

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.858 OF 2023

Akash Laxman Telang
Age 31 years, Occ. Business
R/. Dindrud, Tq. Majalgaon
District Beed, at present Wadwani
Tq. Wadwani, District Beed

...Petitioner

Versus

1. The State of Maharashtra
Through its Section Officer,
Home department (Special),
Mantralaya, Mumbai-32
2. The District Collector
Beed, Tq. and Dist. Beed
3. The Superintendent of Jail
Central Jail, Harsool,
Aurangabad, Dist. Aurangabad

...Respondents

...
Advocate for Petitioner : Mr. P.P. More
APP for Respondents: Mr. A.R. Kale

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**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 5th SEPTEMBER, 2023.**

PER COURT :-

1. Heard the learned advocate for the petitioner and learned A.P.P. for respondents.
2. The challenge in this petition is to the order dated 27.3.2023 passed by the District Magistrate, Beed (respondent No. 2)

detaining 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 (MPDA Act). The said detention order has been confirmed by the State Government, Home Department (respondent No.1). The period of detention is for 12 months w.e.f. from the date of detention. The impugned order has been passed holding the petitioner to be a dangerous person and his activities as such are prejudicial to the maintenance of public order.

3. The learned advocate for the petitioner would submit that the impugned order of detention does not disclose the subjective satisfaction, since the cases relied on are all under Section 65 (e) and (f) of Maharashtra Prohibition Act, 1949. The petitioner has not been detained holding him to be bootlegger. Our attention has been drawn to the definition in Section 2 (b-1) of the MPDA Act, whereby the “dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.

4. According to the learned advocate, Section 328 of I.P.C. has been wrongly invoked. The petitioner has been granted

anticipatory bail. The relevant police papers were not placed before the detaining authority and as such, there was no subjective satisfaction on the part of respondent No. 2.

5. The learned A.P.P. would, on the other hand, submit that the order of detention has been passed on both the counts i.e. that the petitioner being bootlegger and dangerous person as well. Our attention has been drawn to the in-camera statements of the witnesses who state that the petitioner armed with a pistol, threatened the victim of dire consequences. He would further submit that the number of cases are registered against the petitioner under the Maharashtra Prohibition Act go a long way to hold the petitioner to be bootlegger. Our attention has also been drawn to the F.I.R. and the related police papers of the last two offences registered under the Maharashtra Prohibition Act. The learned A.P.P. would ultimately urge for rejection of the petition.

6. Considered the submissions advanced, perused the order of detention, the documents relied on and the affidavit in reply filed by the detaining authority. Before advertng to the factual matrix of the case, it would be apposite to refer to relevant provisions of MPDA Act, which are Sections 2(b) and 2(b-1), which read as under:-

“2. In this Act, unless the context otherwise requires,-

.....

(b) *“bootlegger” means a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor intoxicating drug or other intoxicant in contravention of any provisions of the Bombay Prohibition Act, 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacles or any other materials whatsoever in furtherance or support of the doing any of the above mentioned things by or through any other person or who abets in any other manner the doing of any such thing;*

(b-1) *“dangerous person” means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act, 1959.”*

7. Close reading of the order impugned herein, indicate that the detaining authority has passed the same holding the petitioner to be a dangerous person for branding him to be a such person, the definition thereof suggests that his activities should cover at least one of the offences falling under Chapter XVI or XVII of I.P.C. or any of the offences under Chapter V of the Arms Act, 1959.

8. In the case in hand, crimes registered vide C.R. Nos. 5 of 2023 and 15 of 2023 on 12.1.2023 and 25.1.2023, respectively, have

been relied on. Both the offences pertain to manufacturing of illicit liquor by the petitioner. Close reading of the police papers would indicate that in the first case the petitioner was not at the place and one who was found with illicit liquor claimed to be the man of the petitioner. As such, it was a statement of the co-accused. There is nothing further to indicate that the petitioner was involved in the said crime. In the second crime, the police authorities paid visit to the house of the petitioner, as they had received a tip off that the illicit liquor was being manufactured there. Having learnt that the police authorities to have been visiting, the petitioner allegedly fled. What was seized from the site was the material used for manufacturing of illicit liquor. In both the cases, the petitioner has admittedly been granted anticipatory bail. The bail papers were not before the detaining authority, while the order of detention was passed.

9. It is true that Section 328 of I.P.C. has been invoked in both the crimes. Section 328 of I.P.C. reads as under:-

“328. Causing hurt by means of poison, etc. with intent to commit an offence.- Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

10. The Apex Court in the case of **Joseph Kurian Philip Jose vs State of Kerala, reported in (1994) 6 SCC 535**, in para 10 has observed thus:-

“10. In order to prove offence under Section 328 the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug, etc., that the accused administered the substance to the complainant or caused the complainant to take such substance, that he did so with intent to cause hurt or knowing it to be likely that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence. It is, therefore, essential for the prosecution to prove that the accused was directly responsible for administering poison etc. or causing it to be taken by any person, through another. In other words, the accused may accomplish the act by himself or by means of another. In either situation direct, reliable and cogent evidence is necessary. Now on that basis it has to be seen whether A-1 had any role to play in directly administering to or causing to be taken the poisonous liquor by Sreedharan Pillai deceased, who had purchased and consumed liquor from a retail shop, with intent to cause hurt to him or knowing it to be likely that it would cause hurt to him. This has to be solved remaining cognisant that Sections 272 and 328 are separate offences described in the Indian Penal Code.”

11. For constituting the offence under Section 328 of I.P.C. the alleged act needs to be accomplished. In this case, the petitioner herein is not alleged to have administered or caused it to be administered illicit liquor. Suffice it to say, in our view, the facts of the

first crime indicate that the petitioner was not at the place. What has been relied is the statement of co-accused. In other case, he was also not found and he allegedly fled. Whether he is guilty of the offence of Section 328 of I.P.C. and the related offences could only be decided during the trial of the case. We are aware that all these cases relied on while passing the detention order was the subject matter to arrive at the subjective satisfaction.

12. It is true, based on in camera statements, an order of detention can be passed. In the case in hand, the record indicates that although 12 cases were registered against the petitioner under Section 65(e) of the Maharashtra Prohibition Act, the petitioner did not have history of offences against human body. Albeit, the in-camera statements indicate the petitioner to have threatened those two witnesses. It is risky to solely rely on in-camera statements to uphold the detention order. In our view, those statements are insufficient to hold that the petitioner's activities to be prejudicial to maintenance of public order. The petitioner is in jail since March, 2023.

13. For all the aforesaid reasons, we found, the material relied upon fall short to arrive at subjective satisfaction by the detaining authority. We therefore, allow the writ petition in terms of prayer cause "B", "C" and "D".

14. It is made clear that the observations made herein-above are restricted only for the purpose of deciding this proceeding and the trial court shall not be influenced thereby.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)

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