



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 326 OF 2023

PETITIONER :

Vijay Palasram Rathod
Aged about 48 years, Occ - Labour,
R/o Mohada, Tah Kelapur, Dist. Yavatmal
At Present District Prison, Yavatmal.

V E R S U S

RESPONDENTS :

1. State of Maharashtra
Through Its Secretary,
Home Department (Special)
Mantralaya, Mumbai.
2. The Collector,
Yavatmal, Dist. Yavatmal.

Shri M. N. Ali, Advocate for petitioner.

Shri S. S. Doifode, Additional Public Prosecutor for respondent
Nos.1 & 2.

CORAM:- NITIN W. SAMBRE AND
VALMIKI SA MENEZES, JJ.
DATED : 13/09/2023.

ORAL JUDGMENT : (PER NITIN W. SAMBRE, J.) :

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of learned counsel appearing for the parties.

2. The petitioner came to be detained vide order dated
19/01/2023 passed by the District Magistrate, Yavatmal in
exercise of powers under 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, thereby holding that the petitioner's activity is detrimental to the maintenance of public order.

3. The detention order is questioned on the ground that the material which is considered for recording subjective satisfaction is without any legal basis. The counsel for the petitioner would invite our attention to the contents of the detention order to substantiate the said claim. According to him, apart from earlier six offences considered by the Detaining Authority, which were registered from 23/10/2019 to 15/02/2022, two recently registered offences bearing Crime No.852/2022 punishable under Section 65(E) of the Maharashtra Prohibition Act and Crime No.1484/2022 punishable under Section 65 (c)(d)(f) of the Maharashtra Prohibition Act registered on 12/11/2022 are taken into account.

4. The counsel would urge that in both these cases, which are relied on in the detention order, the report from the Forensic Science Laboratory is not made available. As such, he would urge that the order of detention suffers from non-application of mind, According to him in absence of material to infer that the conduct

of petitioner in the aforesaid two recently registered offences cannot be construed to be violating the public order, the detention order can be said to be illegal. To substantiate his contention, counsel for the petitioner has drawn support from the Judgment of the Apex Court in the matter of District Collector, Ananthapur Vrs. V. Laxmanna, reported in 2005 DGLS (SC) 274, particularly in Paragraph Nos. 7 and 8. In addition to his contention, aforesaid view of the Apex Court is followed by the Division Bench of this Court in the matter of Nilesh Charandas Gaikwad Vrs. State of Maharashtra and another decided on 27/06/2022 in Criminal Writ Petition No.804/2021. He would rely on the observations made in Paragraph No.4 of the said order. Paragraph No.4 reads thus :-

"4. The crimes which have been taken into consideration for reaching a conclusion for continuous activities of the petitioner prejudicial to the public order are Crime No.192 of 2021 registered under Sections 65(c)(d) and (f) and 83 of the Maharashtra Prohibition Act, 1949 and Crime No.250 of 2021 registered under Section 65(c) and (d) of the said Act at Police Station Babhulgaon. In both these crimes, the Chemical Analyzer's report is awaited and if that is so, as rightly submitted by the learned counsel for the petitioner, no conclusion about prima facie involvement of the petitioner in these crimes could be arrived at, and if that is so, no further conclusion regarding involvement of the petitioner in prejudicial activities could be arrived at. This is also the view taken by the Supreme Court in the

case of District Collector Ananthapur and another v. V. Laxmanna, reported in 2005 ALL MR (Cri) 1800 (S.C.)."

5. While countering the aforesaid submissions, Shri Doifode, learned APP would urge that the continuous activity of the petitioner of indulging into the offences punishable under the provisions of Maharashtra Prohibition Act rightly prompted the respondent – authority to invoke the provisions for ordering the detention under 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.

6. According to Shri Doifode, learned APP for respondent Nos.1 and 2, all the FSL reports pertaining to earlier offences (six in number) from 23/10/2019 till 15/02/2022 are made available. He would urge that continuous involvement of the petitioner in the offences punishable under the Maharashtra Prohibition Act, 1949 speaks of criminal mind of the petitioner. He would further urge that the Forensic Science Laboratory Reports in earlier offences were made available to petitioner. In that view of the matter, the District Magistrate was justified in ordering the detention by recording subjective satisfaction. As such, Shri Doifode, learned APP would urge that the availability of report

from Forensic Science Laboratory in relation to earlier six offences sufficiently prompts the Detaining Authority to record satisfaction. In such an eventuality, the order of detention cannot be said to be vitiated. First to substantiate aforesaid contention, reliance is placed on the decision of the Division Bench of this Court in the matter of **Ramesh Balu Chavan Vrs. The Commissioner of Police and others**, reported in **2017 ALL MR (Cri) 3683**.

7. Shri Doifode, learned APP would urge that once there is consistency in the conduct of the petitioner of involvement in the offences punishable under the Maharashtra Prohibition Act, 1949, Detaining Authority was justified in ordering the detention. As such, he would urge that petition is liable to be dismissed.

8. We have considered the rival submissions.

9. With the assistance of the respective counsels, we have perused the detention order dated 19/01/2023. The detention order considers the criminal history of the petitioner of involvement in six offences which were registered from 23/10/2019 to 15/02/2022 punishable under the Prohibition Act.

10. As far as, the recently registered offences from 14/07/2022 to 12/11/2022, which are two in numbers, the

submissions of the learned counsel for the petitioner that the report of Forensic Science Laboratory are not received or made available is a fact not in dispute. As such, it has to be inferred that before passing the detention order, the Detaining Authority was not conscious of the fact as to absence of report from the Forensic Science Laboratory in relation to the petitioner's involvement in offence of bootlegging.

11. As a sequel of above, the Detaining Authority while considering the material as regards the recently registered two offences against the petitioner punishable under the provisions of the Maharashtra Prohibition Act, in addition to earlier offences ought not to have formed basis for ordering detention. The subjective satisfaction recorded by the Detaining Authority for ordering detention sans consideration of the aforesaid issue i.e. absence of report from the Forensic Science Laboratory, in the recently registered offences being Crime Nos.852/2022 and 1484/2022.

12. The Hon'ble Apex Court in the matter of **District Collector, Ananthapur** cited supra in Paragraph Nos.7 and 8 has made following observations :-

"7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is

indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy such material should also be given to the detenu to afford him an opportunity to make an effective representation.

8. Therefore, while holding that dealing with arrack which is dangerous to public health would become an act prejudicial to the maintenance of public order attracting the provisions of the Act. It must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of the such material should be given to the detenu."

13. Drawing support from the Hon'ble Apex Court Judgment referred above, it has to be held that the offences which are punishable under the provisions of the Maharashtra Prohibition Act could be effectively dealt with under the said Act. Hence such act of committing an offence or involving into the

offence punishable under the aforesaid Act cannot be said to be detrimental to the maintenance of the public order.

14. Apart from the above, fact remains that the report of the Chemical Analyzer for bringing home the guilt of the accused is necessary for proving the offence under the Maharashtra Prohibition Act. In absence of such report, it cannot be presumed or cannot be said to have provided basis for recording subjective satisfaction so as to infer the strong case against the accused like petitioner. In absence of report of the Chemical Analyzer / report from the Forensic Science Laboratory, gravity or seriousness of the prosecution case loses its significance. In this background, it cannot be said that the recent offences, which are two in numbers punishable under the Maharashtra Prohibition Act can be said to be relied on for recording subjective satisfaction by the Detaining Authority.

15. Admittedly, in the case in hand, the report of Chemical Analyzer is neither available with the Detaining Authority, nor brought before this Court.

16. In this backdrop, the order of the detention of the petitioner stands vitiated and is accordingly quashed and set aside.

17. The petition stands allowed in terms of prayer clause (i).

[VALMIKI SA MENEZES, J.]

[NITIN W. SAMBRE, J.]

Choulwar