



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1520 OF 2023

Ashok Chavdas Koli

..Petitioner

Vs.

District Magistrate, Jalgaon
and ors.

..Respondents

Ms.Jayashree Tripathi, Advocate h/f. Mr.R.A.Jaiswal, Advocate for
petitioner

Mr.V.K.Kotecha, APP for State

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

DATE : DECEMBER 13, 2023

ORDER :-

Heard both sides.

2. The challenge in this petition under Article 226 of the Constitution of India, is to the order dated 17.08.2023, passed by the District Magistrate, Jalgaon, detaining the petitioner's son – Sanjay Ashok Koli (detenu) under under Section 3(1) 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 ("M.P.D.A", for short).

3. The challenge in this petition is mainly on the ground of delay in passing the order of detention and not subjective satisfaction of the detaining authority. According to learned counsel for the petitioner, the gap between registration of the last crime and the order of detention is not less than of five months. Delay has not been explained in the affidavit-in-reply. She relies on the judgment of the Apex Court in the case of **Pradeep Nilkanth Paturkar Vs. S. Ramamurthi and ors., AIR 1993 SCW 4066** in support of her contention. She submits that the delay, long or short, has to be explained.

As regards the ground of non-subjective satisfaction by the detaining authority, learned counsel would submit that the two crimes under Section 65(a)(e) of the Maharashtra Prohibition Act, have been relied on for passing the order of detention. She submits that in both the crimes, the detenu was not arrested. He was issued with a notice under Section 41-A of the Code of Criminal Procedure. Learned counsel submits that the same indicates that the Investigating Officer did not find the detenu's activities required his eminent arrest, then, how come the same material is being relied on for detaining the detenu for twelve months.

4. So far as the in-camera statements are concerned, learned counsel for the petitioner would submit that those are as vague as could be. Both the witnesses only state regarding the detenu's indulgence in offence under Section 65(a)(e). Both of them were not the victims of the criminal activities of the detenu. Those statements have been recorded long after registration of the crime relied on. According to learned counsel, those statements were got up only with a view to support the order of detention. She, therefore, urged for allowing the petition.

5. Learned APP would, on the other hand, submit that the order of detention refers to ten crimes registered against the detenu for offence under Section 65(a)(e) of the Maharashtra Prohibition Act. The C.A. reports relating to last two crimes were on record. Percentage of alcohol in the seized illicit liquor was 44% and 45%. Same was necessarily injurious to health. He would further submit that the two in-camera statements reinforce the case of the sponsoring authority. The villagers did not come forward to speak against the detenu, such was the detenu's terror. According to learned APP, the subjective satisfaction of the detaining authority cannot be a matter of judicial review in the proceedings under Article

226 of the Constitution of India. He would further submit that sufficiency or insufficiency of the material relied on, also cannot be considered. Learned APP reiterated that the order of detention itself makes out the grounds of detention. He, therefore, urged for dismissal of the petition. According to him, last five crimes were committed in the close proximity of each other.

6. Considered the submissions advanced. Perused the order of detention and the papers relied on.

7. True, there were ten crimes registered against the detenu during the period from 2019 to 2023. The order of detention, however, indicates that the last two crimes, being Crime Nos.21 of 2023 and 27 of 2023, committed during last six months preceding the date of detention, have specifically been relied on. Moreover, the actions taken under Section 93 of the Maharashtra Prohibition Act in 2021 and 2023, have been referred to besides two in-camera statements recorded in May, 2023.

8. The order of detention is dated 17.08.2023. The crime committed on or before September, 2022 have, therefore, no live-link with the order of detention. The detaining authority has also not

specifically relied on those crime. Then, there are two crimes registered under Sections 65(a)(e) and 65(f)(b)(c)(e) of the Maharashtra Prohibition Act. Admittedly, the detenu was not arrested in both the crimes. He was served with notice under Section 41-A of the Code of Criminal Procedure. Same indicates that the Investigating Officer did not find the detenu's arrest to be eminent for investigation of the crimes. Needless to mention, recourse to the action of preventive detention is made when the ordinary law of land falls short to curb criminal activities of a detenu. Both offences were punishable with imprisonment of five years, meaning thereby they were non-bailable offences. The Investigating Officer could have recorded reasons and arrested the detenu, so as to ensure that the arrest had deterrent effect so as to curb the detenu's illegal activities. Instead of doing so, he put up the proposal for detention of the detenu under Section 3(1) of the M.P.D.A. In our view, therefore, the detaining authority ought not to have acted on the proposal for detention of the detenu under M.P.D.A. Be that as it may.

9. Then, there are two in-camera statements relied on. We have perused both the statements. Both witnesses did not claim to

have ever been threatened by the detenu, if they go public or report to the police about illegal activities of the detenu. Both witnesses simply stated that the detenu indulged in manufacture and sale of illicit liquor. In our view, those statements did not further the case of the respondent – authority since the crime for the very offences have been registered against the detenu.

10. Last crime relied on was registered on 02.03.2023, while the order of detention is dated 17.08.2023. True, in the interregnum, there are two in-camera statements recorded on 27.05.2023 and 30.05.2023. It appears that those statements have been recorded only with a view to make out the case to put up the proposal for detention. Such statement could have been recorded well in advance. It is reiterated that both the in-camera statements did not indicate that the witnesses were the victims of the activities of the detenu. As such, there is delay of five months in passing the order of detention and about little over two months after recording of two in-camera statements. The affidavit-in-reply is silent to offer explanation as regards the delay of five months in passing the order of detention after registration of the last crimes. The Apex Court in the case of **Pradeep Nilkanth Paturkar** (supra), has observed that

the delay, long or short, has to be explained by the authority concerned. We do not find any explanation in the affidavit-in-reply.

11 For all the aforesaid reasons, interference with the order impugned herein is warranted. In the result, the petition succeed. Hence, the following order:-

- (i) The Criminal Writ Petition is allowed in terms of prayer prayer clause (b);
- (ii) The petitioner's son, i.e. detenu - Sanjay Ashok Koli, be released forthwith, if not required in any other case.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP