



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 400 OF 2024

Pallavi @ Mahadevi Laxman Pawar,
Age : 35 Years, Occu. : Agriculture,
R/o Washi, Tq. Washi,
Dist. Dharashiv. .. Petitioner

Versus

1. The State of Maharashtra,
Through Additional Chief Secretary,
State of Maharashtra, Home Department,
Mantralaya, Mumbai – 32.
2. District Magistrate, Dharashiv.
3. Superintendent of Police,
Dharashiv, Dist. Dharashiv.
4. Police Inspector,
Police Station Washi,
Tq. Washi, Dist. Dharashiv. .. Respondents

Shri Sopan P. Bhadge, Advocate for the Petitioner.
Shri V. M. Jaware, A.P.P. for the Respondent Nos. 1 to 4.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

**CLOSED FOR JUDGMENT ON : 23.04.2024
JUDGMENT PRONOUNCED ON : 02.05.2024**

JUDGMENT (Per Shailesh P. Brahme, J.) :-

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

2. The petitioner is challenging order of detention dated 22.12.2023 passed by the respondent No. 2/District Magistrate, Dharashiv U/Sec. 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 (for the sake of convenience and brevity hereinafter referred as to the “M.P.D.A. Act”) and order dated 13.02.2024 passed by the respondent No. 1 confirming the order of detention.

3. The respondent No. 2 has arrived at subjective satisfaction on the basis of five offences registered against the petitioner, all are U/Sec. 65(e) of the Maharashtra Prohibition Act and proceedings U/Sec. 93 of the Maharashtra Prohibition Act. Petitioner is found to have habitually indulged in criminal activities, undeterred by action under regular penal laws. In camera statements of two witnesses have also been considered by the detaining authority. Petitioner is described to be a dangerous person and directed to be detained.

4. Learned counsel for the petitioner submits that in camera statements were not supplied to the petitioner and those were not verified by the higher authority. The subjective satisfaction is defective and arbitrary. No offence was registered against the petitioner under the Indian Penal Code so as to brand her as a dangerous person. It is further submitted that the activities of the petitioner cannot be said to be detrimental to law and order. Lastly, learned counsel would submit that there is inordinate

delay in passing order of detention from registration of the last offence, which vitiates impugned action.

5. Learned counsel for the petitioner relies upon following judgments of this Court :

- I. Judgment dated 06.11.2023 passed in the matter of Pintu @ Sidharth Bhagwan Devde Vs. The State of Maharashtra and others in Criminal Writ Petition No. 1501 of 2023.
- II. Judgment dated 28.06.2022 passed in the matter of Hanif Karim Luluwale Vs. State of Maharashtra and others in Criminal Writ Petition No. 75 of 2022.
- III. Judgment dated 23.02.2024 passed in the matter of Vijay Rajendra Kale Vs. State of Maharashtra and others in Criminal Writ Petition No. 1697 of 2023.
- IV. Judgment dated 13.07.2022 passed in the matter of Devidas Lalji Ade Vs. The State of Maharashtra and others in Criminal Writ Petition No. 469 of 2022

6. Per contra learned Assistant Public Prosecutor supports impugned orders on the basis of affidavit in reply. He would submit that serious offences are registered against the petitioner and she is habitually indulging into boot-legging activities, causing danger to the public order. It is further submitted that due procedure of law was followed by the respondent authorities and timeline was meticulously followed. It is further submitted

that in camera statements were verified by the higher police personnel and supplied to the petitioner. He would further submit that subjective satisfaction can be said to be plausible and reasonable. He would press into service Section 5-A of the M.P.D.A. Act to defend impugned action.

7. Learned A. P. P. relies upon the following judgments of the Supreme Court and this Court :

- I. Gautam Jain Vs. Union of India and another reported in AIR 2017 SC 230.
- II. Kashinath Motiram Chavan Vs. Commissioner of Police Solapur reported in AIR Online 2021 Bom 2395.

8. We have considered rival submissions of the parties and we have also gone through relevant papers, which were before the detaining authority. Learned A. P. P. has also made available a set of papers which was before the detaining authority. Pertinently, affidavit in reply filed on record is that of District Magistrate/respondent No. 2. There is no affidavit of Jail Authority where the petitioner has been detained. It is stated in the affidavit of the respondent No. 2 that the grounds of detention and relevant papers were served on the petitioner on 29.12.2023.

9. Five offences registered against petitioner were considered by the detaining authority. She was found to be in possession of illicit liquor which was intended to be sold. All the offences

pitted against her were under the provisions of the Maharashtra Prohibition Act. No offence has been registered against her falling under Chapter XVI and XVII of the Indian Penal Code or the Arms Act. The M.P.D.A. Act provides definition of a dangerous person U/Sec. 2(b-1). In the grounds of detention the petitioner is recorded to be dangerous person in para 4-C, 4-E of the grounds of detention. Affidavit in reply also does not rectify this position. We find that this is non application of mind by the detaining authority.

10. All the offences pitted against the petitioner are under the provisions of the Maharashtra Prohibition Act. Activities of bootlegging per-se would not attract drastic action under the M.P.D.A. Act. There needs to be convincing material to indicate that activities are detrimental to the public order. Corroborative material against the petitioner also falls short to show that her being at large is danger to the public order.

11. Learned counsel for the petitioner relies on the judgment of this Court in the matter of **Hanif Karim Luluwale Vs. State of Maharashtra and others** (supra). Its para No. 11 is as follows :

“11. The impugned order, it is further seen, also does not explain as to how bootlegging activity per se and by itself would adversely affect public order. Any bootlegging activity in which involved is manufacture of illicit liquor can be presumed to be adversely affecting public health. But, there is no presumption in fact or law that every incidence of disturbance of public health would necessarily result in

disturbance of public order. Covid-19 pandemic is the biggest example of this preposition. During that period of time, public at large was afflicted with Covid-19 infection. It was an en masse phenomenon but, our common experience has shown that it did not lead to disturbance of public order in general. Therefore, the authorities would be required to satisfy themselves as to how disturbance of public health in certain cases would result in also disturbance of public order. Such satisfaction has not been reached in the present case.”

We find that there is no adequate material and the subjective satisfaction is based on perception rather than appropriate assessment of the material.

12. We have gone through the original record produced by the respondents. Both in camera statements were verified by the Sub Divisional Police Officer, Bhoom on 27.09.2023. It appears that the petitioner is an illiterate lady. Reply of the respondent No. 2 states that petitioner was served with papers on 29.12.2023. She was in jail. There is no acknowledgment for having received papers. No affidavit is filed by the Jail Authority showing service of relevant documents on the petitioner. There is substance in the contention of the petitioner that in camera statements were not served on the petitioner. The petitioner received incomplete documents. There is room to infer that she was unable to make representation and avail safeguard under Article 22(5) of the Constitution of India.

13. Last offence was registered against the petitioner on 19.09.2023. Impugned order of detention was passed on

22.12.2023 after 94 days. Learned A. P. P. would point out paragraph No. 8 of affidavit in reply to explain delay. It refers that in camera statements were recorded on 29.08.2023. Those were verified on 27.09.2023. Delay of 28 days is unexplained and is unreasonable. Thereafter the proposal was submitted to the detaining authority on 18.10.2023. There is no explanation for delay from 18.10.2023 till 22.12.2023. Unexplained delay vitiates order of detention. It indicates that the petitioner was being at large for considerable period. It creates doubt about the drastic action against her.

14. Learned counsel for the petitioner is justified in relying upon judgment of this Court in the matter of **Vijay Rajendra Kale Vs. State of Maharashtra and others** (supra). We propose to adopt same view. We find that activities of the petitioner cannot be said to be detrimental to the public order. Petitioner has rightly referred to the judgments in the matters of **Pintu @ Sidharth Bhagwan Devde Vs. The State of Maharashtra and others** and **Devidas Lalji Ade Vs. The State of Maharashtra and others** to demonstrate what would be the public order. In the case in hand there is no material to show activities are detrimental to the public order.

15. Learned A. P. P. relies on the judgment of the Division Bench of this Court in the matter of **Kashinath Motiram Chavan Vs. Commissioner of Police Solapur** (supra). Our attention is invited to paragraph Nos. 23 and 27 of the judgment. The principles laid down in para No. 23 of the judgment cannot be

disputed. Facts of the present case are distinguishable from the facts of the case in the cited judgment. The judgment cannot be made applicable to the present case.

16. Another judgment cited by the learned A. P. P. of the Supreme Court in the matter of **Gautam Jain Vs. Union of India and another** (supra) to buttress submission based on Section 5A of the M.P.D.A. Act. Purport of Section 5A has been explained by the Supreme Court. We have carefully considered relevant paragraph Nos. 23, 24 and 25 of the judgment. The case in hand shows that there is non application of mind of the detaining authority, which is jurisdictional error. The detention is recorded to be unsustainable on the ground of inordinate delay. We have recorded our reservation on the subjective satisfaction of the detaining authority. Our first two findings go to the root of the matter. In such a scenario, impugned orders cannot be saved by implication of Section 5A of the M.P.D.A. Act. We are of the considered view that if there is fundamental defect in the order of detention, Section 5A of the M.P.A.D. Act would have no application.

17. For the reasons stated above, we pass following order.

O R D E R

- I. The criminal writ petition is allowed.
- II. The impugned order of detention dated 22.12.2023 passed by the respondent No. 2/District Magistrate, Dharashiv and

order of confirmation dated 13.02.2024 passed by the respondent No. 1, are quashed and set aside.

III. The petitioner shall be set at liberty forthwith.

IV. Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb/April 24