



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2560 OF 2023

Ramesh Imji Chavan
residing at: Sr No.14, Jay Jawan Nagar,
Yerawada, Pune, Presently lodged at
Kolhapur Central Jail, Kolhapur.

... Petitioner

vs.

1. The State of Maharashtra
Through Home Department,
Mantralaya, Mumbai.
2. The Section Officer
Government of Maharashtra,
Home Department(Special)
3. The Commissioner of Police,
Pune City, Pune.

... Respondents

Mr. P.B. Shah a/w. Mr Kayval Shah, for the Petitioner.
Mr. J.P. Yagnik, APP for the State.

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

DATED : 6th OCTOBER 2023

JUDGMENT (PER: GAURI GODSE, J.) :-

1. This petition is filed to challenge the order dated 3rd May

2023, passed by respondent no. 3- the Commissioner of Police, Pune City, in exercise of the power conferred under sub-section (2) of 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 Essential Commodities Act, 1981 (**MPDA Act**) for detaining the petitioner.

2. A perusal of the detention order indicates that the detaining authority has relied upon the complaint registered against the petitioner vide CR No. 22 of 2023, dated 7th February 2023, for an offence punishable under sections 65(b), (c) and (d) of the Maharashtra Prohibition Act, 1949. The detaining authority has also relied upon the in-camera statements of two witnesses. The allegation against the petitioner in the said CR is that the petitioner is running an illegal business of producing country-made liquor and illegally selling the same. The detaining authority has recorded that the petitioner was arrested on 7th February 2023 and was released on bail as per the order dated 7th February 2023. The detaining authority has thus,

by relying upon the aforesaid CR as well as 2 in-camera statements, recorded subjective satisfaction that the petitioner is a bootlegger and thus is required to be detained for preventing him from indulging in prejudicial activities in future.

3. The learned counsel for the petitioner has raised various grounds to challenge the detention order. However, it is not necessary to examine all grounds in as much as the petitioner ought to succeed on the ground of challenge raised in clause (oo) of paragraph no. 10 of the petition, which reads as under:

“oo. That it is submitted that the present Detention Order is passed on the basis of the C.R. no. 22 of 2023 for offence u/s. 65 (b)(c) and (d) of the Maharashtra Prohibition Act registered on 7th February, 2023 and that is reproduced by way of the gist of the said FIR details and in the said Para no. 5.1 of the grounds of detention, it is mentioned that the samples was sent for the chemical examination, the report is still awaited and the said case is under investigation. Hence, it is admitted fact that there was no C.A. (Chemical Analyzer Report), neither any expert opinion is placed before the detaining authority and hence there is no subjective satisfaction in respect

of the same. Therefore it is submitted that the detaining authority has considered prematurely without ascertaining the above mentioned facts and hence it is non application of mind and on this sole ground the present Petition may be allowed and the detention order may be set aside.”

4. Learned counsel for the petitioner submitted that in the investigation of the aforesaid CR registered against the petitioner, the sample of the alleged illicit liquor collected from the petitioner is sent for chemical analysis, and the report is still awaited. Learned counsel submitted that the said CR is under investigation. He further submitted that perusal of the detention order would show that the detaining authority also recorded that the report of the sample sent for chemical analysis is still awaited. Thus, learned counsel submitted that the subjective satisfaction recorded by the detaining authority that the petitioner is a bootlegger is without any substance. He further submitted that the detaining authority, without ascertaining the factual aspect, had issued the detention order without any application of mind. He thus submitted that the detention order passed without recording any subjective satisfaction on any cogent material

vitiates the detention order, rendering the continued detention of the petitioner illegal and impermissible. He, therefore, submitted that the detention order be quashed and set aside, and the petitioner be released forthwith.

5. Learned APP supported the detention order by relying upon the respective affidavits filed on behalf of the detaining authority, the Secretary to the Advisory Board, the State of Maharashtra and the additional affidavit filed on behalf of the detaining authority. Learned APP submitted that after verifying all the material on record and in-camera statements, the detaining authority has recorded subjective satisfaction that the petitioner is a bootlegger and is required to be detained to prevent him from indulging in prejudicial activity in future. Learned APP submitted that the cogent material on record indicates that the petitioner has habitually indulged in illegal activity and is selling illicit country made liquor, which is hazardous to human life and detrimental to society. Learned APP states that the in-camera statements reproduced in the detention order also support the fact that the petitioner is a bootlegger.

Learned APP, therefore, submitted that there is no substance in the ground raised on behalf of the petitioner.

6. We have considered the submissions made by both the parties. We have perused the record of the petition and the affidavits relied upon by the learned APP. A perusal of the detention order reveals that there is only one CR registered against the petitioner, and the investigation of the same is still pending, and the report of the chemical analysis of the sample collected from the petitioner is still awaited. Thus, it is clear that the allegation against the petitioner that he is a bootlegger is still under investigation. Even the report with respect to the sample collected from the petitioner is still awaited. Thus, the subjective satisfaction recorded by the detaining authority is not based on any cogent material. Thus, in the absence of the report of the chemical analysis, only registration of the FIR under the provision of the Maharashtra Prohibition Act cannot be said to be a cogent and sufficient material to record the subjective satisfaction that the petitioner is a bootlegger. Thus, in such circumstances, if the solitary CR registered against the petitioner

is ignored, the detention order is rendered based on only two in-camera statements. Thus, based only on the two in-camera statements, it cannot be said that the detaining authority has recorded a subjective satisfaction based on any cogent material on record. Thus, in view of the aforesaid facts, we do not find that there is any justification for invoking the preventive law against the petitioner. In our view, without any cogent material to hold that the petitioner is a bootlegger, the detention order based on only two in-camera statements is not sustainable. Thus, the continued detention of the petitioner is illegal and impermissible.

7. Hence, for the reasons recorded above, the petition is allowed by passing the following order:

ORDER

(I) Detention order No. OW. No. CRIME PCB/DET/YERWADA/CHAVAN/137/2023 dated 3rd May 2023 passed by the respondent no.3-Commissioner of Police, Pune City is hereby quashed and set aside.

(II) Petitioner be released forthwith, if not required in any other case.

(III) Writ Petition is allowed and Rule is made absolute in above terms.

All parties to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)