind Hemraj Dhapodkar,
Aged about 35 years, Occ. - Labour,
R/o Bazar Chouk Patansawangi, Nagpur,
At present Central Prison, Nagpur.

.... **PETITIONER**

// **VERSUS** //

- 1) State of Maharashtra,
Through its Secretary,
Home Department (Special)
Mantralaya, Mumbai.
- 2) The Collector, Nagpur,
Dist. Nagpur.

.... **RESPONDENTS**

Mr. Mir Nagman Ali, Advocate for the Petitioner.
Mr. M.K. Pathan, Assistant Public Prosecutor for Respondents.

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATED : 07.07.2022

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally
by consent of the learned counsel appearing for the parties.

2. It is contended by the learned counsel for the Petitioner that the detention order was passed on 20.07.2021 and the last of the crimes registered against the Petitioner was on 09.03.2021 and thus, there is no live-link between the detention order and the last of the criminal activity of the Petitioner. It is also submitted that the bootlegging activity *per se* is not prejudicial to the maintenance of public order. It is further submitted that the Petitioner has not been arrested in the two crimes, which have been considered by the detaining authority and he was merely issued a notice under Section 41A (1) of the Code of Criminal Procedure, 1973 (for short the “Cr.P.C.”), which only shows that in the opinion of the Investigating Officer, the Petitioner was not a person, who was required to be put under restraint by arresting him and if that is so, order of preventive detention is not justified.

3. Reliance is placed by learned counsel for the Petitioner upon the judgments of this Court in Criminal Writ Petition No.736 of 2021, decided on 30.06.2022 (*Jaywanta s/o Gangaram Pawar Vs. The State of Maharashtra and others*), Criminal Writ Petition No. 75 of 2022, decided on 28.06.2022 (*Hanif Karim Lалуwale Vs. State of Maharashtra and others*), Criminal Writ Petition No. 804 of 2021, decided on 27.06.2022 (*Nilesh Charandas Gaikwad Vs. State of Maharashtra and another*) and Criminal Writ Petition No. 833 of 2021,

decided on 01.07.2022 (*Ram Anil Bhaskar Vs. Additional Chief Secretary, Govt. of Maharashtra and others*).

4. Learned Additional Public Prosecutor disagrees and submits that the impugned order is unassailable, as it records requisite satisfaction on the basis of the material available to the detaining authority and considered by the authority. He invites our attention to the observations made by the detaining authority in the impugned order in paragraph No.6, in support of his argument. He also submits that there is a bootlegging activity of the Petitioner which has transformed into such a criminal activity, as is likely to affect the public order prejudicially. Thus, he submits that the Petition deserves to be dismissed.

5. It is true that the Petitioner was not arrested in crime Nos. 129 of 2021 and 48 of 2021 and in both these crimes, he was only given an intimation under Section 41A (1) of the Cr.PC. It is also true that the last of the crimes against the Petitioner was registered on 09.03.2021, while the impugned detention order has been passed on 21.07.2021. Ordinarily such a gap of about more than three months between last crime registered against the Petitioner and passing of the detention order and also the Petitioner not being arrested in two crimes considered against him would have convinced us to uphold the

argument of the learned counsel for the Petitioner. But, in the present case, there is also further material available on record which shows continuity of criminal activity on the part of the Petitioner, which is dangerous to maintenance of the public order, even after 09.03.2021, the date on which the last crime was registered against the Petitioner.

6. There are two confidential witnesses. Their in-camera evidence has been recorded on 02.06.2021 and 05.06.2021. In these statements, there is no doubt, have been verified and have also been appropriately considered by the detaining authority. These statements refer to specific periods of time and also specific incidents thereby making them as capable of being duly verified for genuineness of the statements made therein by the confidential witnesses. These statements, therefore, cannot be rejected as vague statements providing no relevant material for the detaining authority. On going through both these statements, we find that they indeed provide important and relevant material for reaching the necessary subjective satisfaction by the detaining authority, which satisfaction easily has been reached by the detaining authority. It cannot be said that the satisfaction so reached by the detaining authority regarding the necessity of preventively detaining the Petitioner on the ground of his continue criminal activities leading to disturbance of public order is perverse.

7. We are also of the opinion that when the in-camera statements of confidential witnesses are considered in the light of the previous criminal activity of the Petitioner, in which he was given a chance by the Investigating Officer to desist from his criminal activity, together with the bootlegging business of the Petitioner, we would find that there is a chain of criminal activity of the Petitioner established on record and it is of such a nature that it cannot be dismissed simply as affecting public health and not transcending into the arena of public order disturbance.

8. For these reasons, we find that all the cases relied upon by the learned counsel for the Petitioner are distinguishable on facts and hence not applicable to the facts of the present case. Thus, there is no merit in the Petition.

9. The Petition stands dismissed.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)