



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

957 CRIMINAL WRIT PETITION NO. 503 OF 2024

**KAVITA MACHINDRA PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Mr. Datta A. Madake
APP for Respondents : Mr. Amar V. Lavte

...

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

DATE : 30 APRIL 2024

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

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

2. Petitioner is challenging order of detention dated 09.02.2024 passed by respondent no. 2 under Section 3 (1) and order dated 16.02.2024 passed by respondent no. 1 under Section 10 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and 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).

3. Respondent no. 1 has arrived at a subjective satisfaction on the basis of offence bearing C.R. No. 200 of 2023 registered under Section 65 (e) of Maharashtra Prohibition Act on 31.08.2023 and two in-camera statements. It has been recorded in paragraph no. 4 (b) and paragraph no. 6 that petitioner is a dangerous person indulging in illegal activities of bootlegging. It has been further recorded that petitioner has not been deterred by ordinary penal laws and therefore, drastic action is required to be taken against her.

4. Learned counsel Mr. D.A. Madke for the petitioner submits that there is delay in taking action against the petitioner from recording of the in-camera statements which vitiates impugned action. He would further submit that both the in-camera statements are tutored, vague and unreliable. It is further submitted that representation of the petitioner submitted on 28.02.2024 was not decided promptly and its out come was not communicated to her.

5. Learned counsel for the petitioner seeks reliance on the judgment of *Sandep Govind Pawar Versus State of Maharashtra and others*, **2023 ALL MR (Cri) 1698**, *Vishwas Arun Garunge*

Versus The District Magistrate, Jalgaon and others, passed by this High Court in Criminal Writ Petition No. 1578 of 2023, *Dhanubai @ Dhanno Yashvant Nettlekar Versus State of Maharashtra and others*, passed by this High Court in Criminal Writ Petition No. 1527 of 2023, *S. Amutha Versus The Government of Tamil Nadu and others*, **2022 LiveLaw (SC) 25**, *Harish Pahwa Versus State of Uttar Pradesh*, **1981 CJ (SC) 139** and *Sayedu @ Syed Karim S/o. Syed Husain Versus State of Maharashtra and others*, passed by this High in Criminal Writ Petition No. 156 of 2024.

6. Per contra, learned APP Mr. A.V. Lavte supports impugned order. He would submit that after considering relevant record the subjective satisfaction has been arrived at for plausible reasons. On the basis of two affidavits, it is submitted that due procedure was followed and timeline prescribed under the Act also has been adhered to. He would further submit that representation of the petitioner was placed before the competent forum and it was rejected on 22.02.2024. Lastly, he would submit that there is no perversity or arbitrariness in the impugned order.

7. We have considered rival submissions of the parties and have also gone through papers. Undisputedly, only offence bearing C.R.No. 200 of 2023 has been pitted against the petitioner

coupled with two in-camera statements. The track record of the petitioner does not show her involvement in offence falling under Chapter XVI and XVII of the Indian Penal Code. The gist of FIR pitted against her is that she was found to be in possession of illicit liquor intended to be sold. The witnesses of the in-camera statements also do not attribute any specific incident or the overt act.

8. In this background, it is useful to refer to judgment of the Supreme Court in the matter of District Collector, *Ananthpur and another Versus V. Laxmanna*, (2005) 3 SSC 663, relevant paragraphs are as follows :

“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, the copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.”

9. We do not find any material to show selling of contraband was dangerous to public health. She has not indulged in any activity so as to describe her as a dangerous person. Considering the track record and the last offence pitted against her, it can be said that she could have been dealt with ordinary penal laws. To resort to drastic penal action is unwarranted. As the material against the petitioner is scanty, we find that subjective satisfaction is perverse and arbitrary.

10. Last offence pitted against the petitioner was registered on 31.08.2023. Record reveals that in-camera statements were recorded even prior to registration of the latest offences i.e. on 26.06.2023 and 27.06.2023. Thereafter, the proposal reached the Detaining Authority on 29.12.2023. Impugned order was passed

on 09.02.2024. From the recording of the in-camera statements there is gap of more than 7 months in passing the impugned order. Our attention is invited by learned APP to paragraph nos. 8 and 9 of reply to show that there was no delay in passing order.

11. It reveals that in-camera statements were recorded on 26.06.2023 and 27.06.2023 which were verified by the higher authority on 27.10.2023. Time consumed has not been explained by the respondent. The explanation stated in paragraph nos. 10 and 11 pertains to steps taken by the authorities post detention order. Therefore, it would not help them. Thus we find that there is lack of proper explanation for the delay of more than seven months. Learned counsel for the petitioner is justified in contending that delay has vitiated impugned order. Judgments of Supreme Court in S. Amutha (supra) and Harish Pahwa (supra) pertains to delay in considering representation. These cannot enure to benefit petitioner for this submission.

12. We have gone through in-camera statements. Those are contended to be vague and artificial. It is very surprising that the witnesses do not cite any particular incident which shows the conduct of the petitioner. They have given narration of the track

history of the petitioner and her habitual criminal activities. It is very surprising that both the witnesses are stated to have reasoned the petitioner to stop from illegal activities. The statements appear to be artificial, tutored and could not have been relied upon.

13. Learned counsel for the petitioner seeks reliance on the judgment of *Sandeep Govind Pawar* (supra). We have considered paragraph no. 12, 16 to 19. Following the ratio laid down in the judgment, we have no hesitation to conclude that the subjective satisfaction is not an intelligible decision. Similarly, we have considered our own judgment in the matter of *Vishwas Arun Garunge* (supra) and more specifically paragraph no. 12. We propose to follow the same view to hold that there is no material to show prejudice to the public order.

14. The representation was made by the petitioner on 28.02.2024. Her grievance is that the same has not been dealt with by the respondents / authorities. A specific ground has been raised in the petition. Respondent no. 2 did not deal with this aspect in the affidavit. In the second affidavit, only cursory reference is made that representation was decided on 22.02.2024. The respondents failed to explain that representation dated 28.02.2024

was dealt with promptly, and result was communicated to the petitioner. There is no material on record to show that representation was ever decided and communicated to the petitioner. This conduct of the respondents vitiates the impugned action. Learned counsel for the petitioner has rightly referred to the decision of the Supreme Court in the matter of *S. Amutha* (supra).

15. Net result is that the subjective satisfaction is arbitrary and not an intelligible decision. There is delay in passing impugned order which has not been explained. The representation has not been decided and communicated to the petitioner promptly. We, therefore, pass following order :

ORDER

- i. Criminal Writ Petition is allowed.
- ii. The impugned detention order dated 09.02.2024 passed by District Magistrate, Latur in MPDA proposal No. 2023/MAG/MPDA/Desk-2/WS-691 and which is confirmed by respondent no. 1 by order dated 16.02.2024 in file number MPDA-0224/CR-106/Spl-3B are quashed and set aside.

iii. The petitioner be set at liberty forthwith.

iv. Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

Thakur-Chauhan/-