



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 95 / 2024

Satva Bhagwat Mendke

Age : 45 years, Occu. Business

R/o Morewadi, Tq. Ambajogai,

District Beed.

...Petitioner

Versus

1. State of Maharashtra
Through Secretary,
Home Department (Special),
Mantralaya, Mumbai.

2. The District Collector,
Beed.

3. The Superintendent of Jail,
Central Jail, Harsool, Aurangabad,
Dist. Aurangabad.

..Respondents

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Advocate for the Petitioner : Mr. P. P. More

A.P.P. for Respondents /State : Mr. K.N. Lokhande

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CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

RESERVED ON : 18 MARCH 2024
PRONOUNCED ON : 22 MARCH 2024

JUDGMENT [Per Shailesh P. Brahme, J.] :

. Rule. Rule is made returnable forthwith. Heard both sides finally
at the admission stage.

2. We are called upon to examine legality and propriety of order of detention dated 26.10.2023 passed by the respondent no.2/District Magistrate against the petitioner under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience).

3. The respondent/detaining authority has arrived at subjective satisfaction to hold the petitioner as bootlegger on the foundation of (i) C.R. No.263/2023 registered on 07.07.2023 under Section 65(e) of the Maharashtra Prohibition Act; (ii) C.R. No.282/2023 registered on 22.07.2023 under Section of 65(e) of Maharashtra Prohibition Act; (iii) Two in-camera statements.

4. Learned Counsel for the petitioner submits that subjective satisfaction on the basis of two offences pitted against the petitioner, is perverse as the material is too scanty. It is further submitted that the time line prescribed under Section 11(1) of the MPDA Act has not been followed. The petitioner was served with notice under Section 41(A) of the Cr.P.C. but no arrest was effected in any of the offences, which shows that the activity of the petitioner does not warrant drastic action. The subjective satisfaction is contended to be faulty because reports of chemical analysis in the both offences have not been considered.

5. Learned Counsel for the petitioner seeks reliance upon the following judgments :

- (i) Rajabhau Ramdas Ade Vs. State of Maharashtra & Ors.
Criminal Writ Petition No.1840/2023
- (ii) Prakash Chandrakant Kanjar Vs. State of Maharashtra & Anr.
Criminal Writ Petition No.1285/2023
- (iii) Nilesh Bansilal Gaywal @ Ghaywal Vs. State of Maharashtra & Ors., Criminal Writ Petition No.1768/2021
- (iv) Hanif Karim Luluwale Vs. State of Maharashtra & Ors.
Criminal Writ Petition No.75/2022

6. Per contra, learned APP opposes the petition on the basis of affidavit-in-reply and additional document which is being tendered across the bar. It is being submitted that there was cogent material against the petitioner for passing impugned order which has been considered in the proper perspective. Due procedure of law has been followed and opportunity of hearing has been extended to the petitioner. It is further submitted that considering over all conduct of the petitioner, detaining authority has passed impugned order on a reasonable and plausible subjective satisfaction. Learned APP would rely upon judgment in the matter of **Vinod Dhannulal Jaiswal Vs. District Magistrate, Aurangabad and Others** in Criminal Writ Petition No.1430/2023 to support his contention.

7. We have considered rival submissions advanced across the bar. We have gone through the relevant papers. We have also considered a compilation which is being tendered by the learned Counsel for the petitioner before advancing his submissions which is purported to be served upon the detainee.

8. Record reveals that as many as thirteen offences and a

preventive action were registered/initiated against the petitioner. For taking action against him under MPDA Act, last two offences have been considered. We have gone through the papers of investigation of C.R. No.263/2023 and 282/2023. First offence was registered against him on 07.07.2023 wherein he was found to be in possession of 100 liters of illicit liquor. Second offence was registered on 22.07.2023, wherein he was found to be in possession of 40 liters of illicit liquor. In this premise, he is being prosecuted for offence under Section 65(e) of the Maharashtra Prohibition Act. We have also considered in-camera statements of two witnesses recorded against him.

9. It reveals from record that the petitioner cannot be said to be involved in serious offence. The material pitted against him is too scanty to proceed against him under MPDA Act which is said to be very drastic action. The bootlegging activity of the petitioner comprising of two offences can be dealt with by normal penal laws. We are of the considered view that recourse to drastic action of preventive detention under MPDA Act is unwarranted. Learned Counsel for the petitioner has rightly referred to our judgment rendered in the matter of Rajabhau Ramdas Ade (supra). In that matter also the detinue was held to be bootlegger on the basis of two offences registered under Section 65(e) of Maharashtra Prohibition Act. We relied upon earlier judgment of the Division Bench in the matter of Nilesh Bansilal Gaywal and Hanif Karim Luluwale (supra). We are inclined to adopt the same view as we have stated in paragraph no.12 and 13 of our judgment in the matter of Rajabhau Ramdas Ade (supra).

10. The next submission is in respect of breach of Section 11(1) of the MPDA Act. Order of detention was passed on 26.10.2023. It was confirmed by the State Government on 28.12.2023. Section 11(1) contemplates the time line of seven weeks from the date of detention. We have considered affidavit-in-reply of respondents in this regard. Paragraph no.9 refers the sequence of events and reiterates that stipulation of period has been followed by the authorities. The petitioner was heard and opinion was submitted by Advisory Board to State Government on 12.12.2023. The petitioner was detained on 27.10.2023. There is compliance of Section 11(1) of Act. We, therefore, reject submission of petitioner.

11. Learned Counsel for the petitioner submits that the petitioner has not been arrested in any of the offences and only notice under Section 41A of Cr.P.C. has been served upon him. Another ground which is pressed into service is in respect of the defective subjective satisfaction for want of report of chemical analysis collected during the course of investigation of the offences pitted against him. We have considered both these aspects in the matter of Vinod Jaiswal (supra) decided on 17.01.2024. In paragraph no. 35 and 36 referring to judgment of Supreme Court in the matter of **Arnesh Kumar Vs. State of Bihar and Anr.**, (2014) 8 SCC 273, we have taken a view that service of notice under Section 41(A) without there being actual arrest, would not enure to the benefit of the detinue. In the selfsame judgment, in paragraph no. 26 we have dealt with the ground of not referring the report of chemical analysis.

12. We find that the grounds of detention which are under challenge do not show that any finding is recorded that the contraband seized from the petitioner in both the offences pitted against him, was found to be dangerous to the human consumption. Under these circumstances, we do not find any merit in the submission of learned Counsel for the petitioner.

13. Thus, the upshot of above discussion is that the petitioner has successfully pointed out that the subjective satisfaction is perverse. We have no alternative than to allow the present petition. We, therefore, pass following order.

ORDER

- (i) The Criminal Writ Petition is allowed.
- (ii) The detention order dated 26.10.2023 passed by the respondent no.2/District Magistrate, Beed is quashed and set aside.
- (iii) The petitioner shall be set at liberty.
- (iv) Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE