



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No. 298 / 2024

Babu Topa Rathod

Age : 52 years, Occu. Agriculture

R/o Tukai Tanda, Tq. Georai,

District Beed.

...Petitioner

Versus

1. State of Maharashtra
Through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai.
2. The District Collector,
Beed.
3. The Sub-Divisional Police Officer,
Sub-Division Beed,
Dist. Beed.
4. Police Inspector,
Police Station Georai,
Dist. Beed.
5. The Superintendent of Jail,
Harsul Central Prison,
Aurangabad.

..Respondents

— — —
Advocate for the Petitioner : Mr. S.E. Shekade

A.P.P. for Respondents /State : Mr. V.K. Kotecha

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

RESERVED ON : 22 MARCH 2024
PRONOUNCED ON : 28 MARCH 2024

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

. Rule. Rule is made returnable forthwith. Heard both the sides finally with their consent.

2. The petitioner is aggrieved by order of detention dated 21.12.2023 passed by the respondent no.2/District Magistrate, Beed under Section 3(1) of 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 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience). On the basis of two offences bearing C.R. No.387/2023 and 443/2023 coupled with in-camera statements, the detaining authority has found him to be bootlegger and liable for detention.

3. Learned Counsel Mr. S.E. Shekade for the petitioner, submits that subjective satisfaction is perverse as material pitted against his client is scanty. There is no reason to resort to drastic action under MPDA Act, when the activities of his client do not disclose any detriment to public order. He would further submit that subjective satisfaction suffers from non-application of mind in absence of reports of chemical analysis. He would further submit that there is unexplained delay in passing order of detention from registration of last crime. Lastly, he submits that there is violation of Section 10 of the MPDA Act.

4. Learned Counsel for the petitioner places reliance on following judgments :

- (i) Sandeep Govind Pawar Vs. State of Maharashtra and Ors.
Criminal Writ Petition No. 172/2023
- (ii) Rajabhau Ramdas Ade Vs. State of Maharashtra and Ors.
Criminal Writ Petition No. 1840/2023
- (iii) Vijay s/o Rajendra Kale Vs. State of Maharashtra and Ors.
Criminal Writ Petition No. 1697/2023
- (iv) Prakash Chandrakant Kanjar Vs. State of Maharashtra and Anr.
Criminal Writ Petition No. 1285/2023

5. Learned APP Mr. V.K. Kotecha defends impugned order relying upon affidavit-in-reply. He submits that there is no delay or breach of any statutory provision in concluding action of detention against the petitioner. The detaining authority has arrived at subjective satisfaction, considering record placed before him which is plausible and reasonable. He submits that in-camera statements are corroborative and rightly relied upon by the detaining authority. Lastly, he would submit that no case is made out to interfere with the impugned order under writ jurisdiction. He seeks to rely upon judgment delivered by our bench in the matter of **Vinod Dhannulal Jaiswal Vs. District Magistrate, Aurangabad and Others** in Criminal Writ Petition No.1430/2023.

6. We have considered submissions of both the Counsels and gone through the relevant record placed before us. At the outset, preventive action against the petitioner is based upon two offences, which are under Section 65(e) and (f) of Maharashtra Prohibition Act and two in-camera statements. Offence bearing C.R. No.387/2023 was

registered on 26.07.2023. Another offence bearing C.R. No.443/2023 was registered on 25.08.2023. In-camera statements were recorded on 16.10.2023. They were verified by Sub-Divisional Police Officer on 21.10.2023. Record reveals that proposal was forwarded and reached office of District Magistrate on 21.11.2023. On 21.12.2023, order of detention was passed. It was approved under Section 3(2) on 29.12.2023. On the same date, proposal was forwarded under Section 10 to Advisory Board. It was placed before Board on 02.01.2024. It was confirmed by the State Government vide order dated 30.01.2024.

7. The petitioner is held to be bootlegger in view of two offences registered under Section 65 of Maharashtra Prohibition Act. Relevant papers of the investigation of C.R. No.387/2023 show that petitioner was found in possession of 32 liters of illicit liquor. Relevant record of C.R. No.443/2023 shows that he was found in possession of 30 liters of illicit liquor. His track record of seven offences would show that his involvement in similar type of offence. No offence under IPC or any other penal law has been registered against him. He does not appear to be involved in serious offences. We find that material pitted against him is inadequate for the drastic action under MPDA Act.

8. We have considered in-camera statements. Though petitioner appears to be involved in bootlegging activity, there is no material on record to show that the activity is hazardous to public health. We do not notice that there is nothing to suggest that the activities would be

danger to public order as such. The petitioner could have been dealt with by normal penal laws. Action under MPDA act is unwarranted in the present case. Learned Counsel has rightly relied upon judgments delivered by our bench in the matter of Rajabhau Ramdas Ade and Vijay Rajendra Kale (supra).

9. It is submitted that the petitioner has not been arrested and only notices under Section 41A of Cr.P.C. have been served on him in the matter pitted against him. Learned Counsel refers to judgment in the matter of Sandeep Govind Pawar (supra) by pointing out paragraph no.13 and 14. Learned APP refers to our latest judgment in the matter of Vinod Jaiswal (supra), wherein view taken in Sandeep Govind Pawar (supra) has been distinguished. We prefer to follow latest view of Vinod Jaiswal (supra). We record our disapproval to the submission of the petitioner in this regard.

10. Learned Counsel for the petitioner refers to judgment delivered in the matter of Prakash Chandrakant Kanjar (supra) on the point of subjective satisfaction in the matters where there is report of chemical analysis. The facts, in the case in hand are distinguishable. The judgment cited would not enure to the benefit of the petitioner.

11. Learned Counsel for the petitioner argued point of delay. Last crime was registered on 25.08.2023. We have gone through affidavit-in-reply, especially paragraph no. 8 and 9 to examine as to the promptitude of the authorities. In-camera statements were recorded

on 16.10.2023. They were verified on 21.10.2023. The proposal reached detaining authority on 21.11.2023. Thereafter impugned order was passed on 12.12.2023, after one month. There is no explanation for the delay of one month. Unexplained delay vitiates impugned order.

12. Learned Counsel for the petitioner points out record to show that the subjective satisfaction has been arrived at in the absence of reports of chemical analysis. The grounds of objection does not refer to any report of chemical analysis. No finding is recorded indicating that consumption of contraband would be hazardous to public health. Therefore, we are not prepared to countenance the submission of learned Counsel for the petitioner. We have clarified this position in our judgment in the matter of Vinod Jaiswal (*supra*) in paragraph no. 26.

13. We have also examined the matter to see the compliance of Section 10 of MPDA Act. Petitioner was actually detained on 25.12.2023. Learned APP would point out paragraph no.10 of affidavit-in-reply to show the sequence of events to demonstrate compliance of Section 10. On 26.12.2023, the proposal was forwarded to the State Government. It was approved on 29.12.2023. It was promptly forwarded to the Advisory Board on the same day. The papers were placed before the Advisory Board on 02.01.2024. Petitioner was heard on 27.01.2024. The State Government confirmed the order on 30.01.2024. There is no reason to disbelieve averments of paragraph no.10 of reply. We find that there is no violation of Section 10 or 11 of MPDA Act.

14. Upshot of our discussion is that subjective satisfaction is perverse in the present matter and there is unexplained delay in passing impugned order. In that view of the matter, we pass following order :

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause (C) and (D).
- (ii) Rule is made absolute in the above terms.

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE