



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

Criminal Writ Petition No. 751 Of 2024

Dadarao Ramdas Jogi
Age : 44 years, Occu. Labour,
R/o. Mouje Bhagdara, Tq. Jamner,
Dist. Jalgaon.

...Petitioner

Versus

1. The State of Maharashtra
Through Deputy Secretary,
Home Department (Special),
Mantralaya, Mumbai.
2. The State of Maharashtra,
Through District Magistrate,
Jalgaon.
3. The State of Maharashtra,
Through Superintendent,
Central Jail, Yeravda,
Pune.

...Respondents

Advocate for the Petitioner : Mr. H.P. Randhir

A.P.P. for Respondents/State : Mrs. P.R. Bharaswadkar

**CORAM : SMT. VIBHA KANKANWADI &
SHAILESH P. BRAHME, JJ..**

**RESERVED ON : 16 AUGUST 2024
PRONOUNCED ON : 20 SEPTEMBER 2024**

J U D G M E N T (*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 the order of detention dated 28.03.2024 passed by the respondent no.2/District Magistrate, Jalgaon under Section 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 (hereinafter referred to as the MPDA Act for the sake of brevity and convenience), detaining him for his detrimental activities of bootleggers.

3. The District Magistrate found that the petitioner was repetitively indulging in activities of bootlegging and he was not being deterred by ordinary penal action. The contraband found with him while committing offences pitted against him was recorded to be injurious to public health consumption. His activities were held to be detrimental to the public order which constrained the detaining authority to pass impugned order.

4. The action of detention against the petitioner is based on following record :

- (i) Crime No.163/2023 under Section 65(f)(b)(c)(e) of the Maharashtra Prohibition Act registered on 30.04.2023.
- (ii) Crime No.283/2023 of the Maharashtra Prohibition Act registered on 26.06.2023.
- (iii) Crime No.52/2024 of the Maharashtra Prohibition Act registered on 26.01.2024.
- (iv) Proceeding No.160/2021 of the Maharashtra Prohibition Act registered on 31.08.2021.
- (v) Proceeding No.403/2022 under Section 93 of the Maharashtra Prohibition Act registered on 29.11.2022.

(vi) In-camera statements of witnesses A and B recorded on 29.02.2024.

5. Learned Counsel for the petitioner would make following submissions to challenge the impugned action :

(i) Impugned action suffers from non-application of mind and the subjective satisfaction is perverse. There was no cogent material to resort to the drastic action.

(ii) Subjective satisfaction is perverse as the order of bail and notice is served under Section 41-A(1) of the Criminal Procedure Code, are overlooked.

(iii) There is delay in passing impugned order.

(iv) There is delay in forwarding report under Section 3(3) of the Act which is unexplained.

6. Learned Counsel for the petitioner tenders on record the written submission and supporting the case law.

7. Learned APP Mrs. Bharaswadkar would support impugned judgment and order. She would rely on affidavit-in-reply of the respondent no.2 to justify that due procedure of law has been followed for taking impugned action against the petitioner. She would submit that there was adequate material against the petitioner and his notorious activities would reflect that regular penal action could not deter him. It is submitted that all the relevant copies were served on the petitioner. The time schedule provided in the statute at different stages has been followed meticulously. The Detaining Authority considered all aspect of the matter and arrived at subjective satisfaction which is reasonable and plausible. It is further contended that all the steps required to be taken under the Act, were taken with due promptitude.

8. A reference is made to the affidavit-in-reply to show that the delay in forwarding proposal for approval under Section 3(3) of the Act, has been explained properly. Learned AP tenders on record sequence of events in tabular form to show compliance of statutory procedure. She also relies on judgment of coordinate bench in the matter of **Vinod Dhannulal Jaiswal Vs. District Magistrate Aurangabad and Others**, AIR OnLine 2024 Bom 105.

9. The action against the petitioner was based on three offences under the provisions of the Maharashtra Prohibition Act, two prohibitory action and two in-camera statements. During the course of hearing, it is brought to our notice of learned Counsel for the petitioner that the petitioner was acquitted from C.R. No.283/2023 in S.C.C. No.783/2023 vide judgment and order dated 16.03.2024 by Illrd Judicial Magistrate, First Class, Jamner. The proposal was submitted on 11.03.2024 and thereafter on 16.03.2024, order of acquittal was passed.

10. The sequence of events placed on record by learned APP shows that in-camera statements were recorded on 29.02.2024. The proposal was submitted on 11.03.2024. The statements of the witnesses were verified on 11.03.2024. The detention order was passed on 28.03.2024. The proposal for approval under Section 3(3) was forwarded on 01.04.2024. The order was passed by the State Government on 04.04.2024. The matter was placed before the Advisory Board on 23.04.2024 and it recommended the detention on 02.05.2024. The order of detention was confirmed on 15.05.2024.

11. It transpires from record that C.R. No.163/2023 registered on

30.04.2023, is the first offence pitted against the petitioner. The last offence bearing C.R. No.52/2024 was registered on 26.01.2024. Immediately on 29.02.2024, in-camera statements were recorded. Thereafter the proposal was submitted on 11.03.2024. We do not find any undue delay in proceeding against the petitioner. No specific instance is pointed out by the learned Counsel for the petitioner to demonstrate that the authorities involved in the process were casual and failed to take required steps.

12. In each of the offence pitted against the petitioner, the contraband was seized and referred for chemical analysis. Our attention is drawn to the report of the chemical analysis to demonstrate that only percentage of ethyl alcohol in the water was mentioned by the Analyzer. Whereas it has been recorded by the Detaining Authority in paragraph no.11 of the grounds of detention that the consumption of alcohol was reported to be injurious to the human consumption and it would likely to lead to serious disease i.e. Jaundice, Cancer etc., which would be fatal. The Detaining Authority did not solicit expert's opinion to record findings in paragraph no.11. The reports disclose that the accused was dealing with illicit liquor. Further certificates may not be necessary. The material used for manufacturing and the method of preparation would be sufficient to hold it as 'hazardous for human consumption'.

13. Learned Counsel for the petitioner seeks to rely on the judgments in the matter of **Yogesh Bharat Rajput Vs. State of Maharashtra and Others**, Criminal Writ Petition No.105/2024 and **Ganesh @ Nana Gangaram Koli Vs. State of Maharashtra and Others**, Criminal Writ Petition No.1530/2023. We have gone through

the judgments. Learned Counsel is fortified in his submission, but this is not sole ground which would vitiate the impugned action.

14. Our attention is invited to order of acquittal dated 16.03.2024 passed in SCC No.743/2023 arising out of C.R. No.283/2023. The order of detention was passed on 28.03.2024. The reasons assigned for the acquittal of the petitioner are relevant which should have been taken into account by the Detaining Authority. The petitioner also could have tendered the order of acquittal to the competent authority. But no endeavour has been made by him. There are other offences and material pitted against the petitioner besides C.R. No.283/2023. Therefore for not considering order of acquittal, action under challenge cannot be vitiated.

15. The petitioner was issued with notice under Section 41-A(1) of the Cr.P.C. in all the offences pitted against him. The learned APP in answer to the submission of the petitioner, relies on the judgment of the coordinate bench in the matter of Vinod Dhannulal Jaiswal (supra). The relevant paragraph is as follows :

“36.It is to be noted that Section 41-A (1) of the Code of Criminal Procedure is to be resorted to by the Investigating Officer before arresting an individual and that provision would regulate his powers to arrest an individual. Needless to state that the arrest contemplated under the Code of Criminal Procedure for carrying out the investigation into a crime by resorting to custodial interrogation would be essentially for completing the investigation. Suffice for the purpose to observe that in the matter of Arnesh Kumar Vs. State of Bihar and Anr.; (2014) 8 SCC 273 the Supreme Court has laid down several guidelines which have to be borne in by the investigating Officer before arresting a person. We are pointing out the law to demonstrate that the submission of the learned advocate for the petitioner that the very fact that the I.O. did not feel necessary to arrest the petitioner although the crimes were registered would be indicative of the fact that even he did not require the petitioner to be sent behind the bars, is fallacious. The arrest for carrying out investigation into a crime would be for a limited purpose of facilitating the Investigating Officer to complete the investigation. Such arrest cannot be looked upon as an action which can be aimed at preventing the accused from indulging in a

similar activity rather any such approach would be inconsistent with the mandate of law laid down in Arnesh Kumar (supra). The action of preventive detention under the preventive detention laws would be aimed at abating the specific activities of an individual whereas the arrest for the purpose of investigation cannot be aimed at preventing him from indulging in any such activity. Precisely for this reason, we are not in agreement with the submission of the learned advocate for the petitioner that petitioner being not arrested in the crimes should be taken into account to draw an inference that even the I.O. did not feel it necessary to abate his unlawful activities. In short the purpose of arrest in respect of crime is aimed at conclusion of the investigation, whereas, detention of a person under the preventive detention law is to prevent him from indulging in certain activities.”

. In view of above referred legal position, we are not inclined to accept the submission of the petitioner.

16. Though it is contended by the petitioner that the reasons assigned for releasing him on bail, were overlooked, no order is pointed out by the learned Counsel for the petitioner, releasing him on bail. On the other hand, the petitioner was served with notice under Section 41-A (1) of Cr.P.C. In the absence of any order, enlarging him on bail, we find the submission is devoid of any substance. The judgments cited by learned Counsel for the petitioner in this regard, cannot be made applicable.

17. Last offence was registered against the petitioner on 26.01.2024. In-camera statements were recorded on 29.02.2024. The dates with sequence of events are placed by learned APP on record, which are not disputed. The time consumed in passing impugned order has been explained by the respondents in affidavit-in-reply. We have gone through the relevant paragraph no.6, 12 and 18. We find that the time consumed for arriving at logical conclusion has been satisfactorily explained and cannot be doubted. The petitioner has placed on the judgment of **Salman Vs. State of Maharashtra through its Secretary Home Department and Others**, 2020 SCC OnLine Bom

858. It can be distinguishable on facts. We have already come to conclusion that there is no unexplained delay in the matter in hand. Therefore ratio laid down therein, is not applicable to the case in hand.

18. The impugned order was passed on 28.03.2024 by the Detaining Authority. Thereafter the proposal under Section 3(3) of the Act was forwarded to the State Government on 01.04.2024. It is submitted by the petitioner that there is delay in sending proposal. Learned APP adverted our attention to contents of paragraph no.12 to explain the time consumed in forwarding the proposal. We find that the explanation is satisfactory. We do not notice laxity in forwarding the proposal. We, therefore, disapprove the submission of the petitioner.

19. The petitioner has placed reliance in the matter of **Hetchin Haokip Vs. State of Manipur and Others**, (2018) 9 SCC 562; **Akash Annasaheb Hodade Vs. District Magistrate, Latur**, Criminal Writ Petition No.391/2023 and **Aatish s/o Ravindra Kharat Vs. State of Maharashtra and Others**, Criminal Writ Petition No.1794/2023. The matter in hand reflects proper explanation of delay of four days. The facts in cited judgments are not similar to the case in hand. We are unable to give any benefit of the ratio laid down in above judgments to the petitioner.

20. Considering over all conspectus of the matter, we find that the subjective satisfaction is reasonable and plausible. There was material against the petitioner to demonstrate his continues indulgence in the bootlegging activities. The in-camera statements corroborate the proposed action against him. The finding recorded by the Detaining Authority that the notorious activities of the petitioner were

detrimental to the public order is just and proper.

21. The impugned action against the petitioner is based upon more than one grounds. We have recorded that the finding in the paragraph no.11 of the grounds of detention is unfounded. The order of acquittal should have been taken into account by the Detaining Authority. Despite this, we prefer to confirm impugned action because of implication of Section 5A of the Act. A useful reference can be made to judgment of the coordinate bench in the matter of **Santosh Subhash Koli Vs. State of Maharashtra and Others**, in Criminal Writ Petition No.1858/2023. The following are the relevant paragraphs :

18. It is expedient to disclose one more legal facet. It is common knowledge that order of detention passed under the Act would be challenged on various grounds comprising of delay, live link, procedural violation, violation of Article 22(5) of the Constitution of India, violation of principles of natural justice, subjective satisfaction, etc. It is difficult to comprehend all the grounds. Challenges on the ground of delay, violation of principles of natural justice or violation of Article 22(5) of the Constitution go to the root of the matter affecting power of the detaining authority. In such a situation, safeguard of section 5A of the Act has no application. However, if the grounds of challenge are based on subjective satisfaction, propriety, sufficiency of incriminating material, section 5A of the Act steps in. In such a situation, entire order of detention would not get vitiated, even if one or more grounds of challenge would have merit.

19. In the matter of Ganesh Vs. State of Maharashtra (supra), we upheld submission of delay which was issue going to the root of jurisdiction. In the case in hand, we have not accepted the ground of delay. Therefore by implication of section 5A of the Act, in the present matter even if we accept submission on the point of absence of expert's opinion affecting subjective satisfaction, impugned order cannot be vitiated.

22. The net analysis of our reasoning is that the petition fails. The writ petition is dismissed. Rule is discharged.

SHAILESH P. BRAHME
JUDGE

SMT. VIBHA KANKANWADI
JUDGE

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