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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1170 OF 2023

Sanjay Namdev Rathod

Age : 45

R/o. Mulegaon Tanda

Solapur (At present Yerawada Central
Prison, Pune)

Petitioner

Versus

1 Commissioner of Police
Solapur

2 The State of Maharashtra
Through Addl. Chief Secretary
to Government of Maharashtra
Mantralaya, Home Department
Mantralaya, Mumbai

3 The Superintendent
Yerwada Central Prison, Pune

Respondents

Ms. Jayshree Tripathi for the Petitioner.

Ms. M. H. Mhatre, APP for the State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 25th JULY 2023

JUDGMENT (PER : GAURI GODSE, J.) :

1. By this petition, the petitioner challenges the order of his detention bearing D.O. No. 01/CB/BL/2023, dated 27th January 2023, issued by the Respondent No. 1- Commissioner of Police, Solapur in exercise of the powers conferred by sub-section (2) of section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (**“the MPDA Act”**).

2. The detaining authority has relied upon three cases registered against the petitioner vide C.R. No. 310 of 2022 dated 23rd June 2022, C.R. No. 349 of 2022 dated 15th July 2022 and C.R. No. 375 of 2022 dated 24th July 2022 for the offences punishable under section 65(e), 81 of the Maharashtra Prohibition Act, 1949.

3. The allegation against the petitioner in the said CR's is that the police have found plastic cans, each containing country made

hathbhatti liquor. The detention order refers to the amount of liquor seized, sealed, labelled and signed by following the procedure under the Maharashtra Prohibition Act, 1949. The detention order further indicates that during the inquiry, it was revealed that the petitioner supplied illicit liquor. The allegation against the petitioner is that he is supplying illicit liquor for sale. In all the CRs the sample from the illicit liquor seized was sent for chemical analysis, and as per the chemical analysis report, the sample contained 5% to 10% V/V of Ethyl alcohol in water. In all the CRs after completion of the investigation, a chargesheet is filed, and the same is pending trial.

4. The detention order further refers to two in-camera statements recorded and verified by the concerned ACP. The gist of the in-camera statements is reproduced in the order of detention. The allegation against the petitioner in the gist of one of the in-camera statements is that the witness had noticed a big black motor tube fallen near the petitioner's motorcycle spilling the hathbhatti liquor, which left a stench. The witness further stated that on he requesting

the petitioner to drive the vehicle slowly, as it was a threat to the children who were playing nearby; the petitioner got down from his motorcycle and threatened the witness by removing a weapon (sura). In the second in-camera statement also, there are similar allegations made against the petitioner. The second witness stated that since the petitioner's motorcycle had stopped working, he threatened the witness and forced him to carry the country made liquor in the auto-rickshaw of the witness.

5. Thus, by relying upon the three CRs and the in-camera statements, the detaining authority has issued the detention order for detaining the petitioner by recording his subjective satisfaction that the petitioner is a Bootlegger within the meaning of Section 2(b) of the MPDA Act.

6. The learned counsel for the petitioner has raised various grounds to challenge the order of detention; however, has pressed into service only the ground raised in clause (g) of paragraph 5 of the petition, which reads as under :

“(g) The petitioner says and submits that a representation of the petitioner dated 16.02.2023 was sent to the Superintendent Yerwada Central Prison, Pune for further forwarding the same to the State Government, wherein there was a dual prayer of revocation and supply of certain information about the averment that the “petitioner is a bootlegger and owns many dens” was made in the representation at para B. The petitioner says and submits that in spite of specific request/demand made in the representation no information/document is supplied to the petitioner till today, thereby such a long delay has caused to deprive the petitioner to make any effective representation. As such petitioner’s right guaranteed under Article 22(5) is violated. The order of detention is illegal and bad in law liable to be quashed and set aside.”

7. Learned counsel for the petitioner submitted that the petitioner had made a representation dated 16th February 2023 which also contained a prayer for the supply of certain information about the

petitioner being a Bootlegger and that he owns many dens as alleged against the petitioner. She submitted that inspite of the specific request made in the representation, no information and/or any document is supplied to the petitioner and that the representation is rejected on 27th February 2023. She submitted that in the reply filed on behalf of the detaining authority, the ground raised by the petitioner is not responded to. She, therefore, submitted that the order of detention stands vitiated for the non-supply of important information and documents as requested by the petitioner.

8. In support of the ground raised on behalf of the petitioner, learned counsel relied upon the decisions of the Hon'ble Supreme Court in the case *Ramchandra A. Kamat Vs. Union of India and Others*¹, *Mehrunissa Vs. State of Maharashtra*² and *Mrs. Nafisa Khalifa Ghanem Vs. Union of India and Others*³ and the judgment of this court in the case of *Rupesh Ram Thakur Vs. The Commissioner of Police, Thane and Others*⁴.

1 (1980) 2 SCC 270

2 (1981) 2 SCC 709

3 (1982) 1 SCC 422

4 2018 ALL MR (Cri) 2264

9. The learned counsel for the petitioner submitted that the Hon'ble Supreme Court in the aforesaid cases has taken the view that the copies of the statement and documents requested by the detenu, if not furnished, or not furnished with reasonable expedition, the same would vitiate the order of detention.

10. Learned counsel for the petitioner submitted that in the case of ***Rupesh Ram Thakur***, this court has also taken a similar view that non-supply of important and material documents referred to in the grounds of detention cannot be denied to the detenu and that failure to furnish such copies to the detenu on such demand being made would vitiate the order of detention.

11. The learned APP supported the order of detention by relying upon the affidavit of Dr. Rajendra Mane, Commissioner of Police, Solapur city and the affidavit of Mr. Japhar Nasarbaig Mogal, Senior Inspector of Police, Jail Road Police Station, Solapur, both dated 26th April 2023 and the affidavit dated 1st June 2023 of Anil Eknath Kulkarni, Joint Secretary, Government of Maharashtra, Home

Department (Special), Mantralaya, Mumbai. Learned APP relied upon the response of the detaining authority in the said affidavit, as well as the State Government and submitted that after the remarks were received from the detaining authority, the State Government considered all the material and rejected the representation.

12. Learned APP also submitted that all the relevant documents relied upon by the petitioner are already supplied to the petitioner, along with the grounds of detention. Learned APP submitted that in the representation, the petitioner has not requested for supply of any documents referred to in the order of detention; however, has requested for certain additional information. She submitted that none of the authority is under any obligation to supply any additional information. She submitted that it is not even the case of the petitioner that he was not supplied with all the documents which are relied upon at the time of passing the detention order. She submitted that perusal of the documents relied upon by the detaining authority at the time of passing the detention order would show that

there is sufficient material against the petitioner to arrive at a subjective satisfaction that the petitioner is a Bootlegger. She thus submitted that there is no merit in the ground of challenge raised by the petitioner.

13. We have considered the submissions made by both parties. A perusal of the order of detention reveals that the allegation against the petitioner is that he is supplying illicit liquor for sale. The material relied upon by the petitioner shows that the petitioner's involvement is revealed as a supplier of country made hathbatti liquor. The order of detention as well as the affidavit of the detaining authority, indicates that the sample collected from the country made liquor seized by the police contained 5% to 10% V/V of Ethyl alcohol in water.

14. Thus, the allegation against the petitioner in all three CRs as well as both the in-camera statements, reveal that there is sufficient material against the petitioner to hold him a Bootlegger within the

meaning of section 2(b) of the MPDA Act. The only objection raised by the petitioner is with respect to the non-supply of certain information as requested in the representation. The ground of challenge as raised by the petitioner reveals that the petitioner was seeking information about the petitioner being a Bootlegger and the allegation that “he owns many dens”.

15. Learned counsel for the petitioner was unable to point out the entitlement of the petitioner for seeking any such information. The decisions of the Hon’ble Supreme Court as well as this court relied upon by the learned counsel for the petitioner, are with respect to the non-supply of important documents relied upon by the detaining authority at the time of issuing the detention order. None of the cases relied upon by the petitioner deal with any such requirement of providing additional information as requested by the detenu. There is a difference between seeking copies of the documents and materials mentioned and relied upon by the detaining authority for recording the ground of detention and any additional information asked for by the detenu.

16. We do not find any substance in the submission made by the learned counsel for the petitioner that any important material and or document mentioned and relied upon by the detaining authority is not supplied to the petitioner. The ground of challenge, as raised in the petition, also indicates that the request of the petitioner was to supply certain information to show that he is a Bootlegger. It is not the case of the Petitioner that the documents relied upon by the detaining authority were not supplied to the Petitioner. Hence, the aforesaid decisions relied upon by the learned counsel for the Petitioner are of no assistance to the Petitioner.

17. In view of the aforesaid, we do not find any substance in the submission made on behalf of the petitioner, and hence the petition is devoid of any merits.

18. Thus, for the reasons stated above, the petition is dismissed.

GAURI GODSE, J.

REVATI MOHITE DERE, J.