



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1695 OF 2023

Bhimrao Dhondiram Rathod

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mr. A.N. Barhate Patil, Advocate for petitioner
Mr. A.R. Kale, Add.P.P. for respondents
....

CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
DATE : 11th DECEMBER, 2023

PER COURT :

1. Heard.

2. The challenge in this petition, under Article 226 of the Constitution of India, is to the order dated 28th September, 2023 passed by Respondent No.2 – District Magistrate, Osmanabad and confirmed by Respondent No.1 – State of Maharashtra, Home Department vide order dated 05th October, 2023 thereby detaining the petitioner under Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Robber and Black Marketing of Essential Commodities Act, 1981 ('M.P.D.A.').

3. The order of detention has mainly been challenged on the ground of the petitioner to have not been supplied with all the grounds of detention and particularly copies of in-camera statements. By non-supply of such documents, the petitioner is alleged to have been deprived of his right of making an effective representation against the order of detention. Another ground of challenge is non-subjective satisfaction by the detaining authority.

4. Learned Additional Public Prosecutor would submit that each and every document relied on for passing the order of detention was served to the petitioner. He brings to our attention the petitioner's signature as 'Rathod' (his surname) on the envelopes containing the in-camera statements. On the other second ground of challenge, he would submit that not less than five crimes for the offence punishable under Section 65(e) of the Maharashtra Prohibition Act, 1949 were registered against the petitioner. The detaining authority has specifically observed that the petitioner's indulgence in selling illicit liquor was necessarily injurious to the public health. According to him, non-subject satisfaction by the detaining authority cannot be a subject matter of judicial review in this petition. He, therefore, urged for dismissal of the petition.

5. In our view, the petition can very well be disposed of on the first ground of challenge viz. non-supply of in-camera statements. The envelopes

bearing the words 'Rathod' (his surname) were brought to our notice to suggest the petitioner put his surname thereon in acknowledgment of receipt of copies of in-camera statements.

6. We have perused each and every document relied on for passing the order impugned herein. Each document supplied to the petitioner bears his signature as 'Bhimrao'. Same suggests the petitioner would sign only his first name. It is surprising as to how while signing the other documents he puts his first name 'Bhimrao', but only puts his surname 'Rathod' while acknowledging the two covers containing the in-camera statements. The authority concerned ought to have placed on record a tangible evidence indicating the petitioner to have acknowledged the receipt of two in-camera statements. The same is not forthcoming. The petitioner specifically relied on the said ground in the petition. We have no reason to disbelieve the petitioner's case. By non-supplying the petitioner copies of in-camera statements (one of the grounds of detention), the petitioner has been deprived in making effective representation against the order of detention. The same causes breach of his fundamental right under Article 22(5) of the Constitution of India and therefore, lead us to allow the petition.

7. In view of above, criminal writ petition is allowed. Order of detention dated 28th September, 2023 passed by Respondent No.2 – District Magistrate, Osmanabad and confirmed by Respondent No.1 – State of

Maharashtra, Home Department vide order dated 05th October, 2023 stand set aside. The petitioner be released forthwith, if not required in any other case.

(SANJAY A. DESHMUKH, J.)
SSD

(R.G. AVACHAT, J.)