



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 676 OF 2024

Bhiva Babulal Gaikwad
Age: 48 years, Occu.: Labourer,
R/o Mehunbare, Tq. Chalisgaon,
Dist. Jalgaon

..PETITIONER

VERSUS

1. State of Maharashtra
Home Department (Special),
Mantralaya, Mumbai
2. The District Magistrate, Jalgaon
Office of the District Magistrate, Jalgaon
3. The Superintendent,
Central Prison Nagpur, Nagpur
4. The Superintendent of Police,
Jalgaon
5. The Police Inspector,
Mehunbare Police Station, Mehunbare,
Tq. Chalisgaon, Dist. Jalgaon

..RESPONDENTS

....
Mr. U.S. Patil, Advocate for petitioner
Mr. A.D. Wange, A.P.P. for respondents
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CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 11th JUNE, 2024

ORAL JUDGMENT (PER : R.G. AVACHAT, J.) :

1. This petition, under Article 226 of the Constitution of India, is filed
for the following relief :-

“B] The order of detention bearing No. DANDAPRA/KAVI/M.P.D.A./10/2024, dated 28.03.2024 issued by Respondent No.2 under Section 3 of M.P.D.A. Act 1981 by the Respondent No.2 be quashed and set aside and on quashing the same petitioner be ordered for release forthwith;”

As such, the challenge in this petition is to order dated 28th March, 2024 passed by the District Magistrate, Jalgaon detaining the petitioner for a period of twelve months on the ground of his activities to have been found to be prejudicial to the maintenance of public order, in view of he being a bootlegger.

2. We heard learned counsel for the petitioner and learned A.P.P. represent the respondent – State at length.

3. Learned counsel for the petitioner would submit that six crimes under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons and Video Pirates Act, 1981 (‘M.P.D.A. Act’) were registered against the petitioner. He was acquitted in three out of six crimes. All those crimes pertain to the years 2017-19. Two other crimes, being C.R. Nos. 60 of 2022 and 77 of 2022 were pending trial. Those offences allegedly did take place long before the order of detention was passed. According to learned counsel, the first five crimes have, therefore, no relevance or at least no proximity with the order impugned herein. Crime, being C.R. No.331 of 2023 registered in December 2023 was

taken into consideration for passing the detention order besides an action under Section 93 of the Maharashtra Prohibition Act, 1949 ('Prohibition Act') taken against him. According to learned counsel, when the proposal was moved and even order of detention was passed, no charge-sheet in the said crime was filed before the competent Court. There was no material on record in the nature of C.A. report to indicate that the illicit liquor allegedly recovered from the petitioner contain particular percentage of ethmol alcohol and the same was prejudicial to the public health/order. According to him, the petitioner was not arrested in C.R. No. 331 of 2023. He was given notice under Section 41-A of the Cr.P.C. According to him, when the concerned police officer did not arrest the petitioner for investigation of the said crime, how could he put up a proposal for the petitioner's detention for a period of twelve months based on the very crime. Learned counsel, therefore, urged for allowing the petition. He relied on the judgment of Division Bench of this Court in case of Criminal Writ Petition No. 1527 of 2023 decided on 08th February, 2024.

4. Learned A.P.P. would, on the other hand, submit that the earlier crimes registered against the petitioner have been referred to and relied on as a history of the petitioner's criminal activities as a bootlegger. Crime vide C.R. No. 331 of 2023 was registered in December 2023. The concerned police station officer immediately put up a proposal for petitioner's detention.

The order of detention passed by the detaining authority indicates his subjective satisfaction. According to learned A.P.P., subjective satisfaction of the detaining authority could not be a subject of judicial review. In the impugned order the detaining authority has observed that the petitioner's activity as a bootlegger to be prejudicial to maintenance of public order which includes public health as well. He, therefore, urged for dismissal of the petition.

5. Considered the submissions advanced. Perused the order of detention impugned in this petition. It is reiterated that six crimes registered against the petitioner and a preventive action taken against him have been referred to and relied on in the order of detention. Moreover, in-camera statements of two witnesses have been relied on. Both the statements are said to be dated 17th and 19th February, 2024.

6. Section 2(a) of the Act M.P.D.A. reads thus :-

2(a) "acting in any manner prejudicial to the maintenance of public order" means—

(i)

(ii) in the case of a bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order ;

7. The term 'bootlegger' has been defined by sub-clause (b) of Section 2 of the M.P.D.A, which reads thus :-

*“(b) “bootlegger” means a person, who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provisions of the *Bombay Prohibition Act, 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacles or any other materials whatsoever in furtherance or support of the doing any of the above mentioned things by or through any other person, or who abets in any other manner the doing of any such thing ;”*

8. Needless to mention that recourse to stringent action of preventive detention is taken when ordinary law falls short to curb the activities of the person to be kept in preventive detention. In the case in hand, although six crimes under Prohibition Act were registered against the petitioner, he was admittedly acquitted three of them. Those pertain to the year 2017-19. On the date of passing of detention order, there were two crimes under the Prohibition Act, pending trial. One of them pertains to the year 2020 while the other pertains to December 2022. The order of detention is dated 07th March, 2024. As such, there is gap of fifteen months between the crime dated 03rd December, 2022 and the order of detention dated 07th March, 2024. There is no proximity between the two so as to suggest reliance thereon was very much imminent to pass an order of preventive detention under the M.P.D.A. Act.

9. As such, the order of detention is mainly passed on Crime vide C.R. No. 331 of 2023, registered in December 2023. While the order of

detention was passed when the said crime was pending investigation. Whatever documents were supplied to the petitioner alongwith detention order did not contain the C.A. reports pertaining to the illicit liquor allegedly seized from him. As such, the detaining authority did not have material before him to find how much percentage of ethnol alcohol was contained in the seized illicit liquor so as to observe the petitioner to have indulged in the activity which is prejudicial for maintenance of public order/health.

10. Admittedly, the investigating officer of the said crime did not arrest the petitioner. The petitioner was served with a notice under Section 41-A of Cr.P.C. The same suggests that arrest of the petitioner in the said crime was not found to be necessary for further investigation. Then what remains is the preventive action taken against the petitioner under Section 93 of the Prohibition Act in February 2024. The same too appears to have been taken based on Crime vide C.R. No. 331 of 2023. There is nothing to indicate the petitioner to have committed breach of the bond executed by him in a proceeding under Section 93 of the Prohibition Act.

11. Then there are two in-camera statements. One is dated 11th November, 2023 and the other is 14th December, 2023. Both these in-camera statements indicate the petitioner to have indulged in manufacturing and sell of illicit liquor. Statements of both these witnesses indicate the petitioner to have assaulted and abused both of them and had also threatened them if they

report the matter to police. We are conscious of the fact that in-camera statements can be relied on for passing the order of detention under M.P.D.A. Act. But, in our view when the said order was mainly passed on one crime registered against the petitioner under Section 65-E of the Prohibition Act and the same was pending investigation, and there were no documents before the detaining authority to indicate the seized alleged illicit liquor contain particular percentage of ethnl alcohol so as to take it to be prejudicial to maintenance of public order/health if consumed, the order of detention needs to be interfered with on the ground of non-subjective satisfaction of the detaining authority. Furthermore, the petitioner was not arrested in the said crime. Then how could the very crime forms the basis of detaining the petitioner for a period of twelve months under the M.P.D.A. Act. For all these reasons, we are inclined to allow the writ petition.

12. In view of above, following order is passed :-

Order of detention dated 28th March, 2024 passed by Respondent No.2 – District Magistrate, Jalgaon in File No. DANDAPRA/KAVI/M.P.D.A. /10/2024 is set aside. The petitioner be released forthwith, if not required in any other crime.

(NEERAJ P. DHOTE, J.)

SSD

(R.G. AVACHAT, J.)