



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

902 CRIMINAL WRIT PETITION NO. 1494 OF 2023

Jibhau s/o Vasant Gaikwad, (Detenue)
Age – 34 years, Occupation- Labour,
Through his real brother
Ratan s/o Vasant Gaikwad,
Age-47 years, Occupation- Labour,
R/o- At post Dapora village,
Taluka and District- Jalgaon.

... Petitioner

Versus

- (1) The State of Maharashtra,
Through its Secretary, Home Department,
Mantralaya, Mumbai-032.
- (2) District Magistrate,
Jalgaon, District- Jalgaon.
- (3) The Superintendent of Police,
Jalgaon, District- Jalgaon.
- (4) Police Inspector,
Jalgaon Taluka Police Station,
Taluka and District- Jalgaon.
- (5) The Superintendent of Prison,
Central Prison, Amravati,
District- Amravati.

... Respondents

...

Mr. Sandesh R. Patil, Advocate for Petitioner.
Mr. A. R. Kale, APP for Respondents / State.

...

CORAM : R. G. AVACHAT and
SANJAY A. DESHMUKH, JJ.

DATE : 21st December, 2023.

Per Court:

. Heard.

2 The challenge in this writ petition is to the order of detention passed 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 "M.P.D.A. Act"). The date of detention is 21st June, 2023. The detention is for a period of 12 months on the ground of the activities of the petitioner being bootlegger were prejudicial to maintenance of public order. The order of detention has been confirmed by the State in the Department of Home.

3 The challenge is mainly on the ground of non-subjective satisfaction of the detaining authority. The ground of delay in passing the detention order has not been specifically raised in this petition. According to the learned counsel for petitioner, the petitioner has been behind the bars for little over 6 months. Although there were 6 crimes registered under Section 65 (f), (b), (c) and (e) of the Maharashtra Prohibition Act, in none of the cases he was ever arrested. According to him, when the ordinary law falls short, then only recourse to drastic provisions of preventive detention are resorted to. According to him,

percentage of alcohol in seized contraband was not more than 13%.
He, therefore, urged for allowing the petition.

4 The learned APP would, on the other hand, submit that the petitioner has continuously indulged in manufacturing and sale of illicit liquor. Five crimes were registered during the period from April, 2020 to February, 2023. All the five crimes have been committed in the close proximity of each other. The petitioner has executed a bond of good behavior for a period of two years in terms of Section 93 of the Maharashtra Prohibition Act. He committed breach thereof and indulged in similar two crimes. According to the learned APP, sale of illicit liquor is necessarily injurious to public health. The detaining authority has specifically observed in paragraph No.11 of the detention order that consumption of ethyl alcohol was injurious to public health. According to the learned APP, sufficiency or insufficiency of material cannot be subject matter of judicial review. He adverted our attention to two in-camera statements. One of the witnesses stated to have had seen the petitioner indulging in the business of manufacturing and sale of illicit liquor. He had, therefore, requested the petitioner not to indulge in such activities. The petitioner slapped him. Similar is the version given by other witness. He too was assaulted by the petitioner. According to the learned APP, such was the terror of the petitioner. No person comes forward to speak against him. According to him, in a

case of conflict between individual interest and public interest, the later shall prevail. He, therefore, urged for dismissal of the petition.

5 Considered the submissions advanced. Perused the order of detention and the documents relied on. It is true that the petitioner has indulged in not less than five crimes, punishable under Section 65 (f), (b), (c) and (e) of the Maharashtra Prohibition Act. First three crimes were committed during the period from April, 2020 to March, 2023, meaning thereby, he was found to have indulged in such crimes once in a year. Thereafter, action under Section 93 of the Maharashtra Prohibition Act was taken against him. The petitioner executed a bond of good behavior for two years. If he has committed a breach, a separate procedure has been prescribed in terms of sub-section (2) of Section 93. The same appears to have not been undertaken by the sponsoring authority.

6 The two crimes committed during the span of six months preceding the order of detention, have specifically been relied on. Those crimes bear C.R. No.1 of 2023 and C.R. No.30 of 2023, committed on 3rd January, 2023 and 22nd February, 2023 respectively. True, within a month both the crimes were allegedly committed by the petitioner. Surprisingly, the Investigating Officer did not prefer to arrest the petitioner in connection with both these crimes. These crimes are

punishable with imprisonment for five years. Meaning thereby the offences are non-bailable. The petitioner was served with notice under Section 41A of the Code of Criminal Procedure. It is not that the said Section bars arrest of an accused involved in commission of offence punishable with seven years of imprisonment. The officer concerned could have recorded reasons for arrest of the petitioner. The learned APP would submit that nothing was required to be recovered from the petitioner and for this reason the petitioner might not have been arrested by the Investigating Officer. The reasons thereof are known to the Investigating Officer alone. Needless to mention, recourse to a drastic provision of preventive detention is made only when ordinary law falls short to curb the illegal activities of the detenu. In none of the five cases, the petitioner had been arrested. It would be anybody's guess that if at least in one of the cases had he been arrested, there might have a deterrent effect. Even he might not have indulged in further activities. In our view, the sponsoring authority, instead of arresting him in last two crimes, preferred to give him notice under Section 41A of the Code of Criminal Procedure, but simultaneously put up proposal for his detention. So far as regards breach of the bond executed under Section 93 of the Maharashtra Prohibition Act is concerned, the sponsoring authority did not move an application to have the bond forfeited and other penal consequences in that regard. For last six months, the petitioner is behind the bars. True, the

petitioner has not averred anything as to the duration of the preventive detention, as to why a maximum period has been exhausted instead of a shorter one. We, therefore, do not address the said issue.

7 Suffice it to say, instead of having recourse to ordinary law of the land, i.e. to arrest the petitioner in the crimes in question, the petitioner has been detained under Section 3 of the M.P.D.A. Act. In our view, therefore, interference with the order impugned herein is warranted. Hence, the following order is passed:

ORDER

- I. The writ petition is allowed in terms of prayer clause (C).
- II. The petitioner be released forthwith, if not required in any other crime.

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]

nga