



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

CRIMINAL WRIT PETITION NO. 452 OF 2024

Rajtilak Tarachand Visave,
Age : 47 Years, Occu. : Agril.,
R/o Patilgadhi, Chopda,
Taluka Chopda, District Jalgaon. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Section Officer,
Home Department (Special),
Mantralaya, Mumbai – 32.
2. The District Magistrate,
Jalgaon, District Jalgaon.
3. The Superintendent of Jail,
Central Prison, Nagpur.
4. The Excise Inspector,
State Excise Department,
Jalgaon. .. Respondents

Shri Jitendra V. Patil, Advocate for the Petitioner.
Shri G. O. Wattamwar, A.P.P. for the Respondent Nos. 1 to 4.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 09 MAY 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 assailing order of detention dated

20.02.2024 passed by the respondent No. 2/Detaining Authority 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”). The petitioner has been branded as bootlegger on the basis of five offences, two preventive actions and two in camera statements.

3. Learned counsel Mr. Jitendra V. Patil for the petitioner submits that there is delay of six months in passing impugned order from the date of registration of last offence which is unexplained and which vitiates impugned order. He would further submit that there is undue delay of eight days in passing order of approval U/Sec. 3(3) of the M.P.D.A. Act. It is further submitted that both in camera statements are vague, unreliable and not indicative of disturbance to any public order. Learned counsel would further submit that though petitioner was found to have committed offence after the preventive action, bonds were not forfeited and no action was taken. He would also submit that subjective satisfaction is arbitrary because there was no experts opinion for recording finding in para No. 11 of the grounds of detention.

4. Learned counsel for the petitioner tenders on record judgments of the Supreme Court and this Court in support of his submissions. He relies on following judgments.

- i. The District Collector, Anantpur and others Vs. V. Laxmanna reported in (2005) 3 SCC 663.
 - ii. Digambar @ Digambar Vitthal Dagdade Vs. The District Magistrate, Latur judgment dated 08.02.2024 in Criminal Writ Petition No. 1736 of 2023.
 - iii. Dhanubai @ Dhanno Yashvant Nettlekar Vs. State of Maharashtra and others judgment dated 08.02.2024 in Criminal Writ Petition No. 1527 of 2023.
 - iv. Prakash Chandrakant Kanjar Vs. The State of Maharashtra and another judgment dated 19.10.2023 in Criminal Writ Petition No. 1285 of 2023.
 - v. Ketan Gorak Darekar Vs. Commissioner of Police, Pune City and others judgment dated 19.10.2023 in Criminal Writ Petition St. No. 16438 of 2023.
 - vi. Aatish s/o Ravindra Kharat Vs. The State of Maharashtra and others judgment dated 07.03.2024 in Criminal Writ Petition No. 1794 of 2023.
 - vii. Vishwas Arun Garunge Vs. The District Magistrate, Jalgaon and others judgment dated 14.03.2024 in Criminal Writ Petition No. 1578 of 2023.
5. Per contra, the learned Assistant Public Prosecutor supports impugned order on the basis of affidavit in reply. He submits that the respondents have followed due procedure of law

in passing impugned order and the timeline prescribed by the statute has been strictly followed. It is further submitted that considering material pitted against petitioner he is found to be habitual offender and undeterred by the ordinary penal laws. He would further submit that subjective satisfaction is reasonable and plausible. He would vehemently submit that no case is made out to upset the impugned order under writ jurisdiction. He would rely upon the judgment of this Court in the matter of **Kashinath Motiram Chavan Vs. Commissioner of Police Solapur** reported in *2021 All MR (CRI) 3043*.

6. Having considered rival submissions of the parties, we find that in all five offences are considered by the detaining authority which are U/Sec. 65(e) of the Maharashtra Prohibition Act together with two preventive actions U/Sec. 93 of the Maharashtra Prohibition Act. A specific finding has been recorded by the detaining authority in paragraph No. 11 considering the reports of chemical analysis, collected during the course of investigation of the offences, that the sample of the contraband is hazardous to human consumption and harmful to human life. It has further been recorded that consumption is likely to cause jaundice, accumulation of water in stomach, cancer and likely to deplete blood level in the body, giving rise to risk of death.

7. It reveals from record that there was no report of chemical analysis in the last offence bearing CR No. 298/2023. The last offence in which the report of chemical analysis is collected is CR

No. 20/2023, registered on 19.01.2023. These are the relevant material facts on the basis of which we are assessing the submissions of the parties and examining sustainability of the subjective satisfaction.

8. The last offence bearing CR No. 298/2023 was registered on 22.08.2023. Impugned order was passed on 20.02.2024, after six months. We have considered paragraph No. 8 of the affidavit in reply of respondent No. 2 dated 26.04.2024 so as to examine the manner in which the proposal was processed. It shows that after registration of the last offence, in camera statements were recorded on 01.01.2024 i. e. after four months. We find no explanation for recording in camera statements after four months. Thereafter, those were verified on 04.01.2024. The proposal was forwarded through channel of the officers and reached detaining authority on 19.01.2024. Thereafter impugned order was passed on 20.02.2024, after a period of one month. No explanation has been tendered for taking one month for passing impugned order of receiving the proposal. Learned counsel for the petitioner is justified in contending that there is unexplained delay of six months.

9. In this regard we are guided by the judgments rendered in the matter of Pradeep Nilkant Paturkar Vs. S. Ramamurthi and others reported in AIR 1994 SCC 656, Austin William Luis Pinto Vs. Commissioner of Police, Greater Mumbai and others reported in 2005 All MR (Cri) 28 and Jaggu Sardar @ Jagdish Tiratsingh Labana Vs. Commissioner of Police, Thane and others in Cri. W.

P. (St) No. 15876 of 2023.

10. Impugned order was passed on 20.02.2024. Our attention is invited to para 10 of affidavit in reply dated 25.04.2024. It refers that the proposal was forwarded to the State Government for approval U/Sec. 3(3) of the M.P.D.A. Act on 22.02.2023. The approval was actually given by order dated 28.02.2024, after a period of eight days. Though there is outer limit of twelve days for granting approval as per Sec. 8 of the M.P.D.A. Act, there is no explanation as to why time was consumed from 22.02.2024 to 28.02.2024. This unexplained delay also vitiates the impugned order. Learned counsel is justified in contending that unexplained delay in securing approval vitiates impugned order.

11. Our attention is invited to in camera statements of the witnesses. Both the witnesses do not refer to any particular incident, witnessed by them or confrontation with petitioner. Their statements show the bootlegging activity of the petitioner. No inference of having committed any offence under Indian Penal Code or any other Penal Law can be made out. We are of the considered view that the in camera statements are not corroborative and indicative of the fact that the petitioner indulged in the activity detrimental to the public order.

12. In this regard learned counsel for the petitioner refers to the judgment in the matter **Prakash Chandrakant Kanjar Vs. The State of Maharashtra and another** (supra). We have considered paragraph No. 22 and 23 of the judgment. We propose to follow

the view taken therein, as in the present matter also the statements even if taken at their face value, would not indicate any activity of causing danger to public order.

13. We have considered the criminal antecedents provided in the tabular form in the grounds of detention. It indicates that first preventive action was taken on 04.07.2022 and another action was taken on 19.01.2023. The petitioner was required to execute bond U/Sec. 93 of the Maharashtra Prohibition Act. After initiating first action against him, he committed CR No. 45/2002 on 07.07.2022, CR No. 20/2023 on 19.01.2023 and CR No. 298/2023 on 22.08.2023. If the petitioner was undeterred and bold enough to commit three offences, then the concerned authority should have taken steps for forfeiture of the bonds. However, we do not find any such action was ever initiated against petitioner. This indicates that the required steps have not been taken against petitioner to curb the activities before resorting to drastic action. We have taken a similar view in the matter of Supadu Bandu Tadvī Vs. District Magistrate Jalgaon vide judgment dated 07.05.2024 in Criminal Writ Petition No. 112 of 2024 that inaction on the part of the competent authorities U/Sec. 93 of the Cr. P. C. would vitiate the action of detention. Following is the relevant paragraph; applicable to the present case also :

17. There is one more aspect in this regard. Though it has been perceived by the respondents that normal law of the land was unable to prevent the petitioner's activities of bootlegging, although on three occasions an action under

section 93 of the M.P. Act was initiated against him, there is absolutely no record to demonstrate that steps were even taken to forfeit the bonds executed by the petitioner and to recover bond amount from him. The first such action was taken on 11-01-2021, the second one was on 24-11-2022 and the latest being on 18-09-2023. A bare look at the aforementioned charts would demonstrate that according to the respondents, the petitioner had continued the bootlegging activity in spite of such actions under section 93 of the M.P. Act and if that be so, one cannot comprehend as to how without even taking the steps to forfeit the bonds and to recover the money since many of these crimes were apparently committed during the bond period of three years stipulated under that section and still, the inference has been drawn by respondent no. 1 – detaining authority that the ordinary law of the land was unable to prevent the petitioner's activities. This, in our considered view, goes to the root of the sustainability of the subjective satisfaction reached by him.

14. Learned counsel for the petitioner points that first offence pitted against him i. e. CR No. 20/2002 U/Sec. 65(e) of the Maharashtra Prohibition Act was investigated and the petitioner was tried. He was acquitted. However, the sponsoring authority and the detaining authority have recorded that the offence is pending trial. Both the authorities are under obligation to bear in mind correct status of the proceedings which has a bearing on the subjective satisfaction arrived at. That is relevant input for forming subjective satisfaction. We have already recorded that for the extraneous reasons the findings in para No. 11 have been recorded. This type of subjective satisfaction cuts across the parameters laid down by the Supreme Court in the latest

judgment in the matter of Nenavath Bujji Etc. Vs. State of Telangana reported in *AIR 2024 SC 1610*. We have no iota of doubt that the subjective satisfaction is arbitrary and perverse.

15. It reveals from record that last offence bearing CR No. 298/2023 is under investigation and no report of chemical analysis has been collected during the course of investigation. Last offence in which the report of chemical analysis was collected was CR No. 20/2023 registered on 19.01.2023. The necessary corollary is that the last offence is not useful to contend that there was ever any illicit liquor with the petitioner. We find that there is no live link from 19.01.2023 to passing of the impugned order on 20.02.2024. There is huge time gap of about one year. The live link between the material pitted against the petitioner and proposed action has snapped. We have already taken a similar view in para No. 15 and 16 of *Supadu Bandu Tadvu Vs. District Magistrate Jalgaon* (supra) that if there is no live link, then the impugned action is vitiated.

16. The detaining authority has recorded finding in para 11 of the order that contraband which was in possession of the petitioner in the four offences was dangerous to human consumption and human life. Learned counsel for the petitioner has shown the reports of the chemical analysis collected during the course of investigation. We find that the reports are silent regarding its effects on the human body and human consumption. We find that there is no experts opinion solicited to arrive at the findings. So far as last offence bearing CR No.

298/2023 is concerned as there is no report of chemical analysis, the offence cannot be considered for arriving at any finding. Thus for want of supporting material we are constrained to record that the findings are perverse. For that purpose learned counsel for the petitioner places reliance on the judgment of this Court in the matter of **Dhanubai @ Dhanno Yashvant Netlekar Vs. State of Maharashtra and others** (supra). We have gone through paragraph No. 25. We propose to take the same view.

17. We have considered five offences pitted against the petitioner which are U/Sec. 65 of the Maharashtra Prohibition Act. All the offences disclose that the petitioner was in possession of the illicit liquor which was intended to be sold. As we have already recorded that there is no experts opinion solicited either during the course of investigation or during preparation of proposal for action of detention to indicate that selling of the contraband was actually injurious to public health. In such a situation mere possessing illicit liquor for the purpose of selling would be at the most amounting to problem of law and order and not the public order. Learned counsel for the petitioner referred to the judgment of the Supreme Court in the matter of **the District Collector, Anantpur and others Vs. V. Laxmanna** (supra). We have considered its para No. 7 and 8. We find substance in the contention of the learned counsel and we propose to follow same view.

18. During the Course of hearing we have come across paragraph No. 5 of the affidavit in reply dated 06.05.2024 of the

respondent No. 2/detaining authority. It has been stated that there need not be any proximity of time in registration of the offence and passing of the impugned order and no limitation has been prescribed under M.P.D.A. Act for passing a detention order and registration of the first/last crime. It is further stated that there was no reason to explain any delay and therefore it was erroneous conception of the petitioner that no explanation for the delay of six months has been given in passing the impugned order. The action under M.P.D.A. Act is regulated and guided by the case law developed in the field from time to time. The detaining authority is oblivious of the judgments which we have referred in paragraphs Nos. 9 and 13.

19. Ignoring the above settled legal position the statements have been made recklessly in para No. 5 of the reply. We strongly disapprove the perception of the detaining authority. We hope and trust that a good sense would prevail over the detaining authority. If such type of statements are made in future or if this type of attitude is adopted in arriving at subjective satisfaction then we will be constrained to come with heavy hands. Time and again it has been emphasised by this Court as well as the Supreme Court that these are the matters of drastic action without trial, curtailing personal liberty of detainee and needs to be dealt with sensitivity. It is not a punishment. The action must be taken strictly adhering to the provisions of the Constitution of India and also the law laid down by the Supreme Court and the High Court.

20. Learned A.P.P. seeks to place reliance on the judgment in the matter of Kashinath Motiram Chavan Vs. Commissioner of Police Solapur Chavan. We have considered paragraph No. 23. Facts and circumstances of that case are distinguishable. We are not impressed with the argument that the ratio can be made applicable.

21. The net result of our analysis is that there is unexplained delay of six months in passing impugned order as well as there is delay of more than eight days in granting approval U/Sec. 3(3) of the Act. The subjective satisfaction is perverse and arbitrary. Hence we pass the following order :

ORDER

- a) The criminal writ petition is allowed.
- b) The impugned order dated 20.02.2024 passed by the respondent No. 2/District Magistrate, Jalgaon is quashed and set aside.
- c) The petitioner shall be set at liberty forthwith if not required to be detained in any other matter.
- d) Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]