



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

Criminal Writ Petition No. 643 / 2024

Baban Shamrao Pawar

Age : 50 years,

R/o Neknoor,

Taluka & District Beed.

...Petitioner

Versus

1. The District Magistrate,
Beed.

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

3. The Superintendent of Jail,
Aurangabad Central Prison,
Harsul.

..Respondents

Advocate for the Petitioner : Mr. Rupesh A. Jaiswal

A.P.P. for Respondents /State : Mr. G.A. Kulkarni

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

RESERVED ON : 29 APRIL 2024

PRONOUNCED ON : 6 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 aggrieved by order of detention dated 05.02.2024 passed by the respondent no.1/District Magistrate, Beed under Section 3(1) 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 Act, 1981 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience).

3. Learned Counsel for the petitioner submits that the subjective satisfaction by the respondent no.1 is arbitrary and perverse. In the absence of any expert opinion, conclusion has been reached that the activities are prejudicial to the maintenance of public order. It is further submitted that translation of few english documents were not furnished causing prejudice to petitioner's right to make effective representation. Learned Counsel further submits that there is delay in deciding representation. It is further urged that there is delay in granting approval under Section 3(3) of the Act.

4. Learned Counsel for the petitioner has placed on record written submissions alongwith judgments being relied on. Additionally during the course of argument, a bunch of papers which were given to the detaining authority has also been placed on record.

5. Learned APP supports impugned order on the basis of

three affidavits filed on different dates. He has also placed on record the documents, which were before the detaining authority. He submits that there is cogent material available against the petitioner indicating the activities detrimental to the public order. He would point out that seizure of material collected during investigation of both the offences to show gravity. He would submit that subjective satisfaction is intelligible. It is further pointed out that in one of the offences charge-sheet has been filed which prima facie shows involvement of the petitioner. He would further submit that the detaining authority has not recorded any finding that contraband seized from the petitioner was injurious to public health. Lastly, he would submit that neither there is delay in processing the proposal, nor is there violation of any statutory provision.

6. Having heard both the Counsels, we find that C.R. No.226/2023 and C.R. No.336/2023 registered under Section 65(f) of the Maharashtra Prohibition Act coupled with preventive actions, earlier order of detention and in-camera statements are the foundation to reach the subjective satisfaction. Interestingly, grounds of detention refer earlier order of detention passed on 14.11.2022 against petitioner. However, it has not been clarified as to what happened to the earlier order of detention. Once the sponsoring authority refers to earlier proposal of detention and order passed on 14.11.2022 under Section 3(1) of the Act, it was incumbent for the

detaining authority to enquire into it. The respondents should have clarified and placed on record relevant documents of earlier action of detention. We were curious to know as to whether the petitioner had undergone detention or the order of detention was upset either by State Government or Advisory Board. It is left to the speculation that as to what prompted the respondents to undertake action for detention for the second time. This reflects on the jurisdiction exercised by the detaining authority.

7. It has been recorded by the detaining authority that during the course of investigation of C.R. No.226/2023, samples of the contraband were referred to chemical analysis. Charge-sheet has also been reported to be filed. In another offence i.e. C.R. No.336/2023, the report of chemical analysis is awaited and the charge-sheet has not been filed. It is concluded by the detaining authority that criminal activities of the petitioner were affecting public order. It is doubtful as to the contraband in last offence is illicit liquor or not. The detaining authority has not referred to experts opinion. Therefore, we find substance in the submission of learned Counsel for the petitioner that without there being an expert's opinion, subjective satisfaction was arrived at.

8. We have considered the judgments cited by the petitioner in the case of Satyavan Shakha Rathod Vs. Commissioner of Police Pune City & Ors., Criminal Writ Petition Stamp

No.15879/2023; Prakash Chandrakant Kanjar Vs. State of Maharashtra & Anr., Criminal Writ Petition No.1258/2023; Dhanubai @ Dhanno Yashvant Nettlekar Vs. State of Maharashtra & Ors., Criminal Writ Petition No.1527/2023 and Vishwas Arun Garunge Vs. District Magistrate, Jalgaon, Criminal Writ Petition No.1578/2023. In those matters, a finding was arrived at by the detaining authority that consumption of contraband would be hazardous to public health. We are of the considered view that ratio of these judgments cannot be made applicable to the present case.

9. In the present matter, petitioner was found to be in possession of material and the chemical to manufacture illicit liquor. In C.R. No.226/2023, a report of chemical analysis is available. We have perused it. It does not spell out any opinion that the contraband would be dangerous to human consumption. On the basis of two offences, preventive actions and the in-camera statements, the activities of the petitioner are held to be detrimental to the public order. Learned Counsel for the petitioner has rightly submitted that there has to be an expert's opinion to infer that the contraband is dangerous to human consumption and ultimately would affect public order. He has aptly referred to judgment in the matter of **District Collector, Ananthapur Vs. Laxmanna, 2005 CJ(SC) 400**. The 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 copy such material should also be given to the detenu to afford him an opportunity to make an effective representation.”

8. Therefore, while holding that dealing with arrack which is dangerous to public health would become an act prejudicial to the maintenance of public order attracting the provisions of the Act. It must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of the such material should be given to the detenu.”

10. In the present matter also, petitioner was not found with the illicit liquor but found to be in possession of material to manufacture illicit liquor. That itself would not lead to conclusion that the activities are detrimental to the public order. The subjective satisfaction in our considered view is perverse.

11. Learned Counsel for the petitioner would refer to page nos. 216 to 219 which are reports of the chemical analysis, collected during the course of investigation of the offences registered against the petitioner. They are in english. We notice that report dated 20.11.2023 pertains to C.R. No.226/2023 which is pitted against petitioner. Learned APP would point out paragraph no.15 of reply filed on 15.04.2024. We do not

find that translated copies of above mentioned documents were furnished to the petitioner. This has affected right to make an effective representation which is important safeguard under Article 22(5) of the Constitution of India.

12. Learned Counsel refers to judgment of Yogesh Nandu Pujari Vs. Commissioner of Police, Thane & Ors., 2013 ALL MR (Cri) 1779. We have considered relevant paragraph nos. 8 and 9 of the judgment. We propose to follow the same. We also propose to follow the view taken in the matter of Ketan Gorakh Darekar Vs. Commissioner of Police, Pune City & Ors., Criminal Writ Petition Stamp No.16438/2023 and Vishwas Arun Garunge Vs. District Magistrate, Jalgaon, Criminal Writ Petition No.1578/2023. There is substance in the submissions that the safeguard provided by Article 22(5) of the Constitution of India, has been violated in the present matter.

13. Petitioner submitted representation on 21.02.2024. It was rejected on 20.03.2024. It was communicated to the petitioner on 21.03.2024. We have considered paragraph no. 7 of the reply dated 16.04.2024 which states that representation was received on 28.03.2024.

14. There is delay of 27 days in deciding representation for which no explanation has been tendered by the respondents. Learned Counsel for the petitioner refers to judgment of **Harish Pahwa Vs. State of Uttar Pradesh**, 1981 CJ(SC) 139. It lays

down that it is duty of state to proceed to determine representation with utmost expedition. The matter must be taken up for consideration as soon as representation is received and dealt with continuously until a final decision is taken and communicated. We propose to follow the same view and constrained to record that delay vitiates the impugned order. To avoid repetition, we record that judgments in the matter of **Akash Annasaheb Hodade Vs. District Magistrate Latur & Ors.**, Criminal Writ Petition NO.391/2023, **S. Amutha Vs. The Government of Tamil Nadu & Ors.**, 2022 LiveLaw (SC) 25 and **Prakash Chandra Yadav @ Mungeri Yadav Vs. State of Jharkhand & Ors.**, 2023 LiveLaw (SC) 529, lay down ratio on similar lines which would support our findings.

15. Impugned order was passed on 05.02.2024. The petitioner was detained on 06.02.2024. Order of detention received approval under Section 3(3) of the Act on 13.02.2024. A delay of eight days is sought to be explained by reply dated 18.04.2024. Even if it is presumed that on 08.02.2024 proposal was received by the State Government, further delay has not been explained. Learned Counsel for the petitioner is justified in contending that delay has vitiated impugned order. He relies on the judgment of **Hetchin Haokip Vs. State of Manipur & Ors.**, 2018 ALL SCR (Cri) 1240. We have carefully considered paragraph nos. 13 to 19 of the judgment. The purport of word forthwith occurring in Section 3(3) of the Act,

has been explained by the Supreme Court. In that matter also there was delay of five days. We propose to follow ratio laid down to conclude that impugned order is vitiated. Incidentally, the judgment of the Supreme Court has been followed in Akash Annasaheb Hodade (supra) and **Dharani Raja Padyachi Vs. State of Maharashtra and Others**, 2019 CJ(Bom) 1658.

16. Learned APP would refer to ratio laid down in the matter of **Smt. Phulwari Jagadambaprasad Pathak Vs. R.H. Mendonca and Others**, 2000 AIR SCW 2727. We have gone through the paragraph no.16. We are of the considered view that the same would not enure to the benefit of the respondents as facts are distinguishable.

17. On the basis of above analysis, we conclude that the impugned order is unsustainable. We, therefore, pass following order :

ORDER

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

SHAILESH P. BRAHME
JUDGE

MANGESH S. PATIL
JUDGE